


QUEENSLAND LAND REGISTRY  
Land Title Act 1994 and Land Act 1994

COVENANT

Form 31 Version 2  
Page 1 of 2

	Dealing Number	Lodger (Name, address & phone number)	Lodger Code
Privacy Statement The information from this form is collected under the authority of the <u>Land Title Act 1994</u> and the <u>Land Act 1994</u> and is used for the purpose of maintaining the publicly searchable registers in the land registry.		Hogan Besley Boyd PO Box 458 Brisbane Q 4001 Ph: 07 3229 4408	463

1. Covenantor

ELLA BAY PROPERTIES PTY LTD ACN 096 551 352

2. Description of Covenant / Lot on Plan

County	Parish	Title Reference
<del>Covariants B, C, D</del> in Lot 237 on NRS 53 or Covenant A on Lot 337 on SP 5 P 193021 Nares	Glady	21413065

3. Covenantee

The Council of the Shire of Johnstone and the State of Queensland (acting through the Environmental Protection Agency)

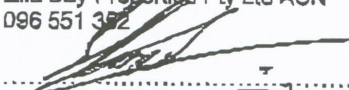
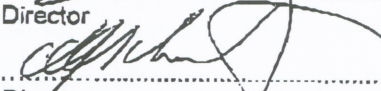
4. Description of Covenant (include reference to relevant section of legislation)

Conservation Covenant pursuant to s 97A(3)(b) of the Land Title Act 1994 for the purpose of the protection, preservation and conservation of the Conservation Area, particularly with respect to the preservation of all vegetation within the Conservation Area in terms of the attached schedule.

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; \*~~the attached schedule and document no. ....~~  
~~document no. ....~~ (\*delete inappropriate words)

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

Witnessing Officer	Execution Date	Covenantor's Signature
..... signature	19 6 12 2006	Ella Bay Properties Pty Ltd ACN 096 551 352 
..... full name		Director
..... qualification		 Director

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

Witnessing Officer	Execution Date	Covenantee's Signature
..... signature	/ /	REFER ENLARGED PANEL
..... full name		
..... qualification		

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

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**SCHEDULE / ENLARGED PANEL /  
ADDITIONAL PAGE / DECLARATION**

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Witnessing Officer

Execution Date

Covenantee's Signature

*Justice of the Peace J.P.*  
..... signature  
*MARIE JIM ANNE SORENSEN*  
..... full name  
*JUSTICE OF THE PEACE*  
..... qualification

25/07/2006

*[Handwritten Signature]*  
.....  
**M. MCGOWRIE**  
ACTING CHIEF  
EXECUTIVE OFFICER

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

Covenantee's Signature

Witnessing Officer

Execution Date

..... signature

/ /

..... full name

..... qualification

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

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### CONSERVATION COVENANT

#### DEFINITIONS

"access"	means that part of the land which shall be located within Common Property providing pedestrian and vehicular access to the public road.
"area"	means the local government area of the Johnstone Shire Council.
"Authorised Officer"	means officers who are from time to time authorised by the Council under the <i>Local Government Act 1993</i>
"building location envelope"	means that part of the land designated for a dwelling and ancillary outbuildings which the Council may designate.
"commencement date"	means the date of execution of this covenant.
"Common Property"	has the meaning given to that expression within the Body Corporate and Community Management Act 1997 within the Scheme.
"conservation area"	means that part of the land described within Item 2 of the Form 31 Covenant.
"Council"	means the Council of the Shire of Johnstone, the Covenantee, and its successors in title i.e. such other Local Government in which the land is situated from time to time.
"Covenant"	means this agreement comprising the Form 31 and the Form 20 Schedule and all annexures and attachments to this agreement.
"Covenantor"	means the person named in Item 1 of Form 31 for as long as that person is the proprietor of the land and thereafter such other person who may from time to time be a proprietor of the land to the intent that both the person entitled to the fee simple interest in the land and a person entitled to an interest less than the fee simple in the land e.g. a lessee of the land will be jointly and severally bound by this covenant.
"Covenantee"	means the Council of the Shire of Johnstone and the State of Queensland (acting through the Environmental Protection Agency) together with their successors and assigns and unless inconsistent with the subject matter or context, includes all persons for the time being authorised by the Covenantee
"Environmental Protection Agency"	means the State of Queensland (represented by the Environmental Protection Agency)
"development"	has the meaning given to that word in Section 1.3.2 of the Integrated Planning Act of 1997 as amended from time to time.
"development approval"	has the meaning given to that phrase in Schedule 10 of the Integrated Planning Act of 1997 as amended from time to time.
"habitat"	includes <del>vegetation of any kind, natural features in the nature of creeks, watercourses, springs, nests or animal lairs.</del>
"interfere with"	includes the cutting down, lopping, poisoning, ringbarking, burning, digging out, pulling out and in relation to fauna includes removing, destroying, maiming,

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frightening, disturbing and in any way interfering with nests or eggs and destroying, diminishing or removing the natural food source of the fauna.

**"Manager of Environmental Services"**

means the person designated by the Council from time to time as holding this position or if no such person is designated then the Chief Executive Officer of the Council.

**"Owner"**

means the person named in Item 1 of Form 31 and includes both the "registered owner" and the "registered proprietor" of the land from time to time.

**"proprietor"**

means the person entitled to an interest in the land whether or not the person is in possession.

**"registered owner"**

means the person recorded in the freehold land register as a person entitled to the fee simple interest in the land.

**"registered proprietor"**

means the person recorded in the freehold land register as a proprietor of the land.

**"Scheme"**

means the proposed Community Titles Scheme into which the Land shall be converted.

**"undesirable plant"**

means an undesirable plant as defined in Schedule 3 to the *Wet Tropics Management Plan 1998*

**"vegetation"**

includes everything growing on the land, including plants of any size, flora, but excludes declared plants under State legislation or Local Laws.

### COVENANTS

IN CONSIDERATION of the Council having granted a development approval to the Owner and for the purpose of fulfilling a condition imposed by the Council on the Owner in relation to such development approval the Owner being the registered owner of the Lot described in Item 2 ("the land") hereby covenants with the Council as follows:-

1. COVENANTOR'S OBLIGATIONS

1.1 NO INTERFERENCE WITH VEGETATION AND FAUNA

The Covenantor shall ensure that there is no interference in any way with any vegetation and fauna within the conservation area other than to remove dead dying or diseased plants or to undertake actions which are required to control declared plants in accordance with the *Land Protection (Pest and Stock Route Management) Act* and Regulations.

1.2 DEVELOPMENT AND ERECTION OF STRUCTURES

The Covenantor shall ensure that the conservation area remains undeveloped and vegetation is protected and no structures are erected on the conservation area.

1.3 DOGS AND CATS AND ANIMALS NOT NATIVE TO THE AREA

The Covenantor must ensure that no dogs or cats be permitted to roam at large within the conservation area and must not introduce into the conservation area any animals which are not native to the conservation area.

1.4 PLANTS NOT NATIVE TO THE AREA

The Covenantor must ensure that plants which are not native to the conservation area are not introduced into the conservation area and shall clear from the conservation area any noxious weed or undesirable plant.

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#### 1.5 REHABILITATION OR REMEDIAL WORK

The Covenantor shall plant, replant, or carry out rehabilitation or remedial work using local indigenous species naturally occurring in the area on the conservation area to restore any vegetation harmed or damaged after the date of execution of this Covenant by the Covenantor, howsoever caused, to a state as near as practical to the state prior to such damage or harm. Where unauthorised clearing or damage to the vegetation in the Conservation Area occurs, the Covenantor will be required to restore the area as far as possible to its former condition. If this requirement is not complied with, the Covenantee may restore the area and may recover the expense of doing so from the Covenantor.

#### 1.6 CASSOWARY CORRIDORS

The Covenantor must not do anything to cause disruption or to interfere with pathways pads or corridors used by cassowaries within the conservation area.

#### 1.7 REMOVAL OF VEGETATION

The Covenantor shall not remove any vegetation from the Conservation Area. Notwithstanding this provision, if any living or dead vegetation on the Conservation Area poses a risk to human safety that vegetation may be cut down or trimmed so as to remove the risk following application to and permission from the Covenantee.

#### 1.8 ACCESS

The Covenantor hereby expressly authorises the Covenantee at any reasonable time, upon giving 5 days notice to enter, re-enter, traverse and leave the Conservation Area with all necessary plant and equipment for the following purposes:

- Inspect and monitor the covenant area and vegetation on the covenant area; and
- Make good any breach of the obligations of the Covenantor under the Covenant at the cost and expense of the Covenantor.

The Covenantee must give notice of any intention to enter the Conservation Area except in cases of emergency or when the Covenantee on reasonable grounds believes that the delay in giving notice is prejudicial to its responsibilities under the Covenant.

#### 1.9 COUNCIL'S COSTS

The Covenantor must pay the reasonable legal costs of the Council in connection with the preparation execution stamping and registration of this Covenant or where the Council itself prepares the Covenant and attends to its stamping and registration its reasonable administration costs; and must pay all stamp duty and registration fees and the costs of the preparation of any plan that may be required in association with this Covenant.

#### 1.10 NO COMPENSATION

The Covenantor must not make any claim against the Covenantee in respect of any matters in this Covenant which might otherwise give rise to a claim for compensation by the Owner against the Council under the provisions of the *Integrated Planning Act 1997*.

### 2. EXCEPTIONS TO RESTRICTIONS AND REMEDIES FOR BREACH

For the purpose of limiting the restrictions imposed upon the Covenantor by the preceding paragraph of this Covenant and for setting out what remedies will be available to the Covenantee in respect of any breach of covenant by the Covenantor the parties mutually covenant and agree as follows:-

#### 2.1 OTHER ACTIVITIES

The Covenantor may carry out on the Conservation Area such other activities as the Covenantee may from time to time by letter to the Covenantor permit.

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2.2 ROAD CONSTRUCTION WORKS

Vegetation removal for road construction works shall be kept to a minimum. However, to allow for unforeseen circumstances, minor incursions of up to 3 metres into the Conservation Area on either side of the roadway shall be permitted during the period of road construction.

2.3 NOTICE OF BREACH

If the Covenantor has breached this covenant and the breach is capable of rectification either in whole or in part the Covenantant may serve written notice on the Covenantor ("Notice of Breach") requiring rectification in such manner and to such extent as the Covenantant deems appropriate.

2.4 NOTICE OF DISPUTE

If the Covenantant wishes to dispute in any way the contents of the Notice of Breach he must give written notice of the fact that he disputes the breach ("Notice of Dispute") to the Covenantant within twenty-one (21) days of the receipt of the Notice of Breach. The Notice of Dispute must set out the grounds on which the Covenantant disputes any of the matters set out in the Notice of Breach and if the dispute is not resolved by mutual agreement within a further twenty-one (21) days from the receipt by the Covenantant of the Notice of Dispute either party may refer the dispute for determination under the provisions for dispute settlement set out in this Covenant.

2.5 NO RECTIFICATION OR NO NOTICE OF DISPUTE

If the Covenantor does not rectify any breach in accordance with the Notice of Breach or does not give any Notice of Dispute in relation to the Notice of Breach within the time stipulated for the giving of such notice, the Covenantant or its duly authorised agents may without further notice enter the land and undertake the necessary work of rectification.

2.6 PAYMENT OF COST OF RECTIFICATION

Without prejudice to the right of the Covenantant to make additional claims against the Covenantor for damages or loss arising out of any breach of this Covenant, in the event of the Covenantor undertaking the work of rectification, the cost of the work of rectification as certified by the Covenantant shall become a debt payable to the Covenantant on demand. It is acknowledged that the costs of rectification may include the labour cost of Covenantant employees, an allowance for the cost of trees and/or plants, plant and equipment, administration costs, reasonable legal costs, interest and overheads. If the rectification is carried out by independent contractors, the cost will include the amount paid to such contractors.

2.7 IF BREACH NOT CAPABLE OF RECTIFICATION

To the extent that any breach of this Covenant is not capable of rectification or complete rectification, the Covenantor will become liable to pay to the Covenantant an amount to be assessed as the value of the habitat destroyed or damaged. It is acknowledged by the parties to this Covenant that although it may not be possible to quantify in monetary terms a precise value for the habitat destroyed or damaged, this will not preclude an assessment of loss being made of the value of the habitat destroyed or damaged. The value of the habitat destroyed or damaged shall in the first instance be a matter for the determination of the Covenantant who shall set out their determination in writing and such determination will include reasons for the assessment of value so determined. Such assessment shall be notified to the Covenantor. The Covenantor may within twenty-one (21) days of the receipt of such assessment notify the Covenantant in writing that he wishes to dispute the assessment and in that event the dispute shall be referred for resolution in the manner provided by the "Dispute Settlement Provisions" of this Covenant. If the Covenantor does not notify the Council within the period of twenty-one (21) days of his intention to dispute the assessment then the amount so determined by the Covenantant shall become a debt due and payable to the Covenantant on demand.

2.8 IF CONTRIBUTIONS TO PARKS AND RECREATION AREAS WAIVED OR REDUCED

If this Covenant has arisen from circumstances which involve the Covenantant agreeing to waive contributions for parks and recreation areas which it would otherwise have imposed, in the event of any breach of this Covenant, the Covenantant will, in addition to any other remedy or right of recovery or right to recover damages to which it may be entitled under this Covenant, be entitled to recover from the Covenantor the amount of any charges waived as liquidated damages for a period of up to six (6) years preceding the breach as liquidated damages.

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2.9 IF RATE DEFERRALS HAVE BEEN ALLOWED

In the case where any rate deferrals have been allowed and there has been a breach of this Covenant, the Covenantor will in addition to any other liability for such breach become liable to repay to the Council such amount as the Council may having regard to all of the circumstances of the breach determine to be fair and reasonable but in no case to exceed the aggregate of the reductions allowed in respect of twenty half yearly rating periods immediately preceding the breach. A certificate by the Manager of Environmental Services, Johnstone Shire Council, setting out the amount of the reductions to be claimed back from the Covenantor pursuant to this Clause shall be conclusive evidence of the amount which the Council is entitled to recover and the amount so certified will become a debt due and payable by the Covenantor to the Council upon demand.

2.10 ORDINARY DAMAGES

The specific reference to types of loss and the recovery of such loss from the Covenantor will not preclude the Covenantee claiming from the Covenantor by way of compensation any other loss which it may prove it has suffered as a result of a breach of this Covenant as damages for breach of contract.

3. DISPUTE SETTLEMENT

Any dispute which is to be referred for resolution under the Dispute Settlement Provisions of this Covenant may at the expiration of the relevant periods be referred for determination by the Covenantee or the Covenantor to an accredited dispute resolution person to be agreed upon or if not agreed upon then to be appointed by the President for the time being of the Planning Institute of Australia, Queensland Division. The accredited dispute resolution person so appointed will act as an independent expert and not as an arbitrator and the decision will be final and binding on the parties. The costs of the accredited dispute resolution person will be borne by the Covenantor.

4. COVENANTEE'S OBLIGATIONS

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

5. INTERPRETATION

5.1 Unless a contrary intention appears in this Covenant a reference to:

- (a) any reference in this Covenant to "approval" of Council "opinion" of the Council or the like shall include the "approval" or "opinion" of an Authorised Officer of the Council;
- (b) the singular includes the plural and vice versa;
- (c) any gender includes all other genders;
- (d) a person includes a corporation;
- (e) a statute ordinance code or other law includes regulations and other statutory instruments under it and consolidations amendments re-enactments or replacements of any of them;
- (f) clause headings are for reference purposes only and must not be used in interpretation.

5.2 Where two or more parties are parties to a covenant agreement or guarantee then the covenant agreement or guarantee shall bind them jointly and each of them separately.

5.3 The Clause headings appearing in this Covenant are inserted for convenience of reference and shall not affect the construction of this Covenant.