

³Part 31 – Covenants

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³Part 31 – Covenants

General Law

[31-0000]

A covenant is a voluntary agreement that creates an obligation by a deed entered into by the parties. Covenants may be of a positive nature in that they require the performance of an action. They may also be negative or restrictive, that is one of the parties is forbidden from undertaking or performing a specified action.

The *Land Act* 1994 and the *Land Title Act* 1994 allow covenants to be registered in favour of the State, another entity representing the State, or a local government for the purposes specified in the legislation.

An instrument of covenant must be validly executed and include a description sufficient to positively identify the subject lots. It must also fully set out the agreed terms and conditions.

Both the grantor (the owner of freehold or lessee of State owned land) and the grantee (the State, an entity representing the State or a local government) must execute the covenant instrument. If the land is leased from the State, the Minister that administers the *Land Act* 1994 must consent to a covenant affecting that land.

The covenantor and the covenantee must be different entities, as it is not possible for a person to covenant with himself or herself at common law.

On registration, a covenant complying with the legislation attaches to the land and binds the owner and all successors in title until it is released.

A registered instrument of covenant is taken not to be registered under the *Land Act* 1994 or the *Land Title Act* 1994 to the extent that it is inconsistent with the legislation.

Practice

[31-2000]

An instrument of covenant must be prepared in a Form 31 – Covenant.

Types of covenants

[31-2020]

A covenant must:

- relate to the use of a lot or part of a lot; or
- relate to the use of a building built or proposed to be built on a lot; or
- be aimed directly at preserving a native animal or plant; or a natural or physical feature of the lot that is of cultural or scientific significance; or
- be for ensuring that all lots that are subject to the covenant are transferred to another person together (the lots subject to the covenant may be freehold, non-freehold or a combination of freehold and non-freehold).

‘Use’ covenants under s 97A(3)(a) may be used to achieve a local government planning objective, provided they are consistent with the local government’s planning scheme and any conditions of development approval, as well as complying with the *Land Title Act 1994* and/or the *Land Act 1994*.

Examples of ‘use’ covenants that are in compliance with the legislation include:

- that a building on the lot must be used for educational purposes
- that the covenant area must be used for noise attenuation purposes
- that a building on the lot is not to be used for residential purposes
- that the lot may be used only for organic farming
- that a building on the lot must not be used for a stated commercial purpose
- that the lot is to be used only for the purpose of construction of buildings used for the development of technology (a definition of ‘buildings used for the development of technology’ should be included)
- that the lot is to be used only for the purpose of construction of water-sensitive residential housing (a definition of ‘water-sensitive residential housing’ should be included).

A subsection is included in the legislation to identify ‘use’ covenants which are *not* allowed by the legislation. These include:

- the requiring of adherence to an architectural, construction or landscaping standard
- a statement, acknowledgement or obligation relating to the use of other land
- a condition precedent to using a lot for a stated purpose or any purpose
- regulation of the conduct of the owner of a lot that is unrelated to, or is ancillary to, use of the lot.

For further clarification and explanation, covenants imposing the following conditions do not comply with the legislation:

- an obligation to ensure that vehicular access to a lot is gained from a named street (regulating conduct ancillary to use of the lot)
- an obligation to keep a fence painted blue (imposing a landscaping standard)
- an obligation to construct any house on the lot within a stated height limit, facing a particular direction, or using split level or elevated construction techniques (a construction or architectural standard and/or regulating conduct ancillary to the use of the lot)
- an obligation not to use a lot for residential purposes until it is connected to water services (a condition precedent).

‘Preservation’ covenants under s 97A(3)(b) may be used as a tool to assist in the preservation of native animals and plants, and natural or physical features of cultural or scientific significance.

Examples of preservation covenants include:

- a covenant for the purpose of preserving native vegetation (imposing an obligation not to remove such vegetation)
- a covenant for the purpose of preserving a bora ring (imposing an obligation not to disturb the area containing the bora ring)
- a covenant for preserving the natural and physical features of the lot being the natural slope of the land in the covenant area
- a covenant for the purpose of preserving native plants and preserving the natural features of the lot, including the water and soil in accordance with a management plan (the management plan should be identified, but not included as part of the covenant instrument).

An example of a covenant that does not comply with the legislation would be a covenant providing that earthworks on a lot shall not exceed a maximum height of 2.0 metres.

Covenants ‘tying parcels of land’ may be registered under s 97A(3)(c). An example is a covenant ensuring that the lots described in Item 2 of the Covenant are to be transferred to the same person.

Purposes for which covenants may not be used

[31-2040]

Restrictions on other dealings

Apart from a covenant under s 97A(3)(c), a covenant cannot prevent the registered owner/covenantor or any other person from registering an interest in the subject lot.

For example, a covenant cannot prohibit the registered owner from granting a lease over the covenant area, nor from granting a lease except on specified terms. The following provisions would be unacceptable and unenforceable in a covenant:

- The Covenantor must not enter into any agreement for lease in respect of any part of the Covenant Area unless the lease is for a term not less than five years.
- The Covenantor must not grant any easement over the covenant area.

Matters to be dealt with by easements

Covenants may not provide for anything capable of being the subject of an easement.

Example –

- a covenant acknowledging that a lot may be used for temporary parking.

Securing payment of money

Covenants may not secure the payment of money or money’s worth under a condition of a development approval or an infrastructure agreement under the *Integrated Planning Act 1997*.

Example –

- an obligation to pay to the local authority agreed infrastructure contributions.

Integrated Planning Act 1997

Under s 2.1.25 and s 3.5.37 of the *Integrated Planning Act 1997* respectively, a covenant may not be inconsistent with a planning scheme or with development approvals.

A covenant may not impose an obligation that is contrary to the *Integrated Planning Act 1997*. For example, under s 3.5.32 of the *Integrated Planning Act 1997*, a local authority must not require an access restriction strip as a condition of development approval. Therefore it is not possible to register a covenant such as:

- The covenantor shall use the Covenant area to restrict access to lot 3 from Brown Street.

However, the following would be an acceptable alternative:

- The covenantor shall not use nor permit the use of the Covenant area for the purpose of driving any vehicles or machinery thereon. (In this case the Covenant area would need to be described by a survey plan.)

Compliance with Legislation

[31-2060]

A registered instrument of covenant is taken not to be registered under the *Land Title Act 1994* or the *Land Act 1994* to the extent that it is inconsistent with the legislation. Under s 97AA of the *Land Title Act 1994* and s 373AA of the *Land Act 1994*, the registration of covenants which are contrary to the legislation (eg pertaining to ancillary matters, landscaping and construction standards etc) would have no effect. Obligations described in such covenants may be conditions of development approval or contained in a local government's building code, but these are matters which depend on *Integrated Planning Act 1997*, and are outside the scope of the *Land Act 1994* and the *Land Title Act 1994*. Under the *Integrated Planning Act 1997*, development approvals and infrastructure agreements statutorily run with the land, and are binding on successors in title.

Requirements for an Instrument of Covenant

[31-2100]

A covenant must contain the full particulars of all parcels that are subject to it. The covenant must describe the undertaking given by the grantor. To clarify the intent of a covenant, inclusion of reference to the relevant legislation is required (eg 'Pursuant to s 97A(3)(c) of the *Land Title Act 1994*').

The certificate of title or State tenure document, if issued, must be deposited for cancellation or a request made to dispense with production.

Survey requirements of a covenant over part of a lot

[31-2150]

A plan of survey or explanatory format plan is required to precede a covenant if the interest affects part of the lot. If the covenant is for the whole of the lot, no plan is required.

Plans for a covenant must comply with directions 4.8.2 and 21 of the Registrar of Titles Directions for the Preparation of Plans. A plan must not describe a covenant as a 'Proposed Covenant' as at least one instrument of covenant must be lodged immediately after the plan (see also part 21 – Plans and Associated Documents, esp ¶[21-0020] and ¶[21-2068]).

A covenant may be included with a survey of lots on a plan of subdivision.

Release of Covenant

[31-2200]

A covenant may be wholly or partly released by registering a Form 33 – Release of Covenant.

A partial release of covenant must clearly specify the extent to which the covenant is released.

If a covenant restricted several uses and was to be released from less than all of the uses, the use to be released can be described in item 5 of the Form 33 or if insufficient space, in a Form 20 – Enlarged Panel annexed to the Form 33.

A partial release of part of the area affected by a covenant must be defined on a survey plan (see the Registrar of Titles Directions for the Preparation of Plans for covenants).

A covenant that is for ensuring that lots remain in the same ownership can only be partially released if at least two lots remain subject to the covenant after the partial release.

The instrument must be signed by the covenantee (see also ¶[33-2100]).

Amendment of Covenant

[31-2300]

Covenants may be amended by an instrument in a Form 13 – Amendment. However, an amendment may not increase or decrease the area of land affected or add or remove a party. If non-freehold is involved, written approval of the amendment by the Minister is required (see ¶[13-2110]).

Forms

General Guide to Completion of Forms

[31-4000]

For general requirements for completion of forms see part 59 – Forms, esp ¶[59-2000].

Dealing Number

Lodger (Name, address, E-mail & phone number)

Lodger
Code
490



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Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 and the Land Act 1994 and is used to maintain the publicly searchable registers in the land registry. For more information about privacy see the department's website.

1. Covenantor

JOHN DAVID BROWN

2. Description of Covenant / Lot on Plan	County	Parish	Title Reference
LOT 4 ON RP800006	SMITH	SMITHSON	22331100
LOT 5 ON RP800006	SMITH	SMITHSON	22331101

3. Covenantee

SMITHSON CITY COUNCIL

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

PURSUANT TO SECTION 97A(3)(c) OF THE LAND TITLE ACT 1994

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 if not applicable

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

A D Lein

..... signature

ARNOLD DOUGLAS LEIN

..... full name

JUSTICE OF THE PEACE (C.DEC) 89339

..... qualification

Witnessing Officer

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

13/9/2007

Execution Date

J D Brown

.....
Covenantor's Signature

..... signature

..... full name

..... qualification

Witnessing Officer

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

15/9/2007

Execution Date

I L Hope

Appointed Officer
IAN LEO HOPE

.....
Covenantor's Signature

COVENANT

Dealing Number



OFFICE USE ONLY

Lodger (Name, address, E-mail & phone number)

Lodger Code
490

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1. Covenantor

JOHN DAVID BROWN

2. Description of Covenant / Lot on Plan

COVENANT A ON SP800106

County

SMITH

Parish

SMITHSON

Title Reference

22331101

3. Covenantee

SMITHSON CITY COUNCIL

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

PURSUANT TO SECTION 97A(3)(b) OF THE LAND TITLE ACT 1994

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 if not applicable

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

A D Lein

..... signature

ARNOLD DOUGLAS LEIN

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JUSTICE OF THE PEACE (C.DEC) #89339

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Witnessing Officer

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

..... signature

..... full name

..... qualification

Witnessing Officer

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

18/9/2007
Execution Date

J D Brown
.....
Covenantor's Signature

20/9/2007
Execution Date

I L Hope
Appointed Officer
IAN LEO HOPE
.....
Covenantor's Signature

Guide to Completion of Form 31

Item 1

[31-4010]

Insert full name(s) of the covenantor, [registered owner(s) of freehold or lessee(s) of non-freehold].

Item 2

[31-4020]

Insert the ‘Lot on Plan’ descriptions for all parcels affected by the covenant.

If the covenant applies to only part of the lot, then the covenant must be described in a manner similar to the following:

‘Covenant A on SP 123567’.

In such cases, a plan will be required to be lodged in the land registry. The plan may be a survey plan or, if the registrar approves, an explanatory plan may be used to graphically represent the area affected by the covenant (see Survey Requirements ¶[31-2150]).

Item 3

[31-4030]

Insert the full name of the covenantee (ie the State, another entity representing the State or a local government).

Item 4

[31-4040]

Include a description of the covenant and the relevant statutory provision. A covenant must be pursuant to either (a) or (b) or (c) in s 97A(3). A covenant cannot be pursuant to more than one of these paragraphs, although more than one covenant may be registered over the same lot for different purposes. Examples –

- ‘Pursuant to s 97A(3)(a)(ii) of the *Land Title Act* 1994 any building on the lot may only be used for residential purposes.’
- ‘Pursuant to s 97A(3)(b)(i) of the *Land Title Act* 1994 and the terms of the attached Schedule.’
- ‘Pursuant to s 97A(3)(a)(i) of the *Land Title Act* 1994 relating to the use of the lot in terms of the attached Schedule.’
- ‘Pursuant to s 97A (3)(c) of the *Land Title Act* 1994’ relating to the future transfer of lots to a single ownership.

If space in item 4 is insufficient the description of the covenant may be set out in a Form 20 – Schedule attached to the Form 31, in which case the panel should refer to the Schedule’.

The covenant instrument must include a statement of its purpose. In the first example above, the purpose is stated in item 4. If the statement of purpose is not in Item 4, then it must be included in the Schedule.

Item 5**[31-4050]**

Covenants must be validly executed by both the covenantor (the owner of freehold or lessee of non-freehold) and covenantee (the State, another entity representing the State or a local government). The covenantor and the covenantee must be different entities.

For execution by a local government see ¶[60-0920]. Execution on behalf of the State or an entity representing the State must be in accordance with relevant legislation.

A covenant that involves non-freehold land must have the written approval of the Minister. Such requirement is in addition to its being executed for and on behalf of the State of Queensland.

Duty**[31-4060]**

There is no duty payable on a Form 31 – Covenant.

¶[31-6000] deleted

Case Law**[31-7000]*****Townsville Port Authority v Max Locke, Registrar of Titles* [2004] QCA 294**

In this case the Queensland Court of Appeal considered the meaning of ‘relate to the use of’ a lot, part of a lot or a building in s 97A(3)(a). Williams J stated:

‘to be registrable the covenant must relate to a purpose for which a building proposed to be built on the lot can be used or otherwise be related to a use to be made or not to be made of that land.’

Fees**[31-8000]**

Fees payable to the land registry are subject to an annual review.

See the current *Land Title Regulation* 2005 – Schedule 2, item numbers 2(h) and 2(m).

Cross References and Further Reading**[31-9000]**

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement

Part 33 – Release of Covenant/Profit a prendre

Notes in text**[31-9050]**

Note ³ – This part is not applicable to water allocations or the Water Allocations Register.