

Dealing Number



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

Lodger
Code

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1. Covenantor

[insert name of registered owner]

2. Description of Covenant / Lot on Plan

[insert description of lot/s]

Title
Reference

insert title
reference

3. Covenantee

The State of Queensland (Represented by Department of the Environment, Tourism, Science and Innovation)

4. Description of Covenant (include reference to relevant section of legislation)

Preservation of native animals and plants pursuant to Section 97A(3)(b)(i) of the *Land Title Act 1994* (Qld).

5. Execution

The Covenantor being the registered owner of the lot described in item 2 covenants with the Covenantee in respect of the covenant described in item 4 and:- *the attached schedule;

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date

.....
Covenantor's Signature

The State of Queensland (represented by Department of the Environment, Tourism, Science and Innovation) by:

..... (full name)

..... (position)
a duly authorised delegate

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date

.....
Covenantee's Signature

Title Reference

COVENANT

for the purpose of the preservation of a native animal
pursuant to s97A(3)(b)(i) of the *Land Title Act 1994*

Background

- A. The Department has the power to direct the imposition of development conditions by virtue of section 56(1)(b)(i) of the *Planning Act 2016* in respect of certain development approvals for which it is the referral agency.
- B. The terms of this Covenant represent the conditions required by the Department to the Development Approval, to be recorded over the Land.
- C. The purpose of this Covenant is to form a binding agreement between the Owner and the Department for the preservation of a native animal pursuant to s97A(3)(b)(i) of the *Land Title Act 1994*, specifically for the preservation of Koalas through the protection and enhancement of Koala Habitat on the Covenant Area within the Land.

Title Reference [insert title reference]

COVENANT PARTICULARS

Item 1 Party details:

Owner (Covenantor):	[Insert]
Department (Covenantee):	The State of Queensland (represented by Department of the Environment, Tourism, Science and Innovation)

Item 2 Purpose:

Purpose:	The preservation of Koalas through the protection and/or re-establishment of the Koala Habitat on the Covenant Area.
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Item 3 Covenant Area:

Address of the Land:	[insert address and Lot on Plan description]
Covenant Area within the Land:	[The whole of the Land OR That part of the Land marked ['x'] on the plan in Annexure 1 to this Covenant]

Item 4 Special Conditions:

SC.1 [Insert heading]

(a) Insert

(i) Insert

1. Definitions and interpretation

1.1 Definitions

In this Covenant:

Authorised Persons means a party's employees, tenants, agents, visitors, invitees, contractors and licensees, and includes:

- (a) in the case of the Department, the Chief Executive, any other persons authorised by the Department to exercise the rights and perform the obligations conferred by this Covenant, any other department or agency responsible for the management or administration of native animals or of the Koala Habitat under the *Nature Conservation Act 1992*;
- (b) in the case of the Owner, any other lawful occupier or user of the Land.

Biosecurity Management Plan means a plan prepared by a suitably qualified professional (for example an ecologist with experience in the management of Weed and Pest species) which provides for the effective management of and states the reasonable measures to prevent, control or stop the spread of biosecurity risks in relation to the Covenant Area. The Biosecurity Management Plan must address how actual and potential biosecurity risks, such as pests, weeds and diseases in the Koala Habitat will be managed.

Bushfire Management Plan means a plan prepared by a suitably qualified bushfire professional (including appropriate personnel from the Queensland Fire and Emergency Services), which provides for the effective management and reduction of the risk or impact of bushfire on the Covenant Area.

Business Day means a day other than a Saturday, Sunday or public holiday in the place the Land is located, or the period 27 December to 31 December inclusive.

Chief Executive means the chief executive under the *Nature Conservation Act 1992*.

Condition means a development condition under the Planning Act, being a condition imposed by the State Assessment and Referral Agency to which the Development Approval is subject to.

Contamination has the meaning given in the *Environmental Protection Act 1994*.

Covenant means the Titles Registry Form 31 and this Form 20 Schedule.

Covenant Area means the part of the Land subject to the Covenant as specified in Item 3 of the Covenant Particulars.

Department means the State of Queensland (represented by Department of the Environment, Tourism, Science and Innovation) or any successor agency with responsibility for the preservation of native animals pursuant to the *Nature Conservation Act 1992*, at the date of this Covenant being the Covenantee named in Item 3 of the Form 31.

Department's Agents includes the Department, the Chief Executive and the Minister administering the *Nature Conservation Act 1992*, and each of the Department's officers, employees, contractors, sub-contractors and agents.

Development Approval means the development approval under the Planning Act that established the requirement for this Covenant over the Land.

Dispute Notice means a notice given by one party to the other pursuant to clause 9 of this Covenant.

Environment means:

- (a) ecosystems and their constituent parts;
- (b) all natural and physical resources;
- (c) the qualities and characteristics that contribute to biological diversity and integrity, intrinsic or attributed scientific value or interest; and

Title Reference [insert title reference]

includes:

- (d) native vegetation,
- (e) native flora and fauna;
- (f) waterways; and
- (g) landforms.

Environmental Laws means any local, State or federal Laws relating to the management and protection of the Environment which apply to the Land, including in relation to Vegetation clearing, Contamination, planning and development, bushfire management, environmental offsets and biosecurity.

Form 31 means the Queensland Land Registry Form 31 Covenant to which these terms apply.

Government Agency means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity or authority.

Invasive Plant has the meaning given in the *Biosecurity Act 2014*.

Koala Conservation Plan means the *Nature Conservation (Koala) Conservation Plan 2017*.

Koala Habitat has the meaning ascribed to it in the Koala Conservation Plan, in respect of the Covenant Area.

Koala(s) means any koala (*phascolarctos cinereus*) in or within the vicinity of the Koala Habitat.

Land means the lot(s) described in Item 2 of the Form 31.

Laws means all laws, statutes, regulations, by laws, ordinances, orders, awards, proclamations and local laws of the Commonwealth, a State or Territory, any local government or a Government Agency together with any binding requirements and mandatory approvals (including conditions) of the Commonwealth, a State or Territory, any local government or a Government Agency.

Owner means the Covenantor described in Item 1 of the Form 31 and Item 1 of the Particulars, and includes its successors in title, assigns, and each of their executors and administrators.

Particulars means the Covenant Particulars forming part of this Covenant.

Pest means an invasive animal under the *Biosecurity Act 2014*.

Planning Act means the *Planning Act 2016*.

Purpose means the preservation of a native animal pursuant to s97A(3)(b)(i) of the *Land Title Act 1994* and any particular purpose described Item 2 of the Particulars.

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

Weed means:

- (a) an Invasive Plant under the *Biosecurity Act 2014*;
- (b) declared plants under the *Land Protection (Pest and Stock Route Management) Act 2002*; and
- (c) any other plants identified as weed species under relevant Environmental Laws.

1.2 Interpretation

In this Covenant:

Title Reference [insert title reference]

- (a) headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) Any obligation of a party to do, or not to do, a thing is also an obligation of the party to ensure that the party's contractors, officers, agents, employees and others claiming by through or under the party do, or do not do, that thing.
- (e) Any failure, act or omission of a party includes a failure, act or omission of any contractor, officer, agent, employee or invitee of the party.
- (f) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
- (g) a reference to a document (including this Covenant) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (i) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (k) includes in any form is not a word of limitation.

2. Covenant purpose

- (a) This Covenant is for the purpose of preserving a native animal pursuant to section 97A(3)(b)(i) of the *Land Title Act 1994*, and more specifically for the Purpose.
- (b) The Owner must take reasonable measures to only use, or allow to be used, the Covenant Area in a manner that is consistent with the Purpose.

3. Development Conditions

- (a) This Covenant is intended to ensure compliance with the relevant Condition(s) of the Development Approval that established the requirement for this Covenant over the Land.
- (b) The parties agree that the conditions contained in this Covenant are Development Conditions for the purposes of the Planning Act and the provisions of this Covenant are therefore enforceable under the Planning Act.
- (c) The Owner must comply at all times with the Conditions.

4. Covenant runs with the Land

- (a) The parties acknowledge and agree that the Covenant will secure the Covenant Area to protect the Koala Habitat contained therein in perpetuity.

Title Reference [insert title reference]

- (b) This Covenant burdens and runs with the Land and binds the successors in title to the Land and to any parcel into which that Land is reconfigured by any means.
- (c) For the avoidance of doubt, the obligations in this Covenant strictly rest with the Owner, are continuing obligations on the Owner, and apply to the Owner notwithstanding that the Owner may not occupy the Land.

5. Registration

- (a) The Owner must do everything reasonably necessary and provide all reasonable assistance to the Department without delay to enable the Covenant to be registered over the title of the Land.
- (b) The Owner agrees to do everything reasonably necessary to give effect to this Covenant.

6. Owner's Obligations

6.1 General

The Owner must not, unless otherwise agreed in writing by the Department:

- (a) do, or omit from doing, anything on the Land which, in the Department's opinion (in its absolute discretion) may adversely affect the Koala Habitat;
- (b) interfere with (whether by act or omission) the:
 - (i) Koala Habitat, including by trimming, pruning, lopping, poisoning, harvesting, picking, clearing, cutting down, moving, removing, or in any other way, damaging or destroying such Koala Habitat (with the exception of mowing, or undertaking work reasonably necessary to control Invasive Plants, Weeds or Pests to the extent that the Owner is lawfully able to do so); or
 - (ii) Koalas, including by capturing, removing, or otherwise harming the Koalas;
- (c) cause any structure, improvement, fixture, trail, path, fence, accessway, or any other works of any kind (including clearing), to be constructed or carried out on the Covenant Area (with the exception of the maintenance to existing structures or infrastructure on the Covenant Area at the date of registration of this Covenant);
- (d) introduce, or allow to be introduced, in the Covenant Area:
 - (i) any non-native Vegetation or animals; or \
 - (ii) an Invasive Plant, Weed or Pest;
- (e) place or store in the Covenant Area any fill, soil, rock, rubbish, ashes, garbage, waste or other foreign material which, in the Department's opinion (in its absolute discretion), does not reflect the conditions of growth naturally occurring as part of the Koala Habitat in the Covenant Area; or
- (f) cause Contamination to the Covenant Area, including by using or disposing of chemicals, treated or untreated effluent from any sewage or greywater systems:
 - (i) within the Covenant Area;
 - (ii) within the Land; or
 - (iii) on any land to which the Owner has an interest,

which is reasonably likely to adversely impact the Covenant Area.

Title Reference [insert title reference]

6.2 Notification and rectification of damage or impacts

- (a) The Owner must notify the Department in writing of:
- (i) any substantial damage to the Koala Habitat;
 - (ii) any interference or negative impact on the Koalas (whether by natural occurrence or otherwise) within the Covenant Area;
 - (iii) the carrying out of any works in the Covenant Area;
 - (iv) the introduction of any non-native Vegetation or animals in the Covenant Area;
 - (v) the storage of any foreign material on the Covenant Area;
 - (vi) the Contamination (or possible or likely Contamination) of the Covenant Area; or
 - (vii) any other thing likely to affect the Koalas or the Koala Habitat,
- as soon as possible but not more than 14 days of becoming aware of such occurrence.
- (b) The Owner must comply with any written notice of the Department setting out its reasonable requirements for the:
- (i) repair of any damage or impact on the Koala Habitat, including by any reasonable rehabilitation or replanting deemed to be necessary by the Department; and
 - (ii) removal of any material, non-native Vegetation or animals, Contamination, improvement, structure or other thing,
- within such time as reasonably required by the Department.

6.3 Fencing the Covenant Area

- (a) Except to the extent otherwise agreed in writing with the Department, the Owner must not:
- (i) use the Covenant Area for grazing livestock or other non-native animals; and/or
 - (ii) clear any part of the Covenant Area, including in maintenance of the Land or any improvement thereon.
- (b) If deemed necessary by the Department, the Owner must:
- (i) exclude non-native animals from the Covenant Area by appropriate fencing (which shall be constructed and maintained as koala-friendly fencing in accordance with the latest version of the Koala Sensitive Design Guideline prepared by the Department, or such other guideline as notified to the Owner from time to time); and
 - (ii) delineate the boundary of the Covenant Area at all times with permanent markers made of steel or concrete posts at each corner and at intervals of no greater than 20m.

6.4 Safety Risk

- (a) Despite clauses 6.1 and 6.2, if anything in the Koala Habitat poses a serious risk to human safety, the Owner may do such things reasonably necessary (including interfering with the Koala Habitat) to remove such risk if it first obtains the prior written consent of the Department, which consent will not be unreasonably withheld provided that:
- (i) in the case of a risk to human safety posed by Vegetation, a report from a suitably qualified arborist is included to support the Owner's request; or

Title Reference [insert title reference]

- (ii) in the case of wildfire risk, the Owner's request is supported by a Bushfire Management Plan.
- (b) Any Vegetation must be left in the Covenant Area so that natural regeneration processes may occur unless, in the Department's opinion (in its absolute discretion), it would constitute a serious wildfire hazard or be otherwise contrary to Environmental Laws.
- (c) Despite clauses 6.1 and 6.2, if the Owner is obliged under any relevant Environmental Laws to remove Weeds or Pests from the Land, including the Covenant Area, and it is necessary, or there is potential to, cause damage to native Vegetation or the Koala Habitat, the Owner must do so only in accordance with a Biosecurity Management Plan which is pre-approved by the Department.

7. Department's powers of entry

- (a) The Owner will permit the Department and its Authorised Persons, at all times, upon reasonable prior written notice (except in the circumstances outlined in clause 7(c)) to enter into and upon the Land with all necessary plant and equipment for any reasonable purpose associated with this Covenant, including:
 - (i) examining, inspecting, testing and monitoring the state and condition of the Koalas or the Koala Habitat;
 - (ii) ascertaining whether the Owner has complied with its obligations under this Covenant; or
 - (iii) making good any breach of the Owner's obligations under this Covenant.
- (b) The Owner will be responsible for notifying any person occupying the Covenant Area of the Department's access to the Covenant Area under clause 7(a).
- (c) Despite clause 7(a), the Department is not required to give the written notice:
 - (i) in the case of emergency;
 - (ii) in the case that the Department believes that there is an immediate danger to the Koalas or the Koala Habitat; or
 - (iii) where the Department reasonably believes that the delay in providing prior notice will likely be prejudicial to the Department being able to comply with its duties and responsibilities under any Law or government policy.

8. Default

8.1 Notice to Remedy

- (a) If the Owner does not comply with its obligations under this Covenant, the Department may issue a written notice to the Owner requiring the Owner to remedy any such non-compliance (**Notice to Remedy**).
- (b) If the Department issues the Owner with a Notice to Remedy, the Owner must comply with the requirements set out therein within such reasonable period specified in the Notice to Remedy (**Remediation Period**).

8.2 Default by the Owner

- (a) On expiry of the Remediation Period, if the Owner has not complied with the requirements of the Notice to Remedy, the Department or its Authorised Persons, may:
 - (i) enter the Covenant Area and perform any planting, replanting, rehabilitation, remedial work or anything else reasonably required in order to remedy the Owner's non-

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compliance, and the Department may recover all costs reasonably incurred under this clause 8.2 as a debt from the Owner, payable on demand; or

- (ii) exercise any powers it may have under any Laws, including under relevant Environmental Laws or the Planning Act.
- (b) The exercise by the Department of its rights under this clause 8.2 will not affect, prejudice or derogate from the rights, powers and authorities of the Department under any Laws, at common law or in equity.
- (c) The Owner will not be in breach of this Covenant for any damage to the Koala Habitat on the Covenant Area caused by any natural occurrence or otherwise caused by something beyond the reasonable control of the Owner.
- (d) The Owner is liable only for breaches of this Covenant which occur while the Owner is the registered owner of any interest in the Land and then only to the extent of that interest.

9. Dispute Resolution

- (a) This clause 9 shall apply to any dispute between the parties to this Covenant.
- (b) Any dispute as to the performance of this Covenant or arising out of this Covenant that has not been resolved by agreement between the parties must be clearly identified in a Dispute Notice served by one party on the other party, following which the parties must attempt to resolve the dispute through negotiation.
- (c) If the parties are unable to resolve the dispute through negotiation, within 14 days of receipt of a Dispute Notice, either party may refer the dispute to a mediator agreed by the parties, with costs to be shared equally between the parties.
- (d) If the parties cannot agree upon a mediator, either party may request the President of the Queensland Law Society to nominate a mediator. The parties will accept the terms of the mediation as specified by the mediator.
- (e) Notwithstanding the existence of a dispute, the Owner will continue to perform its obligations under this Covenant.
- (f) Nothing in this clause 9:
 - (i) is intended to limit the Department's rights under clause 8; or
 - (ii) prevents either party from commencing court proceedings relating to any dispute arising from this Covenant at any time where that party seeks urgent interlocutory relief.

10. Indemnity and Release

- (a) This clause 10 will not apply where the Owner is The State of Queensland.
- (b) The Owner indemnifies the Department and the Department's Agents from and against any claim, right, remedy, action, cause of action, loss, expense or liability incurred or suffered by the Department as a consequence of or in connection with a breach of this Covenant by the Owner or any person for whom the Owner is responsible (including any of the Owner's invitees to the Land).
- (c) The Owner releases and discharges the Department and the Department's Agents from any actions, suits, proceedings, claims, demands (including but not limited to any actions, suits, proceedings claims or demands for costs, losses, damages or expenses) which the Owner may have against the Department or any or all of the Department's Agents in connection with the performance of this Covenant by the Owner or arising out of or in any way connected with or resulting from the granting of this Covenant.

Title Reference [insert title reference]

- (d) The Owner acknowledges that monetary damages alone would not be an adequate remedy for breach of the Owner's obligations under this Covenant and that the Department is entitled to seek an injunction from a Court of competent jurisdiction if the Owner fails to comply or threatens to fail to comply with the Owner's obligations or the Department has reason to believe the Owner will not comply with the Owner's obligations under this Covenant.

11. Transfer of Land

- (a) If the Owner intends to sell or otherwise transfer the whole or any part of the Land to another person (**Transferee**), then it must notify the Department of that intention in writing at least 3 months prior to the proposed sale or transfer.
- (b) If the Owner sells or otherwise transfers the Land, then it must procure the Transferee to execute a deed in favour of the Department, under which the Transferee covenants to perform the Owner's obligations under this Covenant as if the Transferee signed this Covenant itself and including a covenant that the Transferee will also require any subsequent buyers or transferees of its interest to sign a similar deed (**Transfer Deed**).
- (c) The Owner will not be released from its obligations under this Covenant until such time that the Transferee and the Department enter into a Transfer Deed regarding this Covenant, to the Department's reasonable satisfaction.

12. General

12.1 Notices

Each communication (including each notice, consent, approval, request and demand) in connection with this Covenant to be given by either party to the other:

- (a) must be in writing, and signed by the person making it (or by a person duly authorised by that party);
- (b) must be addressed to the other party to the address as notified to that party from time to time;
- (c) must be delivered to that address by hand or posted by pre-paid post or emailed to the address of the addressee;
- (d) is taken to have been received by the addressee:
- (i) where sent by pre-paid post – on the seventh day after the date of posting;
 - (ii) where hand delivered – on delivery; or
 - (iii) where sent by email – on the day that the sender's information system records the email as being sent, unless the party sending the email knows or reasonably ought to suspect that the email and any attached communication were not delivered to the addressee's information system.

12.2 Compliance with Laws

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 Land; and
- (b) imposes a liability on the Department to make a monetary payment to the Owner in the form of compensation or otherwise.

Title Reference [insert title reference]

12.3 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Covenant by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Covenant.
- (b) A waiver or consent given by a party under this Covenant is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Covenant operates as a waiver of another breach of that term or any other term of this Covenant.

12.4 Severance

If any provision of this Covenant is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted, and this Covenant will remain otherwise in full force.

12.5 Time of the essence

Time will be of the essence as regards a date or period determined under this Covenant except that a date or period may be altered by mutual written agreement (unless expressly stated otherwise), in which case time will be of the essence for the date or period as altered.

12.6 No obligations on Covenantee

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

12.7 Conflict

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

12.8 Survival

Any indemnity and release under this Covenant is a continuing obligation, separate and independent from the other obligations of the parties and survives termination or expiration of this Covenant. Any other term by its nature intended to survive termination or expiration of this Covenant, survives termination or expiration of this Covenant.

12.9 Amendments

This Covenant may only be amended by a document in writing signed by each party.

12.10 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Covenant; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 12.10(a).

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12.11 No fettering

Nothing contained in this Covenant will fetter, act as an estoppel or as an agreement about the exercise of discretion or the making of a decision or subordinate legislation under any law by the State of Queensland and its Authorised Persons.

SAMPLE ONLY

Title Reference [insert title reference]

Annexure 1 – Plan of Covenant Area

[Insert plan]

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