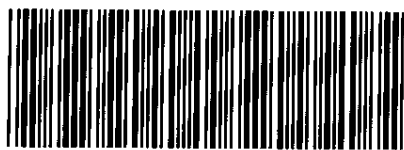


GENERAL REQUEST

Duty Imprint



715597516

NO FEE

12/02/2014 14:41

NR 608

1. Nature of request

REQUEST TO REGISTER STANDARD TERMS DOCUMENT.

Lodger (Name, address, E-mail & phone number)

Noosa Shire Council
PO Box 141
Tewantin, Q, 4565
Ph: 5329 6593

Lodger Code

2. Lot on Plan Description

n/a

County

Parish

Title Reference

3. Registered Proprietor/State Lessee

n/a

4. Interest

n/a

5. Applicant

NOOSA SHIRE COUNCIL

6. Request

I hereby request that: PURSUANT TO S169 OF THE LAND TITLE ACT 1994, THE ATTACHED STANDARD TERMS DOCUMENT RELATING TO A PRESERVATION COVENANT UNDER S97(A)(3)(b)(i) OF THE LAND TITLE ACT 1994 BE REGISTERED FOR NOOSA SHIRE COUNCIL

7. Execution by applicant

Brett DeChastel CEO Noosa Shire Council

10/2/2014

Execution Date

Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Title Reference

PREAMBLE

The purpose of this Agricultural Buffer Covenant is to provide a legal agreement between the owner and the Noosa Council to work together to provide long term retention on private land of the vegetated buffer to agricultural land. Within the buffer Council generally only permits indigenous species of vegetation, however other species are in some instances seen as being more application.

This covenant specifically relates to the implementation of the criteria in Appendix 2 of the State Planning Guidelines: Separating Agriculture and Residential Land.

1. DEFINITIONS

“Act” means the *Land Title Act 1994*.

“Agricultural Buffer Vegetation” means that vegetation within the Covenant Area that conforms to the conditions of the Development Approval.

“Condition” means the provisions applied by Noosa Council to develop the Lots.

“Council” means the Noosa Council, the Covenantee named in Item 3 of the Form 31.

“Covenant” means the terms of this document.

“Covenant Area” means an area to which this Covenant applies as described in Item 2 of the Form 31.

“Development Approval” means the approval granted by the Council pursuant to the *Sustainable Planning Act 2009* in respect of an Application for a Material Change of Use or Reconfiguring of Lot.

“Dispute Notice” means a notice given by one party to the other pursuant to Clause 7 of this Covenant.

“Environmental Weed” means all weed species listed in the Planning Code or in the following standards and legislation or current updates:

- Declared plants under the *Land Protection (Pest and Stock Route Management) Act 2002* and *Sub-ordinate Regulation 2003*.
- Sunshine Coast Local Government Area Pest Management Plan 2012-2016 sections 6.2.2, 6.3.2, 6.4.2, 6.5.2 and 6.6.2, as updated from time to time, a copy of which can be obtained from Council Offices.

“Form 31” means the Queensland Land Registry Form 31 Covenant attached.

“Indigenous Vegetation” means native vegetation which historically has naturally occurred in the local area.

“Legislative Instrument” means an instrument in writing that is of a legislative character and that was made in the exercise of a power delegated by the Queensland Parliament.

“Lot” means each of the Lots described in Item 2 of the Form 31.

“Native Fauna” means native animals which historically have naturally occurred in the local area.

“Owner” means the covenant described in Item 1 of the Form 31 and includes in the case of a corporation its successors in title and assigns and in the case of a natural person or persons their successors in title and each of their executors, administrators and assigns.

“Planning Scheme” has the meaning given in the *Sustainable Planning Act 2009* as amended.

Title Reference

"Vegetation" means any tree, shrub, bush, vine, grass or other living or dead plant material on the Covenant Area other than existing structures such as fences and poles existing at the time when this Covenant came into force and timber imported into the Covenant Area to be used for maintenance of such existing structures.

2. COVENANT

This Agricultural Buffer Covenant relates to the conservation and maintenance of all Vegetation within the Covenant Area pursuant to Section 97A (3) (b) (i) of the *Land Title Act 1994*.

3. ACKNOWLEDGEMENTS

The parties acknowledge and agree that:

- (a) The registration of the Covenant is a Condition of a Development Approval;
- (b) This Covenant is intended to ensure compliance with the relevant Condition(s) of the Development Approval that established the requirement for the Covenant over this property; and
- (c) The key objective of the Covenant is to retain and enhance the Agricultural Buffer Vegetation within the Covenant Area(s).

4. OWNER'S OBLIGATION

4.1 The Owner shall, unless otherwise agreed in writing by the Council, fully and effectively observe and comply with the obligations, to the satisfaction of Council, as follows:

- (a) The Owner must comply with the Condition(s) of the Development Approval that established this Covenant.
- (b) The Owner must comply with the Covenant.
- (c) The Owner must take reasonable measures to only use, or allow to be used, the Covenant Area in such a manner that maintains and protects the Agricultural Buffer Vegetation and Native Fauna habitat values within the Covenant Area(s).
- (d) The Owner must comply with the criteria of Appendix 2 of the State Planning Guidelines separating Agricultural and Residential Land Uses (as amended from time to time) including:
 - i. replacement of dead, damaged or dying Vegetation;
 - ii. management for fire protection, including reduction in litter build up;
 - iii. ensuring access for Council Officers to the Vegetation; and
 - iv. ensuring the buffer element does not shade adjacent cropping land for a significant period in the morning or afternoon.
- (e) The Owner must notify the Council in writing of any substantial damage to vegetation within the Covenant Area (whether by natural occurrence or otherwise) within 14 days of the damage occurring and replanting to occur within 30 days or as agreed.

Title Reference

- (f) the Owner must not introduce, or allow to be introduced, and take reasonable measures to remove, any Vegetation in the Covenant Area which is:
 - i. not Indigenous Vegetation, unless agreed to by Council; or
 - ii. an Environment Weed.
 - (g) The Owner must not, or permit another person to, have either placed or present or store in the Covenant Area the following: fill, soil, rock, rubbish, ashes, garbage, waste or other material that is foreign to the Covenant Area and does not reflect the conditions of growth naturally encountered by the Indigenous Vegetation of the Covenant Area.
 - (h) The Owner must not do, or permit another person to do, anything on the Lot which, in the Council's reasonable opinion, may adversely affect the Covenant Area.
 - (i) The Covenant Area must not be grazed by non-native animals (e.g. cattle, sheep, goats, pigs, deer, rabbits, hares etc.).
 - (j) If deemed necessary by Council officers, non-native animals are to be excluded from the Covenant Area by appropriate fencing.
 - (k) Any fencing within or on the boundary of the Covenant Area shall not incorporate any barbed wire, electric fences or other materials that may cause damage to Native Fauna. No clearing of the Covenant Area is permitted in the maintenance of the fence.
 - (l) The Owner must not, or permit another person to, have a fixture, improvement or structure placed, constructed or erected in the Covenant Area.
 - (m) The Owner must remove any fixture, improvement or structure from the Covenant Area within 30 days of its presence becoming known to the Owner and any damaged vegetation resulting from the installation or removal of the fixture, improvement or structure is to be replanted within 60 days.
 - (n) The boundary of the Covenant Area must be delineated with permanent markers made of steel or concrete posts at each corner and at intervals of no greater than 20 metres. The markers must be maintained and replaced if necessary, and no clearing is permitted in the Covenant Area for maintenance and replacement of the markers.
 - (o) The Owner must not, or permit another person to, have Vegetation in the Covenant Area trimmed, pruned, lopped, poisoned, harvested, picked, cut down, mown, moved, removed, grazed by domestic stock or in any way damaged or destroyed, whether by act or omission.
 - (p) The Owner must not, or permit another person to, have a trail, path, fence, access or access way made, laid out or other constructed element in the Covenant Area.
- 4.2 In the event that an exercise of the obligations in clause 4.1 are found to be inconsistent with the relevant provisions of any approval given under any Legislative Instrument or the Planning Scheme, the Legislative Instrument or Planning Scheme approval shall prevail to the extent of the inconsistency.
- 4.3 Notwithstanding Clause 4.1 (g), if Indigenous Vegetation in the Covenant Area poses a serious risk to human safety, including bushfire risk:

Title Reference

- i. the Indigenous Vegetation may be cut or trimmed so as to remove the risk with the prior written consent of the Council whose consent shall not be unreasonably withheld provided an Arborist report is included to support the facts where required; and
- ii. the Indigenous Vegetation which is cut or trimmed must be left in the Covenant Area so that natural regeneration processes may occur, unless it would, in the Council's reasonable opinion, constitute a fire hazard;
- iii. Any claim of bushfire risk must be supported by a Bushfire Management Plan produced by a relevantly qualified consultant, and the plan must be approved by Council Officers before any clearing occurs.

4.3 For the avoidance of doubt, the obligations under this clause 4 strictly rest with the Owner and are continuing obligations on the Owner, and continue to apply to the Owner notwithstanding that the Owner may not actually occupy the Land.

5. POWERS OF ENTRY

5.1 The Owner must permit the Council and its members, officers, agents, employees, contractors and subcontractors and other persons authorised by it at all times, upon having given reasonable notice to the Owner, to enter into and upon the Lot with all necessary plant and equipment for the following purposes:

- (a) examining, inspecting, testing and monitoring the state and condition of the Designated Covenant Area;
- (b) ascertaining whether the obligations of the Owner in Clause 4 have been duly performed and fulfilled;
- (c) subject to Clause 7, making good any breach of the obligations of the Owner under Clause 4, at the cost and expense of the Owner;
- (d) exercising the Council's rights under Clause 7.

6. NOTICE BEFORE ENTRY

The Council must give reasonable notice of intention to enter the Covenant Area(s) except in cases of emergency or where the Council believes on reasonable grounds that the delay in giving notice is prejudicial to its rights or responsibilities.

7. REMEDY FOR NON-COMPLIANCE

7.1 In the event of non-compliance with the obligations in Clause 4, the Council may issue a written notice requiring the Owner to rectify the non-compliance ("the Rectification Notice").

7.2 The Owner must comply with the Rectification Notice within 14 days of the issue of the Rectification Notice or such other reasonable time period as may be specified in the Rectification Notice, regardless of whether or not the Owner is responsible for the non-compliance.

Title Reference

7.3 In the event that the Owner fails to comply with the Rectification Notice within the time allowed in accordance with clause 7.2, the Council may, by itself or by an agent or contractor, enter the Covenant Area, perform any planting, replanting, rehabilitation or remedial work or anything else to restore the Agricultural Buffer Vegetation harmed or damaged by the non-compliance, and recover the costs performing the work as a debt from the Owner payable on demand.

8. DEFAULT BY OWNER

8.1 If the Council form the view that the Owner has breached this Covenant, the Council agrees to proceed in accordance with Clause 9.

8.2 The Council may exercise its power under the *Sustainable Planning Act 2009* and other statutory provisions in the event of a breach of this Covenant.

8.3 The Owner shall not be responsible for any damage to the Covenant Area caused by any natural occurrence or otherwise caused by something beyond the control of the Owner, however the Owner must replant and maintain the Covenant Area within 2 months or other time period agreed to in writing by Council.

8.4 The Owner is liable only for breaches of this Covenant which occur while the Owner is the registered owner of any interest in the Lot and then only to the extent of the interest.

9. SETTLEMENT OF DISPUTES

9.1 This clause shall apply to any dispute between the parties of this Covenant.

9.2 Any dispute as to the performance of this Covenant or arising out of this Covenant, which cannot be resolved by agreement between the parties, must be clearly identified in a Dispute Notice served by one party on the other party.

9.3 Within five (5) days of the date of the Dispute Notice, the parties must meet to discuss the dispute and its possible determination.

9.4 The parties may within seven (7) days of meeting in accordance with Clause 9.3 agree to refer the dispute to mediation.

9.5 If the parties agree to mediate in accordance with Clause 9.4, then the parties may either:

(a) appoint a mediator agreed by the parties; or

(b) where the parties fail to agree to the appointment of a mediator within the period referred to in Clause 9.4, request for the President for the time being of the Queensland Law Society Incorporated to nominate a mediator which the parties must then appoint as the mediator.

9.6 The costs of any mediator appointed under Clause 9.5 must be borne equally by the parties.

9.7 If any dispute notified under Clause 9.2 remains unresolved, then at any time after fourteen (14) days after the date of a Dispute Notice, and whether before or after reference of a dispute to a mediator under Clause 9.5, either party may institute proceedings in the appropriate court for determination of the dispute.

Title Reference

9.8 The parties may mutually agree in writing to extend any time period specified in Clause 9.

9.9 Clause 9 of this Covenant does not prevent the Owner or the Council from obtaining any injunctive declaratory or other interlocutory relief from a court, which may be urgently required.

10. SERVICE

10.1 A notice is sufficiently made, given or served by a party if left at or forwarded by prepaid post in an envelope addressed to the other party or any of them (where there are more persons than one person comprising the other party) at the address of that party.

10.2 A notice if sent by prepaid post is deemed to have been made, given or served at the time when in the due course of the post it would be delivered at the address to which it is directed whether or not it is actually received.

10.3 In proving service of a notice made, given or served by the Council it is only necessary for the Council to certify to that effect under the hand of the Chief Executive Officer.

10.4 A notice given by a party must be:

- (a) in writing; and
- (b) signed by the party, an officer of that party or the solicitor for that party.

10.5 A party receiving a notice is not obliged to enquire as to the authority of the person signing the notice.

11. COVENANT RUNS WITH THE LAND

This Covenant burdens the Lot and runs with the Lot and binds the successors in title to the Lot and to any parcel into which that Lot is reconfigured by any means.

12. NO EFFECT ON RATES AND CHARGES AND COMPLIANCE WITH LAWS

12.1 For the avoidance of doubt, nothing in this Covenant:

- (a) affects the liability of the Owner to pay all taxes, rates, charges and levies lawfully imposed in respect of the Lot and comply with all relevant laws (including the Planning Scheme applying to the Lot); or
- (b) imposes a liability on the Council to make a monetary payment to the Owner in the form of compensation or otherwise.

13. REGISTRATION

13.1 The Owner shall do everything necessary at the Owner's expense to ensure that this Covenant is registered against the title to the Lot within one (1) month after the execution of this Covenant by Council.

13.2 The Council shall do everything necessary (including executing any documents) to give effect to this Covenant.

Title Reference

14. WAIVER

14.1 No waiver by the Council of any breach by the Owner of any of the provisions of this Covenant shall be implied against the Council or be otherwise effective unless it is in writing under the hand of the Chief Executive Officer.

14.2 A single or partial exercise or waiver of a right relating to this document will not prevent any other exercise of that right or any other right.

15. LACHES AND DELAY

No laches or delay by the Council at any time or times in enforcing any of its rights, powers and the like under this Covenant prejudice or affect those rights or powers.

16. SEVERANCE

If any provision of this Covenant cannot be given effect or full force and effect by reason of statutory invalidity that provision shall be severed or read down but so as to maintain and uphold so far as possible the remaining provisions of this Covenant.

17. ENUREMENT

This Covenant binds the parties to it and their respective successors, assigns, heirs, executors and administrators.

18. NO OBLIGATIONS ON COUNCIL

The rights given to the Council by this Covenant are permissive only and nothing in this Covenant imposes any duty of any kind on the Council to anyone or obliges the Council to perform any act or incur any expense for any of the purposes set out in this Covenant.

19. TIME

Time shall, in all cases, be of the essence of this Covenant.

20. CONFLICT

Nothing in this Covenant will limit any right given to the Council pursuant to any easement or other document granted to or that benefits the Council in the Covenant Area registered before or after the creation of this Covenant.

21. INTERPRETATION

21.1 The headings and the Preamble in this Covenant are for convenience only and do not affect its interpretation.

21.2 References to:

- (a) the singular includes the plural and the plural includes the singular;

Title Reference

- (b) one gender includes each other gender;
- (c) a person includes a body corporate;
- (d) a party includes the party's executors, administrators, successors and any assignee of this Agreement.