

REGISTRATION CONFIRMATION STATEMENT

DEPT OF NATURAL RESOURCES AND MINES, QUEENSLAND

Dealing Registered:

Date: 16/12/2015 at 10:50

STANDARD TERMS DOCUMENT No 716934119

Lodgement No: 3732406
Office: NAMBOUR

Email: legals.nambour@sunshinecoast.qld.gov.au
SUNSHINE COAST REGIONAL COUNCIL
LOCKED BAG 72
SCMC QLD 4560



716934119

NO FEE
04/12/2015 13:38

NR 608

1. Nature of request REQUEST TO REGISTER STANDARD TERMS DOCUMENT	Lodger (Name, address, E-mail & phone number) SUNSHINE COAST REGIONAL COUNCIL LOCKED BAG 72 SUNSHINE COAST MAIL CENTRE QLD 4560	Lodger Code NR 040
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2. Lot on Plan Description NOT APPLICABLE	County	Parish	Title Reference
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3. Registered Proprietor/State Lessee
NOT APPLICABLE

4. Interest
NOT APPLICABLE

5. Applicant
SUNSHINE COAST REGIONAL COUNCIL

6. Request
I hereby request that pursuant to s169 of the *Land Act 1994* the attached Standard Terms Document relating to a Covenant for the use of the allotment under S.97A(3)(a)(i) of the *Land Title Act 1994*

7. Execution by applicant

4/12/15
Execution Date


Sophie Paras - Solicitor
Applicant's or Solicitor's Signature

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

Title Reference ()

1. DEFINITIONS

"Act" means the *Land Title Act 1994*.

"Condition" means the provisions applied by Sunshine Coast Regional Council to develop the Lot and identified in the schedule attached to the Form 31.

"Council" means the Sunshine Coast Regional Council, the Covenantee named in Item 3 and includes its successors in title, administrators and assigns.

"Covenant" means the terms of this document and the terms in the schedule to the Form 31.

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

"Development Approval" means the approval issued by Council and identified in the schedule to the Form 31.

"Form 31" means the Queensland Land Registry Form 31 Covenant to be registered over the Lot.

"Geotechnically Compliant Residential Development" means for the purpose of the preservation of the Lot and any building to be constructed on the Lot so that it may be used for residential purposes without risk of subterranean movement that could render the Lot unfit for residential use:

- (a) all buildings must be sited and/or constructed in accordance with the Geotechnical Report attached to the Development Approval, and any subsequent geotechnical report relating specifically to the Lot;
- (b) all building works and associated earthworks are to preserve the natural slope of the land, and if the slope of the land is to be changed, the owner must obtain certification from a registered professional engineer experienced in geotechnical investigation stating that the proposed works are appropriate to the site;
- (c) prior to any Development Approval for building works and associated earthworks for the Lot, the owner must obtain certification from a registered professional engineer experienced in geotechnical investigation stating that the proposed works are appropriate to the site;
- (d) prior to undertaking earthworks on the Lot not being associated with (c) above, the owner of the Lot must be responsible for obtaining certification from a registered professional engineer experienced in geotechnical investigation stating that the proposed works are appropriate to the site; and
- (e) the certification described in (b), (c) and (d) above must make due reference to the reports referred to in (a) above.

"Geotechnical Report" means the report obtained by the Owner as part of its development application to Council and being a Condition of the development of the Lot and referred to in the schedule to the Form 31.

"Land" means the Lot described in Item 2 of the Form 31.

"Lot" means the Lot described in Item 2 of Form 31

"Owner" means the registered proprietor of the Lot from time to time, and in the first instance, means the Covenantor 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*,

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2. COVENANT

This Covenant relates to the use of the Lot pursuant to Section 97A(3)(a)(i) of the Act to ensure that the Lot is used for Geotechnically Compliant Residential Development.

3. ACKNOWLEDGEMENTS

The parties acknowledged 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.

4. OWNER'S OBLIGATION

The Owner covenants and agrees with Council that the Lot is to be used only for Geotechnically Compliant Residential Development.

5. REMEDY FOR NON-COMPLIANCE

- 5.1 In the event of non-compliance by the Owner with the Owner's obligations under clause 4, Council may issue a written notice requiring the Owner to remedy the non-compliance.
- 5.2 The Owner must comply with a written notice issued pursuant to clause 5.1 within 14 days or such other time period as may be specified in the notice.
- 5.3 In the event that the Owner fails to comply with a written notice within the time allowed in accordance with clause 5.2, Council may exercise Council's rights under clause 6.

6. DEFAULT BY OWNER

- 6.1. If Council forms the view that the Owner has breached this Covenant, Council may agree to proceed in accordance with clause 7.
- 6.2. Council may exercise its powers under the *Sustainable Planning Act 2009* (or any statutory instrument that supersedes that Act) and other statutory provisions in the event of a breach of this Covenant.

7. SETTLEMENT OF DISPUTES

- 7.1. **This clause will apply to any dispute between the parties to this Covenant.**
- 7.2. Any dispute regarding the performance of this Covenant or arising out of this Covenant that cannot be resolved by agreement between the parties must be clearly identified in a Dispute Notice served by one party on the other party.
- 7.3. With 5 days of the date of the Dispute Notice, the parties must meet to discuss the dispute and its possible determination.
- 7.4. The parties may within 7 days of meeting in accordance with clause 7.3 agree to refer the dispute to mediation.

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- 7.5. If the parties agree to mediate in accordance with clause 7.4 then the parties may either:
- 7.5.1. appoint a mediator agreed by the parties; or
 - 7.5.2. where the parties fail to agree to the appointment of a mediator within the period referred to in clause 7.4, 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.
- 7.6. The costs of any mediator appointed under clause 7.5 must be borne equally by the parties.
- 7.7. If any dispute notified under clause 7.2 remains unresolved, then at any time between 14 days and 35 days (inclusive) after the date of a Dispute Notice and whether before or after reference of a dispute to a mediator under clause 7.5, either party may institute proceedings in the appropriate court for determination of the dispute.
- 7.8. The parties may mutually agree in writing to extend any time period specified in clause 7.
- 7.9. Clause 7 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.

8. SERVICE

- 8.1. A notice is sufficiently made, given, issued 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.
- 8.2. A notice if sent by prepaid post is deemed to have been made, given, issued 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.
- 8.3. 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.
- 8.4. 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 of that party.
- 8.5. A party receiving a notice is not obliged to enquire as to the authority of the person signing the notice.

9. COVENANT RUNS WITH THE LAND

- 9.1. Unless it is otherwise expressly provided in this Covenant, every obligation and covenant of the Owner in this Covenant constitutes a personal covenant granted under Section 97A of the Act in respect of the Designated Covenant Area.
- 9.2. 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.

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10. NO EFFECT ON RATES AND CHARGES AND 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 Lot and comply with all relevant laws (including the Planning Scheme applying to the Lot); and
- (b) imposes a liability on the Council to make a monetary payment to the Owner in the form of compensation or otherwise.

11. REGISTRATION

- 11.1 The Owner must do everything necessary at the Owner's expense to ensure that this Covenant is registered against the title to the Lot as soon as reasonably practicable after the execution of this Covenant.
- 11.2 The Council shall do everything necessary (including executing any documents) to give effect to this Covenant.

12. WAIVER

- 12.1 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.
- 12.2 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.

13. 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.

14. 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.

15. ENUREMENT

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

16. TIME

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

17. INTERPRETATION

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

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17.2 References to -

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

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