

TODD & WALKER LAW are a boutique law firm based in Queenstown, providing clients with experienced, valued, pragmatic legal advice. We regularly act for clients who are purchasing land and dwellings in subdivisions in the Queenstown Lakes Region, so we are familiar with the sales agreements for such subdivision. For more information about our team and services, go to www.toddandwalker.com, or see our facebook page <https://www.facebook.com/toddandwalker>.

**BULLENDALE, ARTHURS POINT
SUMMARY OF AGREEMENT FOR SALE AND PURCHASE**

Located on Arthurs Point Road, near Queenstown, Bullendale is a development providing 14 house and land packages as part of stage one of the development. There are four different house types (A-D) proposed to be built, one type being assigned to each lot. Like most of the developments we are seeing in the Queenstown Lakes region, this agreement is drafted on terms that strongly favour the Vendor, and it is important to be informed of the terms before entering into an agreement proposed for Bullendale.

A summary of the terms of the Agreement for Sale and Purchase that we have received from the agent are as follows:

1. The purchase price is deemed to be inclusive of GST (if any).
2. A deposit of 10% is payable either:
 - a. upon the Purchaser's due diligence (or any other condition you impose) condition being satisfied. If you wish to include a due diligence condition in your agreement, please let us know and we can provide you with the wording of one prior to signing. We recommend including a due diligence condition if you need to time to investigate certain matters relating to the development after making your offer; or
 - b. immediately upon the Vendor signing the agreement if there is no Purchaser's condition;

If the deposit is not paid within 3 days of the above dates, then the Vendor can give notice requiring the same to be paid within a further three days and, if not paid within that time, the agreement can be cancelled.

The deposit is paid to the Vendor's solicitor who must hold it as stakeholder until the agreement is completed and settlement occurs.

Note: For those Purchasers relying on Kiwisaver to pay their deposit it can take up to 10 working days to process an application to withdraw your kiwisaver funds. An application must contain all the required documentation which includes a signed agreement. Therefore, if a Purchaser is relying on Kiwisaver to pay their deposit there is the possibility that the application will not be processed within the time the deposit becomes due, and the Vendor may have the right to cancel the agreement. Purchasers who are relying on Kiwisaver should contact their Kiwisaver scheme provider prior to the signing of the agreement because pre-approval can in some cases be obtained in order to speed up the application process. Alternatively you could impose a later date for paying the deposit in your offer.

3. The Vendor has until 31 October 2018 to obtain a separate title, and complete the building of the dwelling. If they do not provide title and a completed dwelling by that date you have the right to cancel the agreement. However, if the Vendor has experienced delays in obtaining consents, or has experienced a delay as a result of delay or default by any third party, weather conditions, strikes etc, then the Vendor is entitled to extend this date by 6 months. While this period may seem generous, it is assumed any Vendor will wish to complete the development in the shortest possible time so that they can have access to the full purchase price.

Note: Generally, a pre-approved home loan from a bank is valid for six months. Therefore, it is important to be aware that some banks are unlikely to grant pre-approvals because the above term establishes that settlement may not occur for more than 18 months. If a Purchaser intends on obtaining home loan pre-approval it is important that they talk to the banks as soon as possible.

4. The agreement is conditional upon the Vendor obtaining all necessary consents for the development, and obtaining a sufficient number of sales, to enable the Vendor to proceed with the development by 31 August 2017.
5. The agreement makes it clear that the design of the development and the dwelling may be changed by the Vendor, provided it does not materially diminish the value of the property.
6. The Vendor is required to transfer any Builder's Guarantee to the Purchaser, provided such guarantee allows for a transfer. If the guarantee does not allow for a transfer, they are not required to do so. Until we know who the Vendor is using to build the dwellings we won't be able to ascertain whether any builders guarantee can be transferred.
7. The Vendor is entitled to change the Scheme Plan of the subdivision at its discretion. If the final area of the lot you purchase is materially less than shown on the Scheme Plan or if any amendment materially diminishes the value of the lot by more than 10%, the Purchaser will be entitled to a pro-rata reduction in purchase price. Any reduction in size or value of less than 10% will not allow for a reduction in purchase price, nor trigger any right of compensation or an ability to cancel the agreement.
8. The agreement specifically provides that the Vendor may grant any easements, encumbrances and consent notices required by it to complete the development. A proposed form of covenant is provided for, and we discuss this further under the heading Land Covenant.
9. The Vendor can make any adjustments or variations to the Scheme Plan, Plans and Specifications, staging of the Development, and any other aspects whatsoever in relation to the Development.
10. The Vendor can vary the materials used in the construction of the dwelling, and can substitute them for other products provided they do not "materially diminish the value of the property". The standard of "materially diminish" is to be determined by the Vendor's adviser acting independently.

11. In respect of any of the above, there is to be no liability for any damages or compensation payable for any such changes.
12. The Purchaser will have 30 days from settlement in which to notify the Vendor of any defects in the property, which the Vendor must thereafter rectify.
13. The Purchaser has no right to caveat the title to the land being purchased.
14. Purchasers will not be able to object to any application the Vendors make for any resource consent for any development of the site, and if called upon to do so, are required to give their written approval in respect of any resource consent or other planning approval.
15. Settlement is required on the later of:
 - a. Five working days following issue of a Code Compliance Certificate for the dwelling; or
 - b. Five working days following issue of a separate title to the property; or
 - c. Five working days following Certificate of Practical Completion for the dwelling is issued.
16. If you wish to on-sell the property prior to settlement and payment being made in full, the Vendor can require that the new Purchaser sign a Deed of Covenant with the Vendor requiring them to observe the terms of the agreement.

LAND COVENANT

When the titles issue, there will be a land covenant registered against the titles which require compliance with various rules. The land covenant will apply post construction of the dwelling and will be relevant to purchaser's so far as additions and alterations to the dwelling are concerned. The proposed form of Land Covenant included with the agreement requires compliance with the following:

1. Before undertaking any additions or alterations to your dwelling, you must obtain the consent of the Vendor (or the Vendor's successor), and the owners of the properties immediately adjacent to your lot. Consent cannot be unreasonably withheld, provided the proposal is not materially different from the existing dwelling.
2. Roof and cladding colour must be within the range of muted tones.
3. Cladding must not be fibre cement, uncoated fibre materials, untreated timber, iron and steel unless painted or coloursteel, unpainted concrete blocks.
4. Trees are not to exceed 5 metres in height.
5. No caravans, sheds or huts are to be used as temporary residence.
6. Caravans must be kept inside a garage.
7. Stages of building must be completed within one year from commencement.
8. No rubbish is to be stored on the property.
9. Broom, gorse, weeds etc must be controlled.
10. You must not keep a dog on the property that is a nuisance, danger or annoyance to other

property owners, nor can you keep any animal that is not domesticated.

11. No further subdivision is permitted, and only one dwelling per lot is permitted.

A number of the above conditions are standard clauses for this type of development. The exceptions that we highlight are those we have noted in **bold** print.

Again, we stress that the above is purely a summary of the specific terms of the agreement, design controls and land covenant. Purchasers should read the agreements in full as, upon signing, it will constitute an unconditional and binding agreement. Once you have done so please contact us for clarification on any matters.

Reminder:

- **For those Purchasers relying on Kiwisaver to pay their deposit it can take up to 10 working days to process an application. An application must contain all the required documentation which includes a signed agreement. Therefore, if a Purchaser is relying on Kiwisaver to pay their deposit there is the possibility that the application will not be processed within the time the deposit becomes due, and the Vendor may have the right to cancel the agreement.**
- **Generally, a pre-approved home loan from a bank is valid for six months. Therefore, it is important to be aware that some banks are unlikely to grant pre-approvals because title may not pass for more than 18 months.**

Should you have any queries concerning the terms of the agreement you should not hesitate to contact any of us:

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