REQUEST TO ENDORSE A PLAN OF SURVEY OVER LOT 3 RP857603 – 79 – 99 MOUNTAIN VIEW DRIVE - SHANNONVALE - DIVISION 10

Gary Warner: 8/38/02-09 :#2361894

PROPOSAL: ENDORSEMENT OF BUILDING FORMAT PLAN OVER DWELLING AND CARETAKERS RESIDENCE IN RURAL PLANNING AREA

APPLICANT: DT & PJ WARD
C/- CHARLES O’NEILL PTY LTD
PO BOX 5246
CAIRNS QLD 4870

LOCATION: 79-99 MOUNTAIN VIEW DRIVE
SHANNONVALE

PROPERTY: LOT 3 ON RP857603,
PARISH OF VICTORY

ZONE: RURAL

PLANNING SCHEME: DOUGLAS SHIRE 1996

REFERRAL AGENCIES: N/A

NUMBER OF SUBMITTERS: NOT APPLICABLE

STATUTORY ASSESSMENT DEADLINE: N/A

DIVISION: 10

APPENDIX: 1. APPLICATION PLANS
2. COPY OF DOUGLAS APPROVAL TPC 995
3. SUPPORTING INFORMATION
LOCALITY PLAN

RECOMMENDATION:

That Council refuses a request to endorse Building Format Plan SP 218095 and its associated Community Management Statement and Land Covenant being a proposal to provide a Community Titles Scheme for a Dwelling and Caretakers Residence at 79-99 Mountain View Drive, over land described as Lot 3 on RP857603 for the following reasons:

1. The creation of Lots on SP218095 will bring about a Material Change of Use of land within those lots.

2. The creation of new Lots on SP218095 and associated exclusive use areas will prevent a “particular purpose” being carried out on the parcel of land that was the subject of MCU TPC995.

3. The building format plan submitted for endorsement is not “consistent with any development permit relevant to the plan”.

4. The endorsement of the subject plan and associated Community Management Statement and Land Covenant will create an immediate identifiable precedent.
6. The proposal represents a misuse of a form of reconfiguration of land normally associated with intensive residential uses (dual occupancies and multi storey apartment blocks).

EXECUTIVE SUMMARY:

Council is in receipt of a request for the endorsement of a Building Format Plan (SP218095) and associated Community Management Statement for a dwelling and Caretaker’s Residence on land (Lot 3 on RP857603) located in the Rural Planning Area at 79-99 Mountain View Drive, Shannonvale.

The request represents a challenge to the intent of both the Caretaker’s Residence approval held over the land and the Rural Planning Area of the former Douglas Shire Planning Scheme. Officers have long held the view that the request was “not properly made” and resisted endorsement of the plan. Following further representations to officers the applicants were advised that the matter would be placed before Councillors for their information and consideration.

The request is recommended for refusal for reasons given in the above recommendation.

TOWN PLANNING CONSIDERATIONS:

Background

On 30 June 2000 the former Douglas Shire Council issued a Development Permit (TPC995) for a Caretakers Residence on the land being Lot 3 on RP857603. A copy of the approval is attached in Appendix 2. The approval contains 13 conditions typical of this sort of development. Condition 13 is most relevant to the subject request i.e.

“The approved Caretakers Residence must be used or intended for use for self contained accommodation for the exclusive use of a caretaker and his family in connection with a particular purpose on the same parcel of land”

This condition reflects the Planning Scheme definition of “Caretakers Residence” i.e.

"Caretaker's residence" - Any premises used or intended for use for self-contained accommodation for the exclusive use of a caretaker and his family in connection with a particular purpose on the same parcel of land;
The 1996 Douglas Shire Planning scheme contained the following provisions with respect to the provision of Caretaker’s Residences:

9.2.4 Caretaker’s Residence

9.2.4.1 Premises must not be erected or used for the purpose of a caretaker’s residence unless:-

1. landscape and recreation area is provided for use by the occupants in accordance with provision 9.2.3.2 and in a location approved by the Council;

2. the design, location, orientation and access is in accordance with Council’s specifications.

9.2.4.2 The gross floor area of a caretaker’s residence must not exceed 100m².

Council has received a compliance statement from the applicants noting that they have met the conditions/requirements of the above quoted Development Approval. It is noted that the Caretakers Residence appears to have been constructed in late 2000 and that the application made in 2000 did not contain a request to provide for separate titles to the respective buildings.

Proposal

The applicants have lodged plan of survey SP218095 (Copy attached in Appendix 1). This plan is what is commonly known as a Building Format Plan. This plan shows the following:

a. Existing dwelling - Lot 1 - Building A – 235m²
b. Caretakers Residence - Lot 2 - Building B – 111m²
c. Plan of exclusive use areas - Common area split into two areas 1A for Lot 1 (Building A) and 2A for lot 2 (Building B).

The endorsement of the subject Building Format Plan as submitted will allow for separate legal titles to be issued for the above listed two buildings located on the site. Given the Rural zoning for the land Council officers consider this to be an unusual and potentially problematic request. The applicants have provided the following commentary in support of the request:

“Some time in early 2008 our clients approached Douglas Shire to enquire about subdividing off the second house on a conventional standard format lot. At the time, they were advised, by a Council planning officer, that this was impossible under the current town plan. But the planning officer further advised them that subdivision as a building format lot may be possible and they were urged to seek the advice of a surveyor. On approaching our firm they confirmed that they did, indeed, have planning approval for two dwellings and, on this basis, I was able to advise that under the provisions of the Integrated Planning Act, we could subdivide by building format plan. The only caveat to this advice was that Council was required to endorse the survey plan under the provisions of the Land Title Act and provided the earlier MCU have been satisfied fully and the use was lawful, Council would not withhold their endorsement.”
The applicants then went on to describe why a separate title to the second dwelling was required: i.e.

“Our clients have a genuine need for a caretaker. Mr Ward works away from home for long periods of time and he needs someone, on site, to maintain a presence. He wants his mother to fulfil that role and, to this end, she has sold her house and has recently moved into the caretaker’s residence. The issue now is that she needs to reinvest the proceeds of the sale of her house by purchasing Lot 2, in order to maintain her pension benefits.”

**Land Zoning**

The subject land is zoned Rural (Agriculture) under the 1996 Douglas Scheme. The land remained in the Rural Planning Area under the 2006 Douglas Shire Planning Scheme.

**Technical matters**

This type of application involves interaction between a number of different Acts and regulations; in particular, the following are directly applicable to this type of development:

a. Integrated Planning Act  
b. Land Titles Act 1994  
c. Body Corporate and Community Management Act 1997  
d. The Registrar of Titles Directions for the Preparation of Plans

The preparation of a Building Format Plan is the first step in the production of a freehold title to the buildings shown on that plan. Building Format plans create common property and lots around and in buildings or structures. A subdivision of this nature that involves common property and at least two (2) lots is also referred to as a community titles scheme and is administered under the Body Corporate and Community Management Act 1997. Use of the common property and the lots is controlled through the “Community Management Statement” produced for the scheme.

**Endorsement of the plan of subdivision**

The plan of subdivision (in this case the Building Format Plan) and the Community Management Statement is required to be endorsed by the Local Government prior to the registration of the title. The Registrar of Titles Directions for the Preparation of Plans notes the following with respect to such endorsements;

4.20 Development approval:

*For any plan of lots or common property in a community titles scheme lodged in the land registry and signed by the surveyor after 4th March 2003, the date of the development approval as defined in the Body Corporate and Community Management Act 1997 is required to be shown on the reverse of the plan immediately above item 12.*
Development Approval: 27th February 2002

Where a development approval as previously defined is not required the following is added in lieu of the date:

"No development approval necessary"

The Integrated Planning Act 1997 also notes when a plan of survey is to be endorsed by Council, in this instance the reconfiguration itself is not assessable development and therefore s3.7.4 applies. (see IPA Section below)

It is the request for the above endorsements that has brought the subject matter to Council’s attention.


Exempt development

Schedule 8 of the IPA makes reconfiguring a lot assessable development, except in certain circumstances [Sch 8, Part 1]. One of these exceptions is where the plan of subdivision is a building format plan that does not subdivide land. In this circumstance, the reconfiguration is not assessable development and cannot be made assessable under a planning scheme [Sch 9, Table 3, and Item 2(a)]. The subject ‘reconfiguration meets the above exemption being a building format plan that does not subdivide land.

i.e.

Endorsing a building format plan that does not subdivide land (s3.7.4 IPA)

“3.7.4 Plan for reconfiguring that is not assessable development

(1) If the reconfiguration proposed to be effected by the plan is not assessable development, the plan may be given to the local government for its approval at any time.

(2) The local government must approve the plan, if –

(a) the plan is consistent with any development permit relevant to the plan; and

(b) there are no outstanding rates or charges levied by the local government or expenses that are a charge over the land under any Act.

(3) If the applicant has not complied with the requirements of subsection (2), the local government must, within 10 business days after receiving the plan, give the applicant written notice stating the actions to be taken to allow the plan to be approved.”

The requirement to endorse the Building Format Plan by Council is called up under Part 7 of the Integrated Planning Act, in particular sections 3.7.1 and 3.7.1A
3.7.1 Application of pt 7
This part applies to a plan (however called) for the reconfiguration of a lot if, under another Act, the plan requires the approval (in whatever form) of a local government before it can be registered or otherwise recorded under that Act.

Examples of plans to which this part applies -

1. A plan of subdivision that, under the Land Title Act 1994, section 50(g), requires the approval of a local government.

2. A building units plan or group titles plan that, under the Building Units and Group Titles Act 1980, section 9(7), must be endorsed with, or be accompanied by, a certificate of a local government.

3.7.1A Definition for pt 7
In this part -

plan includes an agreement that reconfigures a lot by dividing land into parts rendering different parts of a lot immediately available for separate disposition or separate occupation, but does not include a lease for -

(a) a term, including renewal options, not exceeding 10 years; or

(b) all or part of a building.

Council officers are of the opinion that the Building Format Plan submitted for endorsement is not “consistent with any development permit relevant to the plan”. The applicants sought advice on how the matter of consistency with the existing Material Change of Use approval for a Caretakers Residence might be achieved and have noted through their Surveyor the following:

“On the issue of the use of Lot 2 for caretaker purposes we sought advice from the Registrar of Titles. Two possibilities were canvassed. The first being a provision within the CMS to impose the planning requirement and the second being the imposition of a “use” covenant on Lot 2. The first option was rejected as unworkable by the Registrar but we were urged to explore the second option as a possible solution. Consequently, our clients engaged MacDonnells Solicitors to investigate this option and a copy of their use” covenant is attached.

Our client’s solicitors have researched the legality of this issue and we are of the view that the covenant ensures compliance with condition 13 of the MCU and also provides adequate provisions for inspection and enforcement by Council. Whilst it is true that Lot 2 could be sold to another party the covenant which is registered on title, would be discovered at the time of sale and any incoming purchaser would be aware of, and have to comply with the conditions of the covenant and of the MCU. I would like to say that we understand Council’s concern that this subdivision not breach the previous approval conditions but we believe the action we have taken will ensure this outcome.”
It is noted that neither of the agencies discussed above that were consulted on this matter are the “Assessment Manager” for the application.

The covenant referred to in the above dialogue is attached in Appendix 3. In particular the applicants are relying on Clause 4 that states:

“4. PURPOSE OF COVENANT

4.1 The Covenantor and Covenantee agree that the purpose of this Statutory Covenant is to ensure that the Building is used only for the self contained accommodation for the use of a caretaker and his or her family.”

This proposed covenant does not extend to defining how the caretaker will carry out duties in “connection with a particular purpose on the same parcel of land”.

Discussion & Options

Concerns

There appears to be a legal obligation arising from the Material Change of Use approval which requires both of the dwellings to be used in connection with rural activities or “particular purposes” on the site. At a basic “first principles” level, Officers are concerned that the proposed reconfiguration is at odds with the concept of a Caretaker’s Residence whereby there is a direct nexus between uses on the land and the persons residing in the Caretaker’s Residence. Providing a separate certificate of title for the residence removes the direct link between the original parcel of land and the Caretaker’s Residence. As a consequence of the subject application the legal description of the land and buildings changes which in itself may make the original Material Change of Use approval void.

The applicants have taken a form of reconfiguration of land normally associated with intensive residential uses (dual occupancies and apartment blocks) and transferred this type of reconfiguration across to a rural situation in an attempt to provide separate titles to buildings on a large farm site.

Ownership Changes

As noted above the applicants intend to ensure that the use of one of the lots remains as a Caretaker’s Residence through the use of a statutory covenant. Officers consider that this covenant will not guarantee that the owners of the Lot will continue in a caretaking role on the property. Over time and through ownership changes of both new Lots the original intent of the 2000 MCU approval will be lost. Despite the existence of the covenant the two lots will be used independently with no direct relationship with each other and no need to engage in “the particular purpose” for which the Material Change of Use was originally granted.
Precedent

Normally in planning matters the “precedent” effect of an approved use has little weight as each new application is determined on its merits. In this case officers consider that “precedent” will have a far greater role as there are many “Caretakers’ Residences” approved throughout both the former Douglas Shire and the former Cairns City Council areas.

Material Change of use

The placement of the caretaker’s residence within its own Lot on a Building Format Plan constitutes a “Material Change of Use” for which no valid approval exists. As noted above it remains questionable whether the caretaking use is now taking place on the “same parcel of land”. Despite the existence of a land covenant the use within proposed Lot 2 (Building B) may now be more accurately described as simply a “house” and the occupants therein are under no obligation to carry out a caretaking role on the parent parcel of land particularly if that land is now held in separate “exclusive use” areas associated with each “Lot”.

Options

Council has two options with respect to this request to endorse the Building Format Plan and Community Management Statement. If the Building Format Plan is endorsed as presented the issues arising from such endorsement will be:

a. potential for many or all existing caretakers residences being subdivided from their parent parcel of land

b. the undermining of the planning intent associated with the role of caretakers residences and the need or otherwise to review codes associated with such uses.

If Council refuses to endorse the Building Format Plan and Community Management Statement the applicants can seek a declaration under the Integrated Planning Act to review Council’s decision.

Recommendation

Given that this application has the potential to provide a financial benefit to the applicant the burden of proof over this matter should lie with the applicants. The recommendation is to refuse to endorse the Building Format Plan and associated Community Management Statement.

Gary Warner
Planning Officer
Action Officer

Neil Beck
Manager City Assessment
Appendix 1 - Application Plans
Agenda – Ordinary Meeting 28/10/09 - #2330558
Plan of Exclusive Use of Common Property of Mountain View Drive

Parish of Victory

Charles O'Neill Pty. Ltd.
Consulting Surveyors

Parish of Victory County of SOLANDER

341

Agenda – Ordinary Meeting 28/10/09 - #2330558
Appendix 2 – Copy of MCU Approval for Caretakers Residence – MCU -TPC 995

Mr Peter Ward
PO Box 453
PORT DOUGLAS  Q 4871

30 June 2000

Dear Mr Ward

RE: DEVELOPMENT APPLICATION DECISION NOTICE – MATERIAL CHANGE OF USE OF PREMISES APPLICATION NO. TPC 995 – CARETAKER’S RESIDENCE ON LOT 3 ON RP 857603 – MOUNTAIN VIEW CRESCENT, SHANNONVALE

The Development Application No. TPC 995 was assessed and approved with Conditions. The decision was made by Douglas Shire Council on 29 June 2000.

The following schedule provides all the relevant details.

1. Referral Agencies : Nil

2. Conditions of Approval :

That the applicant be advised that Council resolved to issue a Development Permit after the expiry of the appeal period for a Caretaker’s Residence on Lot 3 on RP 857603, Parish of Victory, located at Mountain View Crescent, SHANNONVALE, subject to the following conditions:

1. Any erection and use and occupation of the premises shall at all times comply with the conditions laid down and provided for in the Douglas Shire Planning Scheme from time to time.

2. The provisions of the Local Government Act, Integrated Planning Act 1997, the Building Act, the Fire Safety Act, the Health Act, the Food Act 1981 and all other relevant Acts and Regulations and the Local Laws of the Council from time to time shall at all times be observed and performed in relation to the land, the building and the use and occupation thereof.

3. Approval of satisfactory building plans and specifications in accordance with the Building Act, Council’s Local Laws and the Shire of Douglas Planning Scheme where applicable and generally in accordance with the approved drawings prepared by Mike Baynard Design and Drafting submitted with the application shall be required prior to the commencement of the use.
4. The issue of this approval in no way implies building approval, either in principle or in detail, of any plans of the proposed development which may have been submitted with the application. Approval of any building works associated with the use shall be the subject of an application to carry out building works in accordance with the Council's Local Laws.

5. The provisions of the Development Permit are to be effected prior to the commencement of the specific use as granted by Council.

6. Should work on the development/use as approved not be commenced within a period of two (2) years from the date of the issue of the Development Permit, Council may implement action to revoke the approval.

Health Requirements

7. Refuse storage, removal and collection methods shall be in accordance with the "Environment Protection (Interim Waste) Regulations 1996", and to the satisfaction of Council Manager Environmental Services.

8. The disposal of sewerage effluent is to be to the requirements and satisfaction of the Director Engineering Services in accordance with the Department of Environment guidelines.

9. The applicant shall provide a potable water supply to the Caretaker's Residence and adequate storage for the proposed use to the requirements and satisfaction of the Director Engineering Services.

10. One covered carparking space shall be provided for the occupants of the approved Caretaker's Residence.

11. A minimum area of 60m² adjoining the approved Caretaker's Residence shall be allocated for landscape and recreation for use by the occupants.

12. No clearing of riverine vegetation in proximity to the approved Caretaker's Residence is permitted. Any further clearing of vegetation will require an Application for Permit to Damage Protected Vegetation to Council.

13. The approved Caretaker's Residence must be used or intended for use for self-contained accommodation for the exclusive use of a caretaker and his family in connection with a particular purpose on the same parcel of land.

3. Approval Type : Development Permit
4. Rights of Appeal : Attached standard form for Applicant
5. Assessment Manager : Douglas Shire Council
6. Compliance with Codes for Self-Assessable Development : Not applicable
7. Properly made Submissions : Nil
Enclosed for your information are Sections 4.1.27 and 4.1.39 of the Integrated Planning Act in relation to appeals to the Planning and Environment Court.

Should you require further information in relation to this matter, please contact Council's Senior Planning Officer Malcolm Hardy on telephone 4099 9450.

Yours faithfully

[Signature]

Terry Melchert
Chief Executive Officer
# Appendix 3 – Supporting Information

## Proposed Use Covenant

<table>
<thead>
<tr>
<th>1. <strong>Covenantor</strong></th>
<th><strong>Title Reference</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>PETER JAMES WARD</td>
<td></td>
</tr>
<tr>
<td>DAWN TONI WARD</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. <strong>Description of Covenant / Lot on Plan</strong></th>
<th><strong>County</strong></th>
<th><strong>Parish</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>LOT 2 ON RP 216005</td>
<td>SOLANDER</td>
<td>VICTORY</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. <strong>Covenantee</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>THE STATE OF QUEENSLAND REPRESENTED BY CAIRNS REGIONAL COUNCIL</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. <strong>Description of Covenant</strong> (include reference to relevant section of legislation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pursuant to s97A(3)(a)(iii) of the Land Title Act 1994.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5. <strong>Execution</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>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. <em>the attached schedule.</em>*</td>
</tr>
</tbody>
</table>

**Witnessing Officer must be aware of his/her obligations under section 152 of the Land Title Act 1994**

<table>
<thead>
<tr>
<th>Signature</th>
<th>Full Name</th>
<th>Qualification</th>
<th>Execution Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>PETER JAMES WARD</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature</th>
<th>Full Name</th>
<th>Qualification</th>
<th>Execution Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>DAWN TONI WARD</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature</th>
<th>Full Name</th>
<th>Qualification</th>
<th>Execution Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>CARNS REGIONAL COUNCIL</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature</th>
<th>Full Name</th>
<th>Qualification</th>
<th>Execution Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noel Patrick Briggs, Chief Executive Officer</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

Agenda – Ordinary Meeting 28/10/09 - #2330558
1. DEFINITIONS

1.1 In this Deed unless inconsistent with the context or subject matter:

"Act" means the Land Title Act 1994;

"Body Corporate" means the Body Corporate for Mountain View Drive Community Titles Scheme; 

"Building" means any building erected on the Land;

"Covenantee" means Cairns Regional Council of PO Box 359, Cairns in the State of Queensland, its predecessors, successors, transferees and assigns;

"Covenantee" means the party named in item 1 of the FORM 31 and its successors and assigns as the registered owner of the Land described in item 2 of the FORM 31; 

"Land" means the Lots as described in item 2 of the FORM 31 and includes:

(a) any estate or interest in, on, over or under the Land; and

(b) the airspace above the surface of the land and any estate or interest in the Land; and

(c) the subsoil of the Land and any estate or interest in the subsoil; and

(d) any part or parts of the Land; and

(e) any estate or interest created in respect of any of the above matters.

"Landowner" means the registered proprietor(s) of the Lot and all successors in title, lessees, trustees, occupiers and mortgagees of the registered proprietor's interest in the Lot and any other person deriving an interest in the Lot. The term includes the Covenantee.

"Lot" means the property described in item 2 of the FORM 31 of this Document.

2. INTERPRETATION

In this Deed unless inconsistent with the context or subject matter:

2.1 A reference to a person includes any other legal entity;

2.2 A reference to a legal entity includes a person;

2.3 Words importing the singular number include the plural number;

2.4 Words importing the plural number include the singular number;

2.5 The masculine gender must be read as also importing the feminine or neuter gender;

2.6 A reference to a party includes the party's heirs, executors, successors and permitted assigns;

2.7 Cause headings are for reference purposes only and must not be used in interpretation;

2.8 Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;

2.9 A reference to a statute includes all regulations and subordinate legislation and amendments;
2.10 References to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and fax;
2.11 A reference to a monetary amount is a reference to an Australian currency amount;
2.12 An obligation of two or more parties binds them jointly and each of them severally;
2.13 An obligation incurred in favour of two or more parties is enforceable by them severally;
2.14 References to time are to local time in Queensland;
2.15 Where time is to be reckoned from a day or event, the day or the day of the event must be excluded;
2.16 A reference to a business day means any day on which trading banks are open for business in Queensland;
2.17 If any time period specified in this Deed expires on a day which is not a business day, the period shall expire at the end of the next business day;
2.18 A reference to a month means a calendar month.

3. OTHER expressions
If a term is not defined in this covenant it shall, unless the context otherwise requires, have the meaning given to it by (in descending order of preference)
(a) the Act;
(b) the Integrated Planning Act 1997;
(c) the Planning Scheme for the area; or
(d) the Macquarie Dictionary.

4. PURPOSE OF COVENANT
4.1 The Covenantor and Covenantee agree that the purpose of this Statutory Covenant is to ensure that the Building is used only for the self contained accommodation for the use of a caretaker and his or her family.
4.2 This Covenant relates to the Land pursuant to Section 97A (3)(a)-(b) of the Act.

5. ACKNOWLEDGEMENTS
5.1 The Covenantee and Covenantor acknowledge and agree that:
(a) The Covenantee requires, as a condition of approval of development of the Land, that the Landowner has or will construct a building or elements thereof for the purpose of self contained accommodation for the use of a caretaker and his or her family.
(b) The parties have entered into this document as a Deed.

6. INSPECTION AND MONITORING
6.1 The Covenantor shall permit the Covenantee and its duly authorised agents, upon giving reasonable notice, to enter into and upon the Land with plant and equipment for the purposes of:
(a) examining, inspecting, testing and monitoring the compliance with this Covenant, and
348

(b) ascertaining whether the Covenantee’s obligations under this Covenant have been duly performed and fulfilled.

6.2 The Covenantee shall take all reasonable measures to avoid causing any damage to the Land.

6.3 If the Covenantee or its duly authorised agents cause damage to the Land when doing anything pursuant to Clause 6.1(a), the Covenantee will be fully responsible for the cost of any damage caused arising from the Covenantee’s negligence.

7. DEFAULT

7.1 In the event of non-compliance by the Landowner with the Covenant’s obligations under this Covenant, the Covenantee may, in its absolute discretion:

(a) issue a written direction requiring the Covenantee to remedy the non-compliance; or
(b) enter the Land and any Building on the Land to remedy the non-compliance.

7.2 Where the Covenantee issues a written direction pursuant to Clause 7.1(a), the Covenantee shall comply with the direction within 21 days or such other reasonable time period as may be specified in the direction.

7.3 If the Covenantee fails to comply with a written direction within the time allowed in accordance with this clause, the Covenantee may enter the Land and take what ever steps it deems necessary to rectify such non-compliance.

7.4 Nothing contained in this Covenant shall affect, prejudice or derogate from the rights, powers and authorities of the Covenantee under any statute, rule, regulation, ordinance, by-law, or local law.

8. SEVERABILITY

If any term or condition of this document or its application to any person or circumstance is or becomes invalid or unenforceable, the remaining terms and conditions will not be affected. Each term and condition will be valid and enforceable to the fullest extent permitted by law.

9. JOINT AND SEVERAL LIABILITY

In this document, an obligation incurred by two or more persons will be construed as an obligation incurred jointly and severally by each of such persons.

10. WAIVER

No variation or waiver of any provisions of this document will be of any effect unless it is in writing signed by the parties or, in the case of a waiver, by the party giving it.

11. DELAY

No failure or delay by a party in exercising any right conferred by this document will operate as a waiver of that right.

12. PARTIAL EXERCISE OR WAIVER

A single or partial exercise or waiver of a right relating to this document will not prevent any other exercise of that right or of any other right.
13. **CO-OPERATION**

Each party to this document will do all acts and render all co-operation reasonably required by the other for the purpose of enabling the registration of this document in the Department of Natural Resources.

14. **NO OBLIGATIONS ON THE COVENANTEE**

The rights given to the Covenantor are permissive only and nothing in this Covenant imposes any 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.