

ATTACHMENT 1

Draft Model s88B covenant

1. Interpretation

In this Covenant, unless the contrary intention appears:-

"the Owner" has the same meaning as provided for in the Environmental Planning and Assessment Act 1979 (EP&A Act) and includes any future owner or owners.

"the land subject to this Covenant" means the land herein before described.

"Council" refers to the council, as defined in the EP&A Act, which is the authority benefited by this Covenant.

"building" and "building work" has the same meaning as provided for in the EP&A Act.

"native plant" has the same meaning as in Section 5 of the National Parks & Wildlife Act 1974.

"native fauna" means any animal-life that is indigenous to New South Wales or is known to periodically or occasionally migrate to New South Wales, whether vertebrate or invertebrate and in any stage of biological development, but does not include fish within the meaning of the *Fisheries Management Act, 1994*.

"local indigenous flora" means all native vegetation indigenous to the land subject to this Covenant as shown in the most recent edition of Harden, G. J. (Ed.) *Flora of New South Wales*, Volumes 1-4 (1993) or later editions of this text.

"local indigenous fauna" means all fauna that is indigenous to the land subject to this Covenant.

"exotic flora" means all flora other than native plants.

"exotic fauna" means all animals other than native fauna, but does not include fish within the meaning of the *Fisheries Management Act, 1994*.

"controlled burning" means the lighting of a fire for a specific management purpose, including fuel management, hazard reduction, vegetation and habitat management, and research, in weather conditions that will cause the fire to burn at the predetermined intensity required for the purpose, and within predetermined boundaries.

"reasonable" in relation to carrying out an activity, means using the best methods available and carrying out the activity in such a way as to have minimal impact on the conservation values of the area subject to the Covenant.

Words importing the singular number shall include the plural and masculine gender the feminine or neuter and vice versa.

Any reference to a person shall be deemed to include a corporate body and vice versa.

Any covenant or Covenant on the part of two or more persons shall be deemed to bind them jointly and severally.

2. Use of the land subject to this covenant

The terms of restriction on the use of the land subject to this Covenant are as follows:-

General responsibilities

- 2.1 Except as otherwise permitted by this Covenant, the Owner shall not carry out any act or omit to carry out any act, or cause or permit any act to be carried out or any act not to be carried out which may adversely affect any native fauna or native plants or their habitats on the land subject to this Covenant.

Development

- 2.2 The Owner shall not construct or allow the construction of any new road, access track, building, building work, internal fencing, paving or infrastructure services in the land subject to this Covenant.

Subdivision

- 2.3 The Owner shall not permit subdivision of the land subject to this Covenant.

Native plants and other potential habitat

- 2.4 The Owner shall not be permitted to destroy or cause the destruction or removal of any native plants (including trees, shrubs, grasses) or destroy any other potential habitat for native fauna from the land subject to this Covenant.
- 2.5 The Owner shall not sow or plant trees, grasses or other plants in the land subject to this Covenant other than local indigenous flora.
- 2.6 The Owner shall not remove rocks, termite mounds and other features of the landscape that provide habitat for native fauna.

Native fauna

- 2.7 The Owner shall not undertake or permit to be undertaken any shooting, trapping, baiting or removal of native fauna in the land subject to this Covenant.

Control of exotic flora and exotic fauna

- 2.8 The Owner:
- a. shall not introduce into the land subject to this Covenant any exotic flora or exotic fauna;
 - b. shall control, and where possible remove all exotic flora (unless it is providing habitat for native species) and exotic fauna from the land subject to this Covenant; and
 - c. shall take reasonable measures as may be necessary to prevent exotic flora and exotic fauna spreading from adjacent lands into the land subject to this Covenant.

Fertiliser, pesticides, herbicides and poisonous baits

- 2.9 The Owner shall not use or permit the use or application of fertiliser in the land subject to this Covenant.
- 2.10 The Owner shall not use or permit the use or application of pesticides, herbicides and or poisonous baits in the land subject to this Covenant.

Fire management

- 2.11 The Owner shall take practical steps to prevent the occurrence of bush fires in, and to minimise the danger of the spread of bush fires in or from the land subject to this Covenant. No Asset Protection Zones, or portions thereof, shall be placed in the area subject to this covenant.
- 2.12 Except in the circumstances specified in Clause 2.13, the Owner shall not light a fire, or cause a fire to be lit in the land subject to this Covenant.
- 2.13 The Owner is permitted to light a fire or cause a fire to be lit in the land subject to this Covenant only in the following circumstances:
- a. where the lighting of the fire is a necessary component of bush fire hazard reduction work carried out in accordance with any notice served on the Owner under the *Rural Fires Act 1997* or any other applicable legislation;

- b. where life or property is in immediate threat by bush fire and the lighting of the fire is reasonably necessary to protect life or property.

Firewood

- 2.14 The Owner shall not collect or permit the collection of green wood, standing wood and or fallen hollow timber from the land subject to this Covenant for firewood or any other purpose.

Vehicles

- 2.15 The Owner shall not permit the recreational use of trail bikes, four-wheel drive vehicles or any other vehicle off-track within the land subject to this Covenant.

Removal of inorganic or biological material

- 2.16 The Owner shall prevent by all reasonable means the removal of any biological or inorganic component of the land subject to this Covenant other than exotic flora and exotic fauna, except in the circumstances of scientific research, education and monitoring.

Monitoring of land by Owner

- 2.17 The Owner shall inform the Council as soon as practicable after becoming aware of the deterioration of any of the natural values of the land subject to this Covenant, or of any threat to these values of which the Owner is aware.

Change of Ownership

- 2.18 The Owner shall notify the Council of any change of ownership or control of the land subject to this Covenant.

3. Extent of prohibitions and restrictions

- 3.1 None of the prohibitions or restrictions specified in this Covenant shall apply to the actions necessary for the proper management of the land subject to this Covenant as a protected environment for local indigenous flora and local indigenous fauna.

4. Use of land by servants, agents, lessees or licensees

The Owner shall incorporate the terms of this Covenant in any lease or licence issued over the land subject to this Covenant, and at all times ensure that any servant, agent, lessee, or licensee occupying the land subject to this Covenant shall be aware of the relevant provisions of this Covenant.

5. Right to inspect

The Council and its servants and agents may at all times upon first giving reasonable notice to the Owner, their agent, lessee or licensee, enter upon the land subject to this Covenant to ensure due compliance with this Covenant.

6. Commencement

This Covenant shall have effect from the day of execution.