

COVENANTS

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE as follows:

1. DEFINITIONS AND INTEPRETATION

1.1 Definitions

In this Encumbrance:

Council means the local government body for the area in which the Land is situated;

Encumbrancee means the party described as such on page 1 of this Encumbrance and includes its successors and permitted assigns and any other person claiming under it as a purchaser of the whole or any part of the Orleana Waters Site;

Encumbrancer means the party described as such on page 1 of this Encumbrance and includes its successors in title, permitted assigns and the registered proprietor for the time being of the Land;

Land means the land described on page 1 of this Encumbrance and includes any part of that land;

Orleana Waters Site means the whole of the land comprised, or formerly comprised, in Certificates of Title Volume 5089 Folio 385 and Volume 5400 Folio 557, being allotments 66 and 88 in Deposited Plan 88860;

Rent Charge means the rent charge described on page 1 of this Encumbrance;

Special Building Features means features relating to recycling, energy conservation or environmental management or facilitating the use of computer equipment and innovative technology;

Substantial Commencement means the completion of concrete footings for a building in accordance with an approval given by the Encumbrancee under clause 6.1;

Urban Design Guidelines means the guidelines attached to this Encumbrance, which may be amended from time to time and published by the Encumbrancee in respect to the building scheme that has been or will be adopted and implemented within the Orleana Waters Site.

1.2 Interpretation

In this Encumbrance, unless it is stated to the contrary:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause is a reference to a clause of this Encumbrance;
- (f) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;

- (g) a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (h) a reference to an agreement or document (including this Encumbrance) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Encumbrance or that other agreement or document;
- (i) a reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail;
- (j) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (l) a reference to dollars and \$ is to Australian currency;
- (m) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (n) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (o) references to agree, approve or consent are references to agreement, approval or consent (as the case may be) in writing;
- (p) a reference to the completion of a building or similar expression used in this Encumbrance means the stage at which:
 - (i) the building work is complete except for minor omissions and minor defects on the interior of the building:
 - (A) which do not prevent the building from being reasonably capable of being used for its intended purposes; and
 - (B) rectification of which will not prejudice the convenient use of the building; and
 - (ii) all work on the external façade and other external surfaces of the building is complete and all defects and minor omissions have been rectified; and
 - (iii) a certificate of occupancy under section 67 of the Development Act 1993 (SA) has been issued;
- (q) nothing in this Encumbrance is to be interpreted against a party solely on the ground that the party put forward this Encumbrance or any part of it.

1.3 Headings

Headings do not affect the interpretation of this Encumbrance.

1.4 Schedules and annexures

Schedules and annexures form part of this Encumbrance.

2. RENT CHARGE

2.1 Payment of Rent Charge

Subject to clause 2.2, the Encumbrancer must pay the Rent Charge to the Encumbrancee:

- (a) during the term of this Encumbrance; and
- (b) on 30 June immediately succeeding the grant of this Encumbrance and on each succeeding 30 June.

2.2 Rent Charge not payable unless demanded

The Encumbrancer must only pay the Rent Charge to the Encumbrancee if payment is demanded by the Encumbrancee.

2.3 Encumbrancee's right to injunctive relief and damages

The provisions of this clause 2 do not in any way affect or prejudice the rights of the Encumbrancee to:

- (a) an injunction preventing or restraining any breach of the covenants in this Encumbrance; or
- (b) damages for any such breach.

3. SUCCESSORS BOUND BY ENCUMBRANCE

Without detracting in any way from this Encumbrance being binding on the successors of the Encumbrancer, the Encumbrancer must not transfer the Land to any person unless the Encumbrancer has first procured the grant by that person of an encumbrance:

3.1 Form

in the same form as this Encumbrance;

3.2 Effect

to the same effect as this Encumbrance;

3.3 Binds

which binds that person;

3.4 Benefit

is for the benefit of the Encumbrancee and for the benefit of every other allotment within the Orleana Waters Site; and

3.5 Registration

which is registered on the certificate of title of the Land immediately after the discharge of this Encumbrance and the transfer of the Land to that person.

4. PERMITTED USE

4.1 Urban Design Guidelines

Subject to clause 4.2, the Encumbrancer must ensure that the Land is not used for any purpose other than a purpose specified in this Encumbrance and the Urban Design Guidelines.

4.2 Exceptions

The provisions of clause 4.1 do not:

- (a) apply where the Encumbrancee has given prior written approval to the Encumbrancer to use the Land for a purpose other than as specified in the Urban Design Guidelines; or

- (b) require the Encumbrancer to change any use of any part of the Land which existed prior to an amendment to the Urban Design Guidelines as a result of which that use is no longer permitted.

5. SUBDIVISION

- 5.1 The Encumbrancer must not divide the Land except with the prior written approval of the Encumbrancee.
- 5.2 The provisions of clause 5.1 do not apply:
 - (a) where the Encumbrancee has given prior written approval to the Encumbrancer to divide the Land under the Community Titles Act 1996 (SA); or
 - (b) where the Urban Design Guidelines specifically allow the Land to be divided.

6. RESTRICTIONS ON WORKS

6.1 No works unless in accordance with Urban Design Guidelines

- (a) The Encumbrancer must not carry out or permit to be carried out any works on the Land:
 - (i) contrary to the Urban Design Guidelines; and
 - (ii) except in strict accordance with plans and specifications that have received the prior written approval of the Encumbrancee.
- (b) The Encumbrancer must not submit any plans of building works to the Council for its approval until it has obtained the approval of the Encumbrancee.

6.2 Encumbrancer Building and Development Requirements

The Encumbrancee will not act unreasonably in refusing any approval or imposing any condition of approval under clauses 6.1(a)(ii) and 6.1(b). However, a refusal or a condition cannot be deemed unreasonable if:

- (a) the proposal as submitted is contrary to any provision in the Urban Design Guidelines; or
- (b) a corporate member of the Planning Institute of Australia certifies that the proposed works would have an adverse effect upon the development, appearance, health or amenity of the locality in which the Land is situated or upon any part of that locality.

6.3 Planning and zoning laws

- (a) The Land must not be used or developed except in accordance with:
 - (i) any laws relating to planning or zoning from time to time in force; and
 - (ii) the conditions of any relevant consent or approval given by any Council or other relevant planning authority.
- (b) Any approval granted by the Encumbrancee does not constitute an agreement or representation as to adequacy, suitability or fitness of the proposal, plans or specifications so approved, nor that the Council will grant its approval. The Encumbrancer acknowledges that the Encumbrancer will not place any reliance on the Encumbrancee's approval, whether for the purposes of planning or zoning laws or otherwise.

6.4 Special building features

- (a) The Encumbrancer must not erect, or permit the erection of, a building on the Land unless the building includes all of the Special Building Features set out and described in the Urban Design Guidelines or other specifications as advised by the Encumbrancee.
- (b) The Encumbrancer must not submit building plans and specifications to the Encumbrancee for approval, unless the plans and specifications are accompanied by sufficient information to satisfy the Encumbrancee that the requirements of clause 6.4(a) will be met.

6.5 Certificate

The Encumbrancee may, by giving written notice to the Encumbrancer, require the Encumbrancer to provide the Encumbrancee with a certificate from the Encumbrancer, or from a licensed builder or an independent certifier engaged by the Encumbrancer, stating that the building has been completed in accordance with the requirements of this clause 6. If the Encumbrancee gives a written notice under this clause 6.5, the Encumbrancer must not delay in providing that certificate for a period of longer than 14 days from the date of that notice.

7. NO DELAY

The Encumbrancer:

- 7.1 must not permit any undue delay to occur in the commencement or completion of any works approved under clause 6; and
- 7.2 must not permit the Substantial Commencement of the construction of any building approved by the Encumbrancee on the Land to be delayed beyond a time limit of 12 calendar months after the date of this instrument (or such further time as the Encumbrancee, in its absolute discretion allows, by notice in writing to the Encumbrancer); and
- 7.3 must not permit the completion of any construction of any building approved by the Encumbrancee on the Land to be delayed beyond a time limit of 24 calendar months after the date of this instrument (or such further time as the Encumbrancee, in its absolute discretion allows, by notice in writing to the Encumbrancer); and
- 7.4 must not permit the completion of landscaping approved by the Encumbrancee on the Land between the front of the building and the adjacent front boundary of the Land to be delayed beyond a time limit of 6 calendar months after the completion of the construction of the building on the Land (or such further time as the Encumbrancee, in its absolute discretion allows, by notice in writing to the Encumbrancer); and
- 7.5 must not permit the completion of the construction of a driveway approved by the Encumbrancee on the Land to be delayed beyond a time limit of 3 calendar months after the completion of the construction of the building on the Land (or such further time as the Encumbrancee, in its absolute discretion allows, by notice in writing to the Encumbrancer); and
- 7.6 must not permit the completion of the construction of a driveway crossover (being a crossover connecting the driveway from the boundary of the Land to the kerb) approved by the Encumbrancee to be delayed beyond a time limit of 3 calendar months after the completion of the construction of the building on the Land (or such further time as the Encumbrancee, in its absolute discretion allows, by notice in writing to the Encumbrancer).

8. OPTION TO BUY BACK

- 8.1 If construction of a building approved by the Encumbrancee is not Substantially Commenced or completed or both within the time limits specified in clauses 7.2 and 7.3 (or such further time as the Encumbrancee, in its absolute discretion allows, by notice in writing to the Encumbrancer) or if the Encumbrancer attempts to breach, or does breach clause 5, then the following provisions apply:
- (a) The Encumbrancee may request the Encumbrancer to transfer the Land to the Encumbrancee or its nominee. The request may be made at any time after the expiry of the relevant time limit.
 - (b) The Encumbrancee may, in its sole discretion, determine a price for the Land (being not less than 90% of the gross sale price of the Land to the Encumbrancer).
 - (c) The Encumbrancer must, within one calendar month after the date of a request under clause 8.1(a), transfer an estate in fee simple in the Land in accordance with the request, subject only to this Encumbrance.
 - (d) If a building has been Substantially Commenced when the option is exercised, and a determination has been obtained by a quantity surveyor under clause 9 by the date due for settlement, the price fixed by the Encumbrancee will be adjusted by the calculation in clause 9. If the determination has not been obtained by the last date for settlement under clause 8.1(c), either party may, by notice in writing to the other party, extend the date for settlement by up to one calendar month.
 - (e) The Encumbrancer must promptly execute all relevant documentation submitted to the Encumbrancer by the Encumbrancee for the purpose of giving effect to the transfer.
 - (f) Rates, taxes and all other outgoings relating to the Land will be adjusted to the date of settlement of the transfer. All costs associated with the transfer will be borne by the Encumbrancee or its nominee.
 - (g) The price fixed by the Encumbrancee is payable by the Encumbrancee to the Encumbrancer on settlement.
 - (h) The transfer will otherwise be on the terms and conditions of the standard Real Estate Institute of South Australia Residential Contract.
- 8.2 Subject to this clause 8.2, the Encumbrancer must not lease or transfer the Land unless a building, approved by the Encumbrancee under this Encumbrance, has been completed upon the Land. If such a building has not been completed on the Land and the Encumbrancer desires to transfer the Land, then the following provisions will apply:
- (a) The Encumbrancer must notify the Encumbrancee in writing that the Encumbrancer desires to sell the Land.
 - (b) The Encumbrancee has the option of purchasing the Land, subject only to this Encumbrance, for the price determined by the Encumbrancee in the same manner as set out in clause 8.1(b).
 - (c) The option is to be exercised by notice in writing to the Encumbrancer within one calendar month of the Encumbrancer giving the Encumbrancee notice under clause 8.2(a).
 - (d) If the option is exercised, then within one calendar month after that, the Encumbrancer must transfer an estate in fee simple in the Land to the Encumbrancee or its nominee, subject only to this Encumbrance.
 - (e) If a building has been Substantially Commenced when the option is exercised, and a determination has been obtained by a quantity surveyor

under clause 9 by the date due for settlement, the price fixed by the Encumbrancee will be adjusted by the calculation in clause 9. If the determination has not been obtained by the last date for settlement under clause 8.2(d), either party may, by notice in writing to the other party, extend the date for settlement by up to one calendar month.

- (f) The Encumbrancer must promptly execute all relevant documentation submitted to the Encumbrancer by the Encumbrancee for the purpose of giving effect to the transfer.
- (g) Rates, taxes and all other outgoings relating to the Land will be adjusted to the date of settlement of the transfer. All costs associated with the transfer will be borne by the Encumbrancee or its nominee.
- (h) The price fixed by the Encumbrancee is payable by the Encumbrancee to the Encumbrancer on settlement.
- (i) The transfer will otherwise be on the terms and conditions of the standard Real Estate Institute of South Australia Residential Contract.
- (j) Until expiry of the period stated in clause 8.2(c), the Encumbrancer must not transfer or agree to transfer the Land to any other person (unless in the meantime the Encumbrancee, in writing, unconditionally declines the offer).
- (k) This clause 8.2 does not prevent a transfer of the Land:
 - (i) upon the Encumbrancer's death, to a person entitled to the Land under the will or upon the intestacy of the Encumbrancer; and
 - (ii) if the Encumbrancer comprises two or more persons, between those persons.

8.3 If a building, approved by the Encumbrancee under this Encumbrance, has not been completed on the Land and the Encumbrancer causes or permits the Land to be advertised for sale without first complying with clause 8.2, then the following provisions will apply:

- (a) The Encumbrancee has the option of purchasing the Land, subject only to this Encumbrance, for the price determined by the Encumbrancee in the same manner as set out in clause 8.1(b).
- (b) The option must be exercised by notice in writing served on the Encumbrancer within one calendar month of the date on which the Encumbrancee becomes aware that the Land has been advertised for sale. (A certificate under the hand of a manager or secretary or other senior officer of the Encumbrancee is conclusive evidence of such date).
- (c) If the option is exercised, then within one calendar month after that, the Encumbrancer must transfer an estate in fee simple in the Land to the Encumbrancee or its nominee, subject only to this Encumbrance.
- (d) If a building has been Substantially Commenced when the option is exercised, and a determination has been obtained by a quantity surveyor under clause 9 by the date due for settlement, the price fixed by the Encumbrancee will be adjusted by the calculation in clause 9. If the determination has not been obtained by the last date for settlement under clause 8.3(c), either party may, by notice in writing to the other party, extend the date for settlement by up to one calendar month.
- (e) The Encumbrancer must promptly execute all relevant documentation submitted to the Encumbrancer by the Encumbrancee for the purpose of giving effect to the transfer.

- (f) Rates, taxes and all other outgoings relating to the Land will be adjusted to the date of settlement of the transfer. All costs associated with the transfer will be borne by the Encumbrancee or its nominee.
- (g) The price fixed by the Encumbrancee is payable by the Encumbrancee to the Encumbrancer on settlement.
- (h) The transfer will otherwise be on the terms and conditions of the standard Real Estate Institute of South Australia Residential Contract.
- (i) Until expiry of the period stated in clause 8.3(b), the Encumbrancer must not transfer or agree to transfer the Land to any other person (unless in the meantime the Encumbrancee, in writing, unconditionally declines to exercise the option).

9. COMPENSATION FOR WORK DONE

9.1 If at the time of the Encumbrancee's exercise of an option to purchase under clause 8 the Encumbrancer has Substantially Commenced the construction of a building approved by the Encumbrancee under this Encumbrance upon the Land, then the fair market value of the works completed in respect of any such building or structure will be determined by a quantity surveyor who:

- (a) is registered to practice in South Australia; and
- (b) has no less than 5 years relevant experience immediately prior to the appointment, and is appointed at the request of the Encumbrancee by the then President of the South Australian Chapter of the Australian Institute of Quantity Surveyors.

9.2 The following provisions apply to the determination of the value of such works by the appointed quantity surveyor:

- (a) the appointed quantity surveyor is an expert and not an arbitrator;
- (b) the appointed quantity surveyor must seek, accept and give due consideration to written submissions from or on behalf of the Encumbrancee or Encumbrancer;
- (c) the appointed quantity surveyor must determine (i) the fair market value of the works as at the date on which the relevant notice to acquire the Land is given under clause 8 less (ii) the cost to complete any additional or required works which are required by the Encumbrancee (including associated costs) in order for the works to comply with the Urban Design Guidelines;
- (d) each party will bear its own costs and expenses in relation to the appointed quantity surveyor's determination;
- (e) the parties must pay in equal shares the appointed quantity surveyor's fees and expenses and costs of determination;
- (f) the appointed quantity surveyor must provide the determination to the parties in writing, with reasons for the determination, within 21 days of appointment;
- (g) the provisions of the Commercial Arbitration Act 2011 (SA) do not apply to the appointed quantity surveyor's determination; and
- (h) the determination of the appointed quantity surveyor is final and binding on the parties.

9.3 Subject to clause 9.4, the amount of the value of the works as determined under this clause 9 will be added to the price fixed by the Encumbrancee, as an adjustment at settlement.

9.4 If the costs referred to in clause 9.2(c)(ii) are greater than the fair market value of the works referred to in clause 9.2(c)(i), the amount of the difference will be deducted from the price fixed by the Encumbrancee, as an adjustment at settlement.

10. NOT FAIL TO MAINTAIN

10.1 The Encumbrancer must not allow:

- (a) the state of repair of the Land, any building, structure or improvement on the Land or of any painted surface; or
- (b) the general state of tidiness or cleanliness of the Land or of any building, structure or improvement on the Land; or
- (c) the maintenance of the landscaping, paving and car parking areas on the Land,

to fall below a standard that is acceptable to the Encumbrancee.

10.2 The Encumbrancee must act in good faith in determining the standard acceptable to it for the purposes of this clause.

10.3 The Encumbrancer must not permit any rubbish bin or similar receptacle to be placed between the front of any building erected on the Land and the street alignment (except that a bin may be so placed immediately before being emptied or removed).

11. VEHICLE PARKING

11.1 If the Land is designated in the Urban Design Guidelines for residential development only, the Encumbrancer must not allow any vehicle of a recreational nature (eg caravan, boat, campervan, etc) or a commercial nature (eg truck, bus, van, etc) to be parked between the front building line of any building on the Land and the road boundary (or boundaries) of the Land (except on an irregular and infrequent basis) or to be parked anywhere else on the Land so as to be visible from the street or from any other public place.

11.2 The Encumbrancer must not permit any carparking area to be used other than for vehicle parking.

12. WAIVER AND RELEASE

12.1 Encumbrancee may waive any covenant relating to the Land

The Encumbrancee may from time to time in its absolute discretion modify, waive or release any of the covenants of this Encumbrance (including the Urban Design Guidelines).

12.2 Encumbrancee may waive any covenant relating to other land within the Orleana Waters Site

- (a) The Encumbrancee may from time to time in its absolute discretion modify, waive or release any of the covenants of, or incorporated into, any memorandum of encumbrance or other similar instrument relating to any other land in the Orleana Waters Site (regardless of whether the relevant

instrument was entered into or imposed before, at the same time as or after the date of this Encumbrance).

- (b) No such modification, waiver or release releases the Encumbrancer or its successors in title from the covenants of this Encumbrance.
- (c) The Encumbrancee will not be liable to the Encumbrancer in respect of any such modification, waiver or release.

13. RELEASE ON TRANSFER

Once a building has been completed on the Land in accordance with the terms of the approval required under clause 6.1, the following provisions will apply:

- 13.1 The Rent Charge and covenants of this Encumbrance will be binding only upon the registered proprietor for the time being of the Land.
- 13.2 Subject to clauses 3 and 13.3, each successive registered proprietor of the Land will be released from the payment of the Rent Charge and from the performance of the covenants of this Encumbrance upon transferring the fee simple in the Land to another person.
- 13.3 Despite a transfer as referred to in clause 13.2, the rights of the Encumbrancee under this Encumbrance will be preserved against any former registered proprietor, in relation to a breach of this Encumbrance which occurred either before the transfer or by reason of the transfer.

14. MORTGAGEE'S RIGHTS AND OBLIGATIONS

14.1 Exercise of power of sale

If the Encumbrancer is in default under the terms of any mortgage granted over the Land and registered under the Real Property Act 1886 (SA) nothing in this Encumbrance is to be construed as in any way affecting the rights of the mortgagee to exercise its power of sale contained in that mortgage if the mortgagee in the exercise of its power of sale gives the first option to purchase the Land to the Encumbrancee or its nominee for the price set out in clause 14.2.

14.2 Price of Land

Subject to the mortgagee's obligations both at law and in equity in exercising its power of sale, the price for which the Land is offered by the mortgagee to the Encumbrancee will be the minimum amount of consideration which may be determined by the Encumbrancee as payable by the Encumbrancee to the Encumbrancer in the event of the Encumbrancee purchasing the Land pursuant to clause 8 of this Encumbrance.

14.3 Mortgagee's rights otherwise preserved

Apart from clauses 14.1 and 14.2, nothing in this Encumbrance is to be construed as in any way affecting the rights of a mortgagee of the Land to exercise the power of sale contained in the mortgage.

15. ACKNOWLEDGMENT OF BUILDING SCHEME

15.1 Urban Design Guidelines

The Encumbrancer acknowledges for itself and its successors in title that the covenants in this Encumbrance are entered into and undertaken for the purposes of putting into effect the Urban Design Guidelines.

15.2 Acknowledgment/Receipt

The Encumbrancer acknowledges that it received the Urban Design Guidelines attached to this Encumbrance prior to the grant of this Encumbrance.

15.3 Benefit of Covenants of Encumbrance

The Encumbrancer acknowledges for itself and its successors in title that:

- (a) this Encumbrance is imposed as part of a building scheme for the regulation of development of land within the Orleana Waters Site; and
- (b) the covenants of this Encumbrance will run with and bind the Land; and
- (c) the covenants of this Encumbrance are for the benefit of both the Encumbrancee and for the benefit of every other allotment, and the owners of such allotments, within the Orleana Waters Site.

- 15.4 The Encumbrancer warrants that it has required, and will continue to require, each purchaser of land in the Orleana Waters Site, as a condition of sale, to execute an instrument in substantially similar form to this instrument and containing substantially similar covenants and other stipulations.

16. SUNSET CLAUSE

The rights and obligations of the Encumbrancee (but not those of purchasers of any land in the Orleana Waters Site) will cease from a date 3 years after the settlement of the sale by the Encumbrancee of the last remaining vacant allotment in the Orleana Waters Site (excluding any allotment upon which no building is permitted to be erected under planning or zoning laws or the Urban Design Guidelines then applicable, or both).

17. REMEDIES

- 17.1 The Encumbrancee is entitled to:

- (a) all the powers rights and remedies given to encumbrancees by the Real Property Act 1886 (SA) and any other statute;
- (b) all powers, rights and remedies given to encumbrancees at common law; and
- (c) the right to an injunction or to damages in respect of a breach of any covenant by the Encumbrancer (or a previous Encumbrancer).

- 17.2 Nothing in this Encumbrance prejudices the powers, rights and remedies referred to under clause 17.1.

18. NOTICE

18.1 Form and execution

- (a) A notice given by the Encumbrancee under this Encumbrance must be:
 - (i) in writing; and
 - (ii) signed by the Encumbrancee, or by a director or secretary or other officer of the Encumbrancee authorised for that purpose for the time

being, or by the solicitors for the Encumbrancee, or by an attorney of the Encumbrancee.

- (b) A notice given by the Encumbrancer under this Encumbrance must be:
 - (i) in writing; and
 - (ii) signed by the Encumbrancer, or by a director or secretary or other officer of the Encumbrancer authorised for that purpose for the time being, or by the solicitors for the Encumbrancer.

18.2 **Service**

- (a) A notice may be served upon the Encumbrancer either:
 - (i) personally;
 - (ii) by being left for the Encumbrancer on the Land;
 - (iii) by being affixed to some part or parts of the Land; or
 - (iv) by being sent by prepaid post under cover addressed to the Encumbrancer at the last known place of business or abode in South Australia of the Encumbrancer.
- (b) A notice may be served upon the Encumbrancee either:
 - (i) personally;
 - (ii) by being sent by prepaid post under cover addressed to the Encumbrancee at the last known place of business or abode in South Australia of the Encumbrancee.

18.3 **When effective**

A notice to the Encumbrancer takes effect and is in force from the next day after the day on which it is served, left or posted (as the case may be) whether or not the notice comes to the hands or knowledge of the Encumbrancer.

18.4 **Content**

- (a) It is not necessary in any notice on the Encumbrancer to specify any amount but the notice will be sufficient if it requires payment of the monies secured by this Encumbrance without specifying the amount.
- (b) Any notice as to default under this Encumbrance may be a general notice that default has been made without specifying the nature of the default.

18.5 **Other ways**

The provisions of this clause 18 are in addition to any other ways in which the Encumbrancee may be entitled to give the Encumbrancer a notice in relation to this Encumbrance.

19. **POWER OF ATTORNEY**

- 19.1 If the Encumbrancer breaches any of the Encumbrancer's obligations under clause 8, the Encumbrancer irrevocably appoints the Encumbrancee as the Encumbrancer's attorney for the purpose of:
 - (a) doing in the name of the Encumbrancer any act, matter or thing which the Encumbrancer is required to do under that clause;
 - (b) signing any documents required to be signed under that clause; and

- (c) without limiting clause 19.1 (a) and clause 19.1 (b), signing any documents to enable registration of a transfer of the fee simple in the Land under the Real Property Act 1886 (SA).

19.2 The Encumbrancer specifically authorises the Encumbrancee by this clause 19 to register this power of attorney at the Lands Titles Registration Office.

19.3 Any person dealing with the Encumbrancee is not required to enquire as to the valid exercise by the Encumbrancee of a power of attorney granted by this clause.

19.4 The Encumbrancer ratifies any act done by the Encumbrancee in accordance with the provisions of this clause.

20. TRANSFER OF ENCUMBRANCE BY ENCUMBRANCEE

20.1 Without limiting clause 17.1, the Encumbrancer acknowledges and agrees that the Encumbrancee may, at any time and without the consent of the Encumbrancer, transfer its estate and interest as encumbrancee in this Encumbrance to a third party in accordance with the Real Property Act 1886 (SA).

20.2 The Encumbrancee must give the Encumbrancer written notice of a transfer under clause 20.1 by no later than 20 business days after registration of the transfer at the Lands Titles Registration Office.

Urban Design Guidelines

Orleana Waters at Evanston Gardens

Design Guidelines – August 2012



Devine

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- E.2.** Driveways, Crossovers and Paving
- E.3.** Fencing

F. Construction Requirements

G. Fibre to the Home

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A. A Vision for Orleana Waters

A.1. The vision

The beautiful rolling countryside that surrounds Gawler is famous for its iconic vistas that form the gateway to the Barossa Valley.

Orleana Waters will be nestled in this delightful landscape, offering residents the pleasure of a brand new master planned address and the reassuring country values of the established and close-knit Gawler community.

This beautiful new address will be unique in the region for its picturesque wetlands that will create a lush oasis amidst peaceful parks and landscaped gardens.

Orleana Waters will provide an idyllic family environment. There's easy and safe access to public transport and children can conveniently walk to Trinity College.

It's a place where you'll meet like-minded neighbours who share your values and take pride in their community.

A.2. Location

Orleana Waters will be a sensitively planned addition to the delightful town of Gawler, 42km north of Adelaide at the gateway to the iconic Barossa Valley.

While Orleana Waters offers the country atmosphere and close community of Gawler, it's still easy to stay connected.

The Adelaide CBD can be reached easily via excellent road connections. And the Gawler-Adelaide train line is a short walk from all homes.

Meanwhile it's a leisurely 5km drive to the centre of Gawler, a delightful town that combines the best of country living with all the facilities you need for modern living. Here you'll find grocery shopping, retail, cinema, high school, golf course and a selection of great eateries.

Orleana Waters itself is situated opposite a proposed new shopping precinct and within walking distance of the highly-regarded Trinity College.

A.3. Purpose of the Urban Design Guidelines

These Urban Design Guidelines have been created to ensure that the Vision for Orleana Waters is achieved. Ensuring a high quality of built form and community will allow residents to be confident that they will be part of a harmonious and attractive living environment for many years to come.

The guidelines form part of an Encumbrance which is attached to the Land Contract for all allotments within Orleana Waters. Under the contract of sale, purchasers are contractually required to comply with the Urban Design Guidelines. The guidelines will help you make important decisions about the design of your home and should be read in conjunction with the Gawler Council Development Plan.

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B. Process

B.1. Approval and Building Process

Assessment and approval against the Urban Design Guidelines must be granted by the Orleana Waters Design Review Panel (DRP) prior to submitting to Gawler Council for planning approval. Adhering to this process will ensure an efficient approval process.

If applicants are unsure whether their proposed dwelling will meet the requirements of the Urban Design Guidelines, a plan should be prepared and submitted to the DRP for preliminary discussion prior to finalizing drawings and specifications. This will prevent delays and avoid additional design costs.

Any future or proposed building works following Encumbrance Approval will require additional assessment and approval from the DRP within timeframe as specified in encumbrance.

Whilst it is the intent that these Urban Design Guidelines comply with the Gawler Council Development Plan and current legislation, it is the applicant's responsibility to ensure compliance with the requirements of all relevant authorities. Approval from the DRP is independent from Gawler Council and does not guarantee approval from Gawler Council.

Devine reserves the right to vary or exclude any of the requirements under these covenants. The DRP may, at their discretion, approve an application which does not completely comply with the Urban Design Guidelines based on architectural merit and intent.

Applications for approval against the Orleana Waters Urban Design Guidelines should be forwarded as follows:

Orleana Waters Design Review Panel
GPO Box 2941
ADELAIDE SA 5001

Once approval from the DRP has been obtained (the stamped approved plans will be returned with an approval notice), applicants will need to lodge the stamped plans and assisting relevant documentation and fees to Gawler Council to receive Development Approval pursuant to the Development Act.

A post construction inspection may be conducted on behalf of the DRP to ensure compliance and adherence to the approved plans.

The general process to be followed is:

Step 1: Purchase land

Step 2: Design Home

Step 3: Submit Design Drawings to DRP

Step 4: Review of Drawings by DRP

Step 5: Encumbrance Approval by DRP

Step 6: Lodge Development Application with Gawler Council

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Step 7: Development Approval from Gawler Council

Step 8: Construction

Step 9: Post Construction Inspection

B.2. Application Requirements

- Completed Application Form and Checklist (Appendix 1).
- Completion and submission of required drawings at A3 (Refer Appendix 1).

B.3. Construction Time Requirements

- **Construction Commencement:** 12 months from date of settlement. Devine reserves the right to re-purchase the allotment if construction has not commenced within 12 months of settlement.
- **Construction Completion** (Certificate of Occupancy): 24 months from date of settlement. Retaining walls (if required) and fencing must be completed within this timeframe to achieve construction completion.
- **Front Landscape Completion:** 3 months from Construction Completion
- **Driveway and Crossover Completion:** 3 months from Construction Completion
- **Window Covering Installation:** 6 months from Construction Completion. Window coverings may include curtains, blinds and/ or non reflective tinted films. Please note that temporary window coverings will not be accepted.

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C. Sustainability

C.1. Sustainable Design

Devine encourages a sustainable community at Orleana Waters with reduced impact to the environment through energy and water efficient homes. Whilst it is mandatory in South Australia for each dwelling to achieve a minimum 6 star energy efficiency rating, you are encouraged to utilize additional methods to increase the energy efficiency of your home. An energy efficient home not only minimises the impact a household has on the environment, it may also reduce your power, gas and water bills.

Requirements

- All dwellings must achieve a minimum 6 star energy efficiency rating as part of the Development Application. This is assessed by the council, independent from the Urban Design Guidelines.
- At least one daytime living area must be orientated reasonably to the north.

Recommendations

- Select a site with optimum solar access suitable for the design.
- Maximise north facing walls and glazing.
- Allow northern orientation to daytime living areas.
- Provide appropriate shading to East, West and North glazing (eg. eaves, external blinds, verandahs).
- Consider the positioning of glazing and shading devices to allow winter sun to penetrate yet prevent summer sun from entering.
- Orientate home and operable windows and doors to catch prevailing breezes and take advantage of cross ventilation.
- Insulate your home to improve thermal efficiency.
- Zone living spaces to reduce energy demands in heating and cooling.
- Install energy efficient appliances.

C.2. Water Conservation

Reducing water use and harnessing rainwater can help to reduce demand on potable water. The use of water efficient fixtures and appliances and water recycling can save considerable amounts of water.

Requirements

- A minimum 1000L capacity rain water tank is required to be installed and be plumbed into the dwelling as part of the Development Application. This is assessed by the council, independent from the Urban Design Guidelines.

Recommendations

- Retain and re-use storm water on site.
- Use sustainable and water tolerant landscaping techniques.
- Install water efficient appliances.
- Landscape with permeable surfaces to reduce water run off from site.

C.3. Waste Management

Waste management and recycling practices for builders must be consistent with the KESAB Clean Site program.

Requirements

- Builders are to adhere to KESAB Clean Site principles.
- Builders are to store hard waste on site in a bin. All recyclable hard waste is to be recycled through a licensed waste collector.

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D. Home Design

The streetscape of Orleana Waters should reflect a diverse range of homes with a cohesive nature to contribute to the quality of the community. As such, home design requirements have been developed to create a unified streetscape character.

D.1. Site Planning

Purchasers will be provided with a Building Envelope Plan (BEP) relating specifically to their allotment and this will form part of the contract of sale of the nominated allotment.

The Building Envelope Plan identifies the area in which a dwelling may be sited. It should be noted that the minimum distances may only be achieved if all other mandatory requirements are satisfied. In some instances greater setback distances may be required in order to comply with requirements such as solar access and private open space. In particular the BEP indicates the following mandatory requirements:

- The minimum building setback from each boundary for one and two storey development.
- The location and sizing of garages and driveways.
- The location of garages where zero lot line allocations for garages/ carports on boundaries have been nominated.
- Allotments where corner treatment of façade is required.
- Allotments where sound attenuation methods are required.

Requirements

- All dwellings should comply with the minimum requirements of the BEP to gain encumbrance approval.
- Medium Density allotments which specify attached or semi detached housing will be individually assessed on architectural merit and intent. Separate Urban Design Guidelines may be issued for such sites.
- Further subdivision of allotments is not permitted.
- Dwellings should comply to the following setback requirements as a minimum;

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SETBACK (Refer BEP)	MIN. REQUIREMENT	
	Single Storey	Second Storey
Front setback (to main façade) Boulevards/ Collector Roads All other minor roads	5m 3m (Figure 1)	5m 3m
Front setback (to porch/ balcony) Boulevards/ Collector Roads All other minor roads	4m 1.5m	
Secondary frontage Road Laneway	1.5m 0.9m	2m 2m
Garage	5.5m (Figure 2)	
Garage on laneway	0.5m	
Side Setback Site frontage >9m Site frontage ≤9m	0.9m 0.9m	2m 0.9m
Rear	2.0m	6m

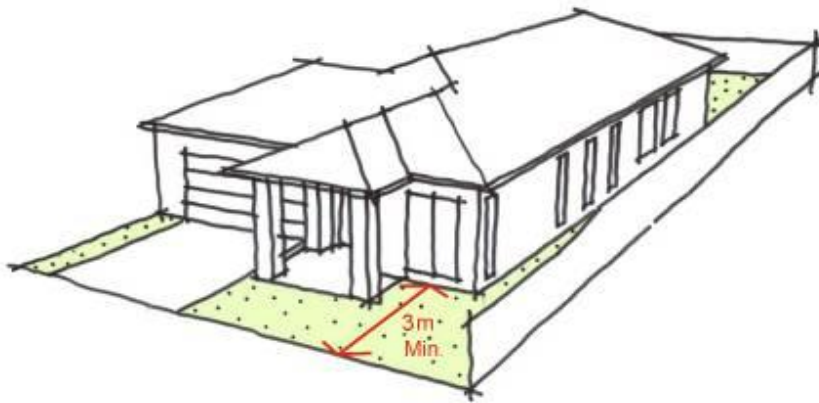


Figure 1: Minimum front setback on minor roads. Refer BEP



Figure 2: Minimum front setback to garage

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D.2. Sound Attenuation

Residential development should have regard to existing and possible future noise sources with respect to site layout, orientation, design and construction to ensure a safe and comfortable residential environment. The BEP will identify any allotments which may be affected (eg. railway fronted allotments) and require treatments. A Land Management Agreement (LMA) placed over the land will refer to a set of guidelines listing the nature of sound attenuation works required for each allotment. These may include the following:

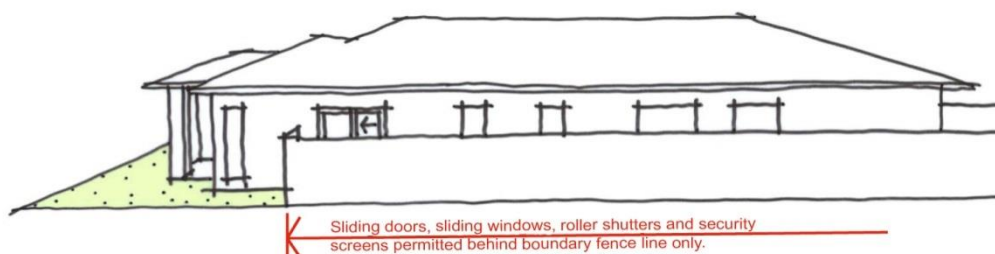
- Laminated glazing to windows.
- Additional building acoustic requirements.
- Side and rear fencing to be erected before occupation of the dwelling.

D.3. Street Frontage and Elevations

The quality of the streetscapes and community at Orleana Waters is supported by the built form of the homes and the articulation of their facades. Coherent and collective character with opportunity for diversity will allow for an attractive streetscape and compliment the quality public realm of this master planned community. Variety and individuality are important in defining an attractive streetscape.

Requirements

- Dwellings must be designed and orientated to provide visual interest and surveillance of the street.
- Facade design must differ from the two properties on each side of the proposed lot and the three closest properties across the road.
- External colour schemes should be of an earthy/contemporary nature. Feature highlights and accent colours are allowable, however bold/bright colours are not to be used as main facade colours.
- The front façade of the dwelling must incorporate the use of a minimum two differing materials. Timber windows with a stained finish may be included as one of these materials.
- An entry structure or feature is required to clearly identify the main entry to the home with a minimum floor area of 2.0m², alternatively it will be considered on architectural merit.
- The entry structure should typically be located on the front façade. Other options (eg. to the side on a single fronted allotment or to the secondary frontage on a corner allotment) must address the parameters outlined above and will be assessed on architectural merit.
- Blank walls to streets are not permitted. Façades are required to be articulated with variation in material and include transitional spaces.
- Sliding windows, roller shutters and security screens are not permitted on any façade visible from the public area and not behind the fence line.



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- Window and door head heights to front façade are not permitted to be raised to the eaves. There must be separation between the eave and window.
- Infill panels are not permitted above window and door openings on façades facing the primary or secondary street. Above window and door infill must be as per the surrounding wall.
- Painted infill panels to front façade are not permitted.

Recommendations

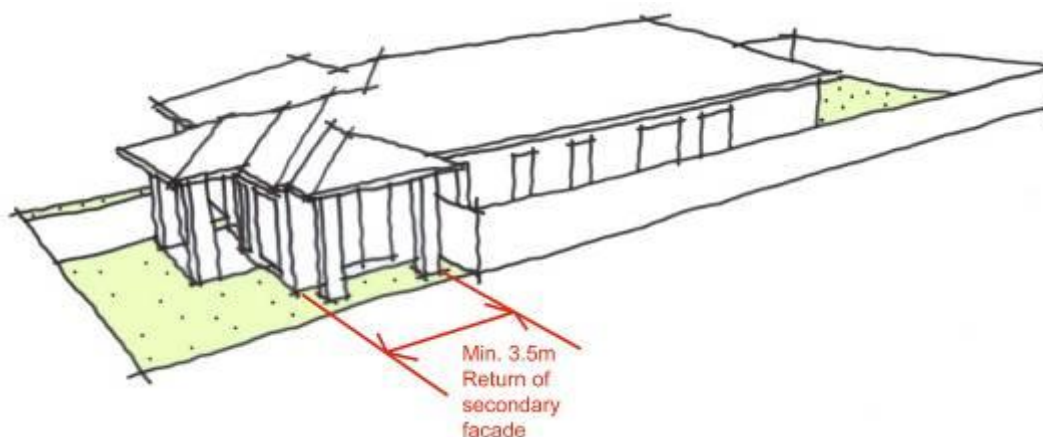
- Use of verandahs, porches and balconies facing the street(s)
- Consider the use of upper level balconies to extend the internal living areas of the dwelling onto the street front creating passive surveillance and amenity

D.4. Corner Allotments

Dwellings on corner allotments should be designed to provide appealing facades to both street frontages. Addressing all street frontages and public open spaces will minimize the effects of large runs of boundary fencing and enhance the overall streetscape.

Requirements

- Ensure corner treatments extend around the corner for a min. 3.5m from the front wall.



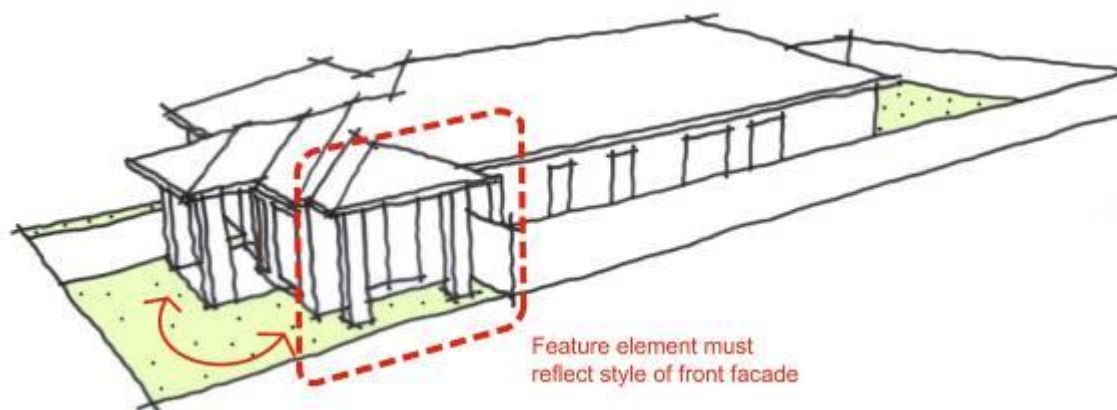
- Windows should repeat the proportions and design of the window(s) to the primary elevation, providing a consistent appearance on both the front and side elevations.
- Materials and colours should repeat the palette used on the front façade, providing a continuous appearance on both the front and side elevations.
- The articulated form and style of facade features must be applied to the secondary façade of the home to address the corner. These include, but are not limited to, roof/wall projections, porticos, pergolas, shading devices and roof form.

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- Services (e.g. meter box /gas meter) should be located on the side wall which does not address the secondary road frontage where possible. If this is not possible, the services should be finished and screened in materials and colours which compliment the style & finish of the façade.

D.5. Roof Design

The presence a dwelling has to the street is largely dependant on the size of the home, width of frontage and distinguishing architectural features. The roof and ceiling height has a large impact on the overall appearance of the dwelling and should be carefully considered in the design of your home.

Requirements

- Minimum ceiling heights between finished surfaces must be 2550mm.
- Allotments with a frontage width of over 14m should have a minimum roof pitch of 22° for gabled and hipped roof forms.
- Allotments with a frontage width of 14m and under should have a min. roof pitch of 25° for gabled and hipped roofs.
- Allotments with a frontage width of less than 9m and roof pitch less than 25° will be assessed on architectural merit.
- Single hip roof forms to the front façade will not be permitted.
- Skillion and flat roofs will be assessed on architectural merit.
- No reflective metal sheet cladding will be permitted.

Recommendations

- Increased ceiling heights of 2700mm or greater are encouraged.
- Increased roof pitch is encouraged.
- Two storey detached dwellings are encouraged.
- 450mm min. eaves.
- Provide a section of north orientated roof for solar hot water panels and photovoltaic systems (except where this would be located on the front of the dwelling and visible from the street).

Note: To achieve the desired neighbourhood character, specific allotments have been nominated to be either minimum 2700mm ceiling height or mandatory single or double storey construction. Please refer to the BEP for additional details.

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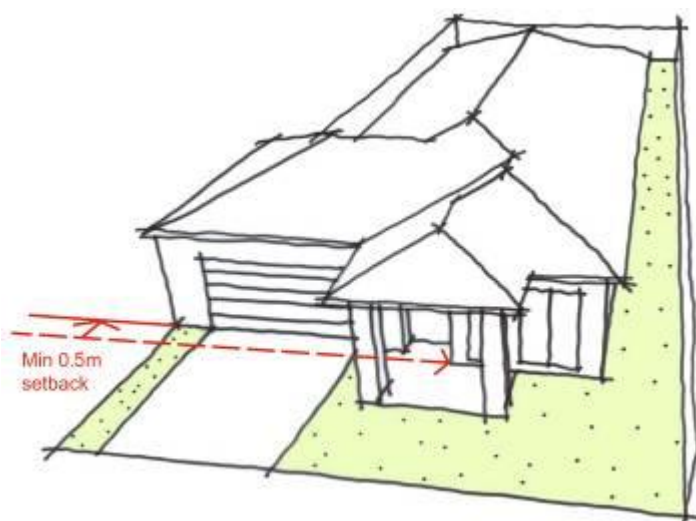
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D.6. Garages and Car parking

Garages and carports must not dominate the streetscape. Façade style, projection and variation can be used to minimize garage dominance in the streetscape. Onsite car parking should be provided to prevent cars from parking on the street.

Requirements

- Garages and carports must have a roof form and pitch, building materials and detailing that complement the associated dwelling.
- Garages and carports must be setback a minimum of 0.5m behind the main façade.



- Maximum door opening width must not exceed 5m.
- Maximum percentage of garage width to lot frontage must not exceed 50%.
- Triple garages will not be permitted.
- All garages and carports must have panel type doors with moulded door panels as minimum. Roller doors visible to the street will not be permitted.
- All vehicles must be parked on the approved driveway or behind the building line.
- Recreational or commercial vehicles (ie. caravan, boat, trailer, truck, van or like vehicles) must be parked behind the building line and not be visible from the street.

Note: Garages exceeding 50% width of street frontage may be approved based on architectural merit where design and façade articulation present the home to the street in a manner which minimises garage dominance. This may include the following design techniques:

- Projection and articulation in façade and entry structure.
- Use of bulkheads and parapet walls.
- Use of additional materials and colours.
- Elements projecting forward of the building and garage.
- Cohesive design elements in façade and garage detailing.

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Approval from the DRP in this situation will not guarantee approval from Gawler Council. Minimising garage dominance is an independent requirement of Gawler Council and applications outside of the requirements will be assessed on their merit accordingly.

D.7. Outbuildings, Sheds & Detached Garages (Excluding rear loaded or laneways)

Services and structures poorly positioned can alter the look and feel of the streetscape. It is important to blend these services and outbuildings with the home to minimize the effect of views from the adjacent streets or public open spaces.

Requirements

- The purchaser must not construct or move any detached garage, shed or outbuilding of any sort on the allotment without first applying to and obtaining approval in writing from the DRP. An approval from local authorities may also be required, if and only when the DRP has granted approval.
- The purchaser must not erect or move onto the allotment any temporary building or structure including a caravan.
- Structures should not be visible from the primary street frontage.
- Structures should be set back a minimum of 3m from a secondary street and behind the side boundary fence.
- Structures should be coloured to compliment the adjacent house or fence (galvanised metal not permitted).

D.8. Services and Ancillaries

Requirements

- Meter boxes must be painted to match the surrounding wall colour.
- Hot water tanks and rainwater tanks must be screened from view from adjacent streets.
- Solar hot water tanks must not be roof mounted and not visible from adjacent streets.
- Evaporative cooling Units, air conditioners, aerials, antennas and/ or satellite dishes must not be visible from the adjacent streets & be installed below the adjacent ridgeline.
- Where possible, roof mounted ancillaries should be coloured to compliment the roof colour.
- Solar hot water panels and Photovoltaic panels should not be installed to the front elevation, but are accepted and encouraged on all other elevations (including the secondary frontage).
- Refuse bins must not be stored where visible from the street.
- Any water tap to front of property should be either located in garden beds to side of the property or mounted to the side of the home.
- Water tanks installed on lot widths of 14m or less are to be slim line painted tanks with a maximum overall height of 1.9m. Lots greater than 14m wide may install round style tanks (as appropriate to space and access requirements) with a maximum overall height of 1.9m. The colour of the tank must blend with the wall or the fence it adjoins.

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E. Landscape Design

E.1. Landscape

The landscaping of each allotment in Orleana Waters provides an opportunity to contribute to the attractive and functional streetscape. Well designed front gardens will ensure a seamless landscape between streets, parks and homes.

Requirements

- Each property should have an appropriately designed front garden that complements the dwelling and streetscape including an appropriate amount of permeable surfaces and planting.
- Feature stonework (pebbles, aggregates, etc) is allowed. Plain road base type material including crushed rock is not permitted.
- Nature strips to be lawn or garden.
- Garden beds to be planted out (not left as unplanted).
- Letterboxes must compliment the design and colour of the dwelling (or incorporated in front fence where applicable).
- Front yards to be maintained to an acceptable level by purchaser otherwise Devine reserves the right to take necessary remedial works at the purchaser's cost.
- Vacant lots must be maintained by purchaser (weeds, grass max 100mm high), and kept cleared and free of rubbish. Failing this, Devine will undertake maintenance at the purchaser's cost.

Recommendations

- Minimum 50% permeable surfaces to all landscaping.
- Select plants with low summer watering requirements.
- Select plants that are non invasive and will not become environmental weeds.

E.2. Driveways, Crossovers and Paving

Front paths and driveways should be designed to complement the design of the home and its landscape. Driveways should not dominate the streetscape and colour and style are important elements to consider in achieving this.

Requirements

- Driveway, crossover and paving to the front of the home must be constructed of pavers or in appropriate concrete finish as per the adjoining footpath.
- Decorative, patterned and/ or stencilled concrete is not permitted.
- Other finishes to be assessed on architectural merit (eg. saw-cut concrete).
- Driveway and crossover must be constructed of the same material and colour.
- Maximum gradient of 1 in 5 to all driveways.
- Maximum crossover width of 3m for single and 4.5m for double driveways.

E.3. Fencing

Fencing design strongly influences the character of the neighbourhood. Cohesive fence design and minimising long runs of solid fencing is essential in creating attractive streetscapes. Mandatory front fencing is nominated on the BEP to create a sense of boulevard through the main streets in the neighbourhood. In some instances, Devine will provide feature fencing at key locations which will have a set style to reflect the neighbourhood character.

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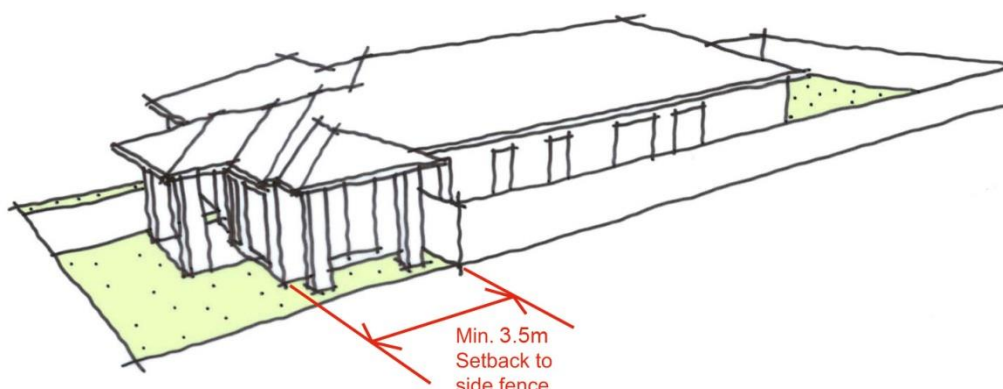
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Requirements

- Side and rear boundary fences should be constructed of coloured modular panel (“Colorbond” or approved similar) material installed vertically in the Orleana Waters neighbourhood colour “Grey Ridge”.
- All side and rear boundary fences are to be 1800mm high above ground level.
- Solid side boundary fencing should be set back at least 1m behind the main façade of the house.
- Fencing to side streets (secondary frontage) on corner allotments must finish at least 3.5m behind the main building line, i.e. behind the main facade of the house.



- Front fencing will be nominated and provided by Devine on mandated allotments. Please refer to BEP.
- Side fencing in front of the building line will only be permitted where an approved front fence is to be installed and should be in the style and colours of the approved front fence or otherwise approved by the DRP.
- Any front fence, where not provided by the developer, must include feature posts/pillars and achieve 50% transparency to be approved by the DRP (solid infill panels are not permitted).
- Maximum height of front fencing is 1.2m, with 1.5m for incorporated pillars.
- The purchaser of any allotment that is deemed to have fencing or wall structures required by a relevant authority or Devine, will not object to the construction of such upon their allotment.

Recommendations

- Landscaping should be used to achieve any additional screening desired for privacy purposes.

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F. Construction Requirements

- Provide waste receptacles on the construction site for storing/containing product waste
- Waste receptacles must be located within the allotment boundary and must not be located on nature strips
- Provide rubble aggregate to the driveway during construction to minimise the transportation of mud from sites under construction

G. Fibre to the home

As the land developer, Devine is designing and installing the infrastructure in the road for NBN Co Ltd to deliver a fibre network to each property.

As the building owner you are required to ensure your house is wired correctly according to NBN Co Ltd requirements. You must ensure your builder and sub contractors are aware of:

- The responsibilities and requirements related to the in-home wiring in order to wire the home correctly.
- Space and pathway compliance requirements with NBN Co Ltd specifications; and
- The correct equipment is to be used to prepare for connection to the NBN.

In doing so you should also discuss and reach agreement with your builder about your desired services and placement of fibre equipment and service outlets within your home. The relevant information for you and your builder to refer to is contained in the latest version of the document “NBN Co In-Home Wiring Guide for SDUs and MDUs.” This and other NBN Co Ltd information can be accessed through the website at:

www.nbnco.com.au

The direct link to this document is:

<http://www.nbnco.com.au/assets/documents/new-developments-wiring-guide.pdf>

We are obligated to inform you that failure to comply with NBN Co's Building Ready Specification will prevent connection of your home to the Network Infrastructure and you may incur additional costs in order to connect to the Network.

Access to the NBN network will provide a wide range of communication and information outcomes, but in order to capitalise on this you do need to take control and ensure that your home is made NBN ready.