

TERMS OF COVENANT

1. OBJECTIVES:

- 1.1 The purpose of the covenant is to protect the Natural Values of the Land.
- 1.2 This Covenant will bind the current registered proprietor of the Land (that is the Owner who is a party to this Covenant) and all future registered proprietors of the Land.

2. LOCATION

This Covenant applies to the Land, being:

Folio of the Register Volume Folio - The area at in the Municipality of comprising about (area) marked Conservation Covenant Area Number shown shaded on Plan No. in the Central Plan Register, a reduced copy of which is attached, by way of illustration only, in the First Schedule of this Covenant.

3. DEFINITIONS AND INTERPRETATION

- 3.1 In this Covenant unless the contrary intention appears:

“Business Day” means any day on which banks as defined in the *Banking Act 1959 (Commonwealth)* are open for business in Hobart;

“Clearance of Native Vegetation” means the clearing, cutting, pushing over, destroying or otherwise removing of Native Vegetation in any way;

“Covenant” means this Instrument including all Schedules;

“Crown” means the Crown in Right of Tasmania;

“Exotic Species” means any plant or animal species not Native to the Land or its immediate surrounds;

“Foreign Material” means any material from outside the boundaries of the Land and includes rubbish, soil, gravel, mulch and compost;

“Land” means the lands described in clause 2;

“Legislative Requirement” means Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth or State;

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.
Covenant_ V4_PLCP_23May2017.doc

THE BACK OF THIS PAGE MUST NOT BE USED

“Minister” means the Minister administering the *Nature Conservation Act 2002*;

“Native” means species occurring naturally in the Land or its immediate surrounds prior to the year 1788;

“Native Vegetation” means all plants, including fallen dead wood and litter, Native to the Land or its immediate surrounds;

“Natural Values” means the variety of all life-forms that are Native to the Land, including plants, animals and micro-organisms, the genes they contain, and the ecosystems of which they are a part (including soils, water and landforms) and the processes which maintain them;

“Owner” means the registered proprietor of the Land and includes any successor in title of that person;

“Subdivision” means subdivision under the *Local Government (Building & Miscellaneous Provisions) Act 1993*;

“Writing” and words of like import include typing lithography photography and other modes of representing or reproducing words in a tangible and visible form and **“written”** has a corresponding meaning.

3.2 In this Covenant unless the contrary intention appears:

- (a) a reference to a clause or schedule is a reference to a clause of, or schedule to, this Covenant and a reference to this Covenant includes a recital or schedule;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) a word importing the singular includes the plural and vice versa; a word importing a gender includes each other gender and a reference to a person includes an individual, firm, body corporate, association (whether incorporated or not) government, governmental or semi-governmental body, local authority or agency;
- (d) a reference to a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation), transferees and assigns;

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.

Covenant_ V4_PLCP_23May2017.doc

THE BACK OF THIS PAGE MUST NOT BE USED

- (e) a reference to an act, matter or thing, includes the whole, or any part of that act, matter or thing and a reference to a group of acts, matters, things, or persons includes each act, matter, thing or person in that group;
- (f) if under this Covenant or anything done under it, the day on, or by, which any act, matter or thing is to be done, is not a Business Day, then that act, matter or thing may be done on the immediately following Business Day;
- (g) the verb "include" (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as, a word of limitation;
- (h) headings are inserted for convenience and do not affect the interpretation of this Covenant;
- (i) if any terms are added to a schedule, then it is agreed that those terms will form part of this Covenant;
- (j) a reference to an obligation of two or more parties binds all of them jointly and each of them severally.

GENERAL COVENANTS

- 4.1 The Owner agrees not to undertake activities on, or in relation to, the Land which will cause damage to, or degradation of, the Natural Values.
- 4.2 Without limiting the operation of clause 4.1 the parties agree that the following activities will cause damage to, or degradation of, the Natural Values and must not be undertaken on, or in relation to, the Land:
 - (a) use of fertiliser;
 - (b) Subdivision of the Land *(Optional)* except for the purpose of Subdividing the Land in accordance with the Second Schedule of this Covenant;
 - (c) introduction of Foreign Material except materials for the maintenance *(Optional)* and construction of infrastructure, fences or carriageways as authorised in writing by the Minister;
 - (d) off-road use of vehicles except for emergency purposes, or for the purpose of assisting the maintenance or construction of infrastructure or carriageways *(Optional)* or for the purpose of mustering stock;
 - (e) use of effluent of any kind for irrigation or other purposes;

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.
Covenant_ V4_PLCP_23May2017.doc

THE BACK OF THIS PAGE MUST NOT BE USED

- (f) lighting of fires except for the purposes of fire hazard reduction or management of the Natural Values as authorised in writing by the Minister;
- (g) *Use in most cases* control of Native animals except for the purpose of protection of the Natural Values as authorised in writing by the Minister;
- (h) *OR the following words if the owner has a GMP* control of Native animals except when authorised by a permit under the *Nature Conservation Act 2002* or the *Wildlife Regulations 1999*;
- (i) use of herbicides and other chemicals except for registered herbicides or pesticides for the purpose of controlling Exotic Species that threaten the Natural Values as authorised in writing by the Minister;
- (j) removal or disturbance of soil, rock or other mineral resources except for the purposes of maintenance **(Optional)** **and construction** of fences, carriageways or infrastructure and for revegetation activities;
- (k) planting of any plants except the use of Native seeds or plants for the purpose of revegetation as authorised in writing by the Minister;
- (l) building or placement of infrastructure, fences or carriageways except:
 - (i) for the purposes of fencing to protect the Land from activities on adjoining land or to meet property boundary fencing commitments to adjoining landowners;
 - (ii) for the purposes of constructing additional fences **(Optional)** **or constructing additional carriageways (Optional) infrastructure** as authorised in writing by the Minister;
- (m) taking of water except as authorised in writing by the Minister;
- (n) interference with the natural flow of water except minor interference associated with the maintenance of existing infrastructure and carriageways **(Optional)** **or the construction of infrastructure and carriageways** as authorised in writing by the Minister;
- (o) Clearance of Native Vegetation except:
 - (i) for the purposes of fire hazard reduction, fire fighting purposes, or the creation and maintenance of firebreaks if authorised by Tasmanian Fire Service or as authorised in writing by the Minister;
 - (ii) for the purposes of maintenance of carriageways, rights of ways and easements in accordance with all Legislative Requirements;
 - (iii) for the purposes of maintenance of infrastructure or fences as authorised in writing by the Minister;
 - (iv) **(Optional)** **for the purpose of firewood collection for domestic use by the Owner as authorised in writing by the Minister;**

- (v) **(Optional)** for the purpose of constructing additional carriageways or fences or infrastructure as authorised in writing by the Minister;
- (p) introduction of Native fauna species except as authorised in writing by the Minister;
- (q) introduction of Exotic Species except:
 - (i) declared biological control (agent) organisms under the *Biological Control Act 1986* for the purpose of controlling declared target organisms under the *Biological Control Act 1986*;
 - (ii) **(Optional)** livestock for the purpose of grazing the Land as authorised in writing by the Minister; and
 - (iii) **(Optional)** dogs and horses for the purposes of **(Select one or both of the following)** mustering livestock and recreation as authorised in writing by the Minister.

* Note for drafters: do not detail limits that are subject to changes in regulations (etc) e.g. distances for fire protection around infrastructure; widths of firebreaks, roads; width of telecom/power easements, quantity/type of firewood etc. If necessary, this information will go into the Nature Conservation Plan.

4.3 The Owner agrees:

- (a) to use best endeavours to ensure that Exotic Species that threaten the Natural Values of the Land do not become established;
- (b) to use best endeavours to eliminate or control established Exotic Species that threaten the Natural Values of the Land by observing the weed management prescriptions and feral animal control prescriptions issued for the Land by the Minister;
- (c) to observe any reasonable fire management practices prescribed for the Land by the Minister;
- (d) to maintain fences if those fences are necessary to protect the Natural Values of the Land;
- (e) to observe any threatened species management prescriptions issued for the Land by the Minister;
- (f) to observe any prescriptions limiting off-road vehicle use issued for the Land by the Minister; and
- (g) to use best endeavours to protect the Natural Values of the Land.

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.
Covenant_ V4_PLCP_23May2017.doc

THE BACK OF THIS PAGE MUST NOT BE USED

5. WAIVER OF RIGHTS OF RECOVERY

The Owner waives all present and future rights to claim against the Minister or the Crown for:

- (a) personal injury to, or death of, the Owner;
- (b) either or both loss of, or damage to, any of the Owner's property; and
- (c) financial loss to the Owner,

arising from or attributable to, the Owner carrying out any obligations or activities required or authorised under this Covenant. This waiver does not operate to release the Minister or the Crown from liability arising from, or attributable to, a wrongful (including negligent) act or omission of the Minister or the Crown.

6. CHANGE OF OWNERSHIP

- 6.1 The Owner must notify the Minister in writing of any agreement entered into by the Owner to effect any change of ownership or control of the Land and that notice must detail the name and address of all parties to the agreement and the nature of the change of ownership or control.
- 6.2 The Owner must notify the Minister in writing of any change of ownership or control of any portion of the Land and that notice must detail the name and address of the new owner, lessee or licensee.
- 6.3 The Owner must provide a copy of this Covenant, and all authorisations given by the Minister under the terms of this Covenant to all prospective purchasers, lessees or licensees of the Land.
- 6.4 Despite any other provision of this Covenant, a person will not be liable for any breach of the terms of this Covenant which has been committed after that person has ceased to be a registered proprietor of the Land.

7. RIGHT TO INSPECT AND CONDUCT WORKS

- 7.1 The Owner will, after having been given reasonable notice by the Minister, allow the Minister or any person who is authorised by the Minister to enter upon the Land in order to:
 - (a) inspect the condition of the Land; or

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.
Covenant_ V4_PLCP_23May2017.doc

THE BACK OF THIS PAGE MUST NOT BE USED

- (b) conduct any works (including research) which are required to preserve or prevent degradation of the Natural Values.
- 7.2 If an access route is agreed to in writing by the parties, then the method of access to the Land is to be in accordance with the agreement except in the case of an emergency or where, in the circumstances, the Minister considers that method of access would be unreasonable.
- 7.3 The Minister will keep the Owner indemnified against any loss, damage or legal liability arising from entry to the Land and attributable to any act or omission of the Minister or an authorised person in respect of:
- (a) personal injury to, or death of, any person; or
- (b) damage to property on the Land;
- 7.4 Clause 7.3 of this Covenant does not apply to loss or damage which may arise in respect of works required to be done to preserve or prevent degradation of the Natural Values and which have been properly done.

8. DISPUTE

- 8.1 If a dispute arises between the parties under this Covenant, then (except in the case of action required to be taken under statute) the parties undertake in good faith to use all reasonable endeavours to resolve the dispute between them by negotiation.
- 8.2 If a dispute arises requiring resolution, a party must serve a notice on the other specifying the nature and subject matter of the dispute.
- 8.3 If one party has given a written notice of dispute to the other party and the parties are unable to resolve the dispute by means of a meeting or meetings held between them within twenty (20) Business Days after receipt of the notice, then the dispute must be submitted for resolution under the following sub-clauses.
- 8.4 The matter in dispute must be referred for resolution by a person of appropriate qualifications and experience, as agreed between the parties, who will act as mediator and conduct a mediation concerning the matter in dispute.
- 8.5 The costs of all mediation under this clause are to be shared equally between the parties.
- 8.6 The parties agree to use their best endeavours to resolve the dispute by mediation.

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.
Covenant_ V4_PLCP_23May2017.doc

THE BACK OF THIS PAGE MUST NOT BE USED

8.7 If a dispute cannot be settled within forty (40) Business Days (or such other period as the parties agree) of one party serving a notice of that dispute in accordance with Clause 8.2, the dispute must be determined under the provisions of the *Commercial Arbitration Act 2011*.

9. NOTIFICATION OF MATTERS ADVERSELY AFFECTING NATURAL VALUES

The Owner will advise the Minister of any proposed actions or events which have had, or may have, adverse affects upon the Natural Values.

10. REVIEW OF AUTHORISATIONS

10.1 Unless otherwise agreed by the parties, and confirmed in writing by the Minister, all authorisations given by the Minister under Clause 4.2, may be reviewed by the Minister and the Owner at any time, but at intervals no longer than 10 years.

10.2 Any authorisation reviewed under clause 10.1 may be amended by the Minister pursuant to that review.

11. COMPLIANCE WITH THE LAW

11.1 Despite any other provision of this Covenant, the parties must comply with all laws and Legislative Requirements which are relevant to this Covenant.

11.2 Nothing contained within this Covenant should be taken to mean or imply that local government planning approval or any other approval has been or will be granted for activities which require such approval. It is the Owner's responsibility to obtain the relevant approvals and permissions and the Owner warrants that it will do so prior to undertaking any activities.

12. NOTICES

12.1 A notice or other communication to be given or made under this Covenant must be in writing and addressed to the party to which the notice is required to be given at the following addresses.

12.2 A notice or other communication given or made under this Covenant must be in writing and addressed, as the case may be, as follows:

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.
Covenant_ V4_PLCP_23May2017.doc

THE BACK OF THIS PAGE MUST NOT BE USED

THE MINISTER C/- Secretary
 Department of Primary Industries, Parks, Water
 and Environment
 Private Land Conservation Program
 GPO Box 44
 HOBART TAS 7001

THE OWNER [REDACTED]
 [REDACTED]
 [REDACTED]

Facsimile Number: [REDACTED]

or as otherwise advised in writing.

12.3 A notice or other communication is taken to have been duly served:

- (a) in the case of hand delivery - when delivered;
- (b) if sent by prepaid post - on the third (3) Business Day after the date of posting;
- (c) if sent by facsimile transmission (only if the sending facsimile machine produces a print out of the time, date and uninterrupted transmission record of the sending of the notice) - upon completion of sending if completion is within ordinary business hours in the place where the recipient's facsimile machine is located, but if not, then at 9.00 a.m. on the next Business Day in that place.

12.4 A notice or other communication given or made under this Covenant is sufficient if:

- (a) in the case of the Minister, it is under the hand of the Minister or a duly authorised officer of the Minister or the Minister's solicitors;
- (b) in the case of the Owner, it is under the hand of the Owner or the Owner's solicitors.

12.5 A printed or copied signature is sufficient for the purposes of sending any demand, written consent or other communication by facsimile transmission.

13. OBLIGATIONS OF THE MINISTER

In consideration of the Owner's agreements in this Covenant the Minister agrees:

- (a) to arrange for the provision of such assistance and technical advice to the Owner as the Minister considers reasonable to provide for the protection and preservation of the Natural Values within the Land; and
- (b) to bear the cost of preparation and registration of this Covenant but not including any legal or other costs incurred by the Owner.

14. SEVERANCE

If any provision of this Covenant or its application to any person or circumstance is or becomes void, invalid, illegal or unenforceable, then so far as possible, the provision will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable. If any provision, or part of it, cannot be so read down, then the provision, or part of it, will be taken to be void and severable and the remaining provisions of this Covenant will not be affected or impaired in any way.

15. GOODS AND SERVICES TAX

- 15.1 Subject to any other provision of this Covenant expressing a contrary intention, if GST is imposed on a supply made under it, then the party paying for the supply must pay the amount of the GST to the party making the supply, at the same time as, and in addition to, the amount payable for the supply.
- 15.2 A party making a taxable supply under this Covenant must give the recipient a tax invoice for the taxable supply when that supply is made.
- 15.3 In this clause "GST" refers to goods and services tax under *A New Tax System (Goods and Services) Act 1999* ("GST Act") and the terms used have the meaning as defined in the GST Act.

16. MINISTER'S RIGHT TO DELEGATE OR AUTHORISE

- 16.1 The Minister may authorise, or delegate the right to, another person to perform or exercise any of the Minister's functions, powers, duties or responsibilities specified under this Covenant.

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.
Covenant_ V4_PLCP_23May2017.doc

THE BACK OF THIS PAGE MUST NOT BE USED

- 16.2 Any act or thing done by a duly appointed delegate, or authorised person described in Clause 16.1, while acting in the exercise of his or her delegation or authorisation (whichever is the case) will have the same force and effect as if that act or thing had been done by the Minister.

17. SPECIAL PROVISIONS

The special provisions in the Second Schedule are part of this Covenant and bind the parties according to their tenor.

Note to drafter – Place CPR plan here. Make as large as possible.

SECOND SCHEDULE

Part 1. TERM

The Parties agree that this Covenant may be discharged, at the Owner's cost, **XX** years from the date of this Covenant, or any time thereafter, if the Owner gives six months prior written notice to the Minister. A termination under this clause is without prejudice to the Minister's right to enforce this Covenant in respect of any previous breach by the Owner.

*** Note for drafter, delete 'Part 1. Term' if the Covenant is perpetual.**

Part 2. CONSIDERATION

In consideration of the Owner's agreements contained herein the Minister has agreed to pay to the Owner **\$XXXXXX** upon the signing of this Covenant.

*** Note for drafter, delete 'Part 2. Consideration' and 'Part 3 Repayment of moneys paid to the Owner' if there is no consideration payment upon registration of the Covenant.**

Part 3. REPAYMENT OF MONEYS PAID TO THE OWNER

- (a) The Minister may, by notice in writing, require the Owner to repay to the Minister all or part of the moneys specified in Part **2** of this Second Schedule if the Owner:
- (i) commits a material breach of this Covenant;
 - (ii) fails to remedy a breach of this Covenant within the period specified (which period must be reasonable in all the circumstances) in a written notice of that breach given by the Minister to the Owner; or
 - (iii) has repeatedly breached a particular provision of this Covenant and has been so notified in writing by the Minister on at least one occasion.
- (b) The amount to be repaid under subclause (a) is an amount that the Minister considers appropriate having regard to:
- (i) the amount of money paid to the Owner under Part 2 of this Second Schedule;
 - (ii) the amount of time that has elapsed since this Covenant has been entered into;

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.
Covenant_V4_PLCP_23May2017.doc

THE BACK OF THIS PAGE MUST NOT BE USED

- (iii) whether there has been a change of ownership of the Land;
 - (iv) the nature of the breach;
 - (v) any loss or costs incurred by the Minister or the Crown as a result of the breach; and
 - (vi) any financial gain made by the Owner as a result of, or in connection with, the breach.
- (c) The moneys referred to in sub-clause (a) of this Part will be a debt due to the Minister and must be repaid together with interest no later than sixty (60) Business Days from the date of the Minister's written notice to the Owner requiring repayment.
- (d) The interest referred to in sub-clause (c) of this Part is payable from the date of payment by the Minister of the moneys referred to in sub-clause (a) to the date of actual repayment by the Owner to the Minister with such interest to be calculated on a daily basis. The relevant interest rate will be the rate specified as the "prescribed rate" in the *Land Acquisition Act 1993*, or where that rate is no longer available for reference purposes, the rate then used by the Crown for the purposes of calculating interest on consideration payable by the Crown to landowners in respect of the compulsory acquisition of lands.

Part 4. WAIVER OF RIGHT OF COMPENSATION

The Owner waives all rights to recover any statutory or other compensation from the Minister or the Crown in relation to the protection of the Natural Values of the Land under this Covenant including rights provided by Section 45 of the *Threatened Species Protection Act 1995* or Part 5 of the *Nature Conservation Act 2002* for any loss or damage suffered of whatsoever nature.

Part 5. COVENANT NOT TO BE VARIED OR DISCHARGED WITHOUT CONSENT OF COMMONWEALTH CROWN

This Covenant may not be varied or discharged by the parties without the consent of the Crown in Right of the Commonwealth of Australia being first obtained.

*** Note for drafter, this clause only applies if there is an agreement/funding between the Department and the Commonwealth (e.g. PAPL)**

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.
Covenant_ V4_PLCP_23May2017.doc

THE BACK OF THIS PAGE MUST NOT BE USED

Part 6. AGREED RESERVATION OF RIGHTS/DOMESTIC ZONE

- (a) Despite any other provision of this Covenant, the Owner reserves the right to establish a Domestic Zone on the Land subject to:
- (i) the boundaries of the Domestic Zone being first approved by the Minister in writing, which approval will not be unreasonably withheld; and
 - (ii) the terms of this Covenant being varied or replaced, as required by the Minister, for the purposes of establishing the Domestic Zone.
 - (iii) the Domestic Zone not exceeding **XXX** hectares.
- (b) For the purposes of this clause the term Domestic Zone will mean an area of the Land which may be used by the Owner for the following purposes:
- (i) construction of a dwelling and associated outbuildings, infrastructure, fences, carriageways and gardens and;
 - (ii) for clearance of vegetation for the purpose of fire hazard reduction

*** Note for drafter, delete 'Part 6. Agreed reservation of rights/Domestic Zone' if no reservation of rights has been approved.**

Part 7. AGREED RESERVATION OF RIGHTS/SUBDIVISION

Despite any other provision of this Covenant, the Owner reserves the right to create a Subdivision on the Land subject to;

- (a) the boundaries of the Subdivision being first approved by the Minister in writing;
- (b) the plan associated with this Covenant being varied or replaced, as required by the Minister;
- (c) the Subdivision complying with all Legislative Requirements, and authorisations given by the Minister are subject to that compliance; and
- (d) the Subdivision not exceeding **XXX** number of lots with each lot being a minimum **XXX** hectares.

*** Note for drafter, delete 'Part 7. Agreed reservation of rights/Subdivision' if no reservation of rights has been approved.**

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.
Covenant_ V4_PLCP_23May2017.doc

THE BACK OF THIS PAGE MUST NOT BE USED

Part 8. CARBON SEQUESTRATION RIGHTS

The Minister agrees that all future carbon trading rights arising at law in respect of the Land will vest in the Owner and that the Crown will not seek to claim any interest in relation to those rights.