

Question on Notice

No. 784

Asked on Tuesday, 15 June 2021

MR S ANDREW ASKED THE MINISTER FOR THE ENVIRONMENT AND THE GREAT BARRIER REEF AND MINISTER FOR SCIENCE AND YOUTH AFFAIRS (HON M SCANLON)—

QUESTION:

With reference to the Private Protected Area Program (PPAP) under which financial incentives are offered to landholders in exchange for their signing a 'conservation agreement' with the government, which are registered as an encumbrance over the title and binding on all successive owners of the property 'in perpetuity'—

Will the Minister (a) provide a copy of the standardised 'Conservation Agreement' used for these transactions, (b) advise how many properties were (i) included in PPAP in this manner, (ii) previously used for agriculture and (c) advise what steps are taken to ensure elderly and vulnerable landowners receive independent legal advice before signing such agreements and if family members, especially their children, are made aware of what is happening?

ANSWER:

I thank the Member for the question.

The Department of Environment and Science's Private Protected Area Program is currently comprised of 541 nature refuges and one special wildlife reserve over 4.47 million hectares of conservation-significant land in Queensland. Many private protected areas balance conservation with production, allowing compatible agricultural land-uses, such as sustainable grazing, to continue.

Since the first nature refuge was declared in 1994, each of the 542 privately-owned and managed protected areas have been established by a landholder voluntarily entering into a conservation agreement with the Queensland Government. A contemporary example of a voluntary conservation agreement is attached (**Attachment 1**). Queensland's 542 private protected areas vary in size, from lifestyle blocks to large scale nature refuges that are a portion of properties that are hundreds of thousands of hectares in size.

As with any contractual arrangement being entered into with the Queensland Government, it is the responsibility of all interested parties to seek independent legal advice as required. The *Nature Conservation Act 1992* defines all interested parties and, as part of the statutory processes to declare a new private protected area, the Queensland Government notifies these parties who are invited to make a submission.



**Conservation Agreement
(made as a deed)
to establish
Nature Refuge**

Between **State of Queensland** acting through the **Department of Environment and Science**

(State)

The party specified as the **Landholder** in Item 1 of Schedule 1 to this conservation agreement

(Landholder)

EXAMPLE AGREEMENT ONLY



Conservation Agreement to Establish Nature Refuge

Background

Recitals

- A. The Minister has prepared, under section 44 of the Act, a proposal for the declaration of a nature refuge.
- B. The State has complied with sections 44 and 45 of the Act.
- C. The Minister and the Landholder have agreed to enter into a conservation agreement in accordance with section 45 of the Act to facilitate the declaration of Nature Refuge.
- D. The intention of the declaration of Nature Refuge is to bind the State, the Landholder, the Landholder's successors in title and other persons with an interest in the Land the subject of the conservation agreement, to conduct Land Uses in a manner which is consistent with this conservation agreement.
- E. The parties agree to the terms and conditions in this conservation agreement, which consists of:
 - (a) this cover page and signing page;
 - (b) Schedule 1 – Conservation Agreement details;
 - (c) Schedule 2 – Terms and conditions;
 - (d) Schedule 3 – Significant Natural Resources of the Land;
 - (e) Schedule 4 – Management conditions;
 - (f) Schedule 5 – Protected Area Plan;
 - (g) Schedule 6 – Financial Assistance; and
 - (h) Schedule 7 – Special Activities to be carried out by the State.
- F. Capitalised words and phrases have the meanings specified in clause 20 of Schedule 2, or any other schedule or annexure as appropriate.



Conservation Agreement to Establish Nature Refuge

Schedule 1 – Conservation Agreement details

Item 1 Party details

State:

Party Name: State of Queensland acting through the Department of Environment and Science

ABN:

Street Address:

Contact Officer Name:

Contact Officer Postal Address:

Contact Officer Telephone:

Contact Officer Email:

Landholder:

Party Name:

Address:

Contact Person Name:

Postal Address:

Telephone:

Facsimile:

Email:

Item 2 Land

Item 3 Place of mediation

Item 4 Other persons with an interest in the Land that are bound



Deed of Agreement

Schedule 2 – Terms and conditions

1. Precedence

Where any inconsistency exists between:

- (a) this Schedule 2;
- (b) Schedule 1;
- (c) Schedule 4;
- (d) Schedule 6;
- (e) Schedule 7;
- (f) Schedule 5;
- (g) Schedule 3; or
- (h) any other schedules or annexures of this conservation agreement,

the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.

2. Commencement and term

- 2.1 This conservation agreement is made pursuant to section 45 of the Act.
 - 2.2 This conservation agreement is made as, and takes effect as, a deed.
 - 2.3 This conservation agreement constitutes the entire agreement between the parties and it is the intention of the parties that this conservation agreement constitutes a conservation agreement under section 45 of the Act. If an earlier agreement applies to the Land, this conservation agreement terminates and replaces the earlier agreement in accordance with section 48(1) of the Act.
 - 2.4 If this conservation agreement is executed by all parties on the same date, it will commence immediately but if this conservation agreement is not executed by all parties on the same date, it will commence on and from 10 Business Days after the date that the last party to do so signs.
 - 2.5 This conservation agreement is intended to provide protection for the Significant Natural Resources and will only terminate if the declaration of the nature refuge over the Land is revoked in accordance with the Act or it is terminated and replaced in accordance with clause 2.3.
 - 2.6 However, clause 12 survives any termination of this conservation agreement.
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3. Conservation Agreement binding

- 3.1 The parties agree that, despite any terms of this conservation agreement:
 - (a) this conservation agreement shall not prevent an energy provider from complying with its maintenance obligations (typically vegetation management maintenance) under the *Electricity Act 1994* as they relate to existing power lines on the Land;
 - (b) this conservation agreement binds:
 - (i) the holder of any lease or sublease on the Land;
 - (ii) the holder of any easement on the Land; and
 - (iii) any other person listed in Item 4 of Schedule 1 (if any) with an interest in the Land and to the extent noted in Item 4 of Schedule 1 that the person is bound.
- 3.2 This conservation agreement is binding on the State, the Landholder and the Landholder's successors in title and any other person who has an interest in the Land, to the extent that this conservation agreement contains terms to that effect.

Conservation Agreement to Establish Nature Refuge

- 3.3 The Landholder will notify all persons:
- (a) who have, or obtain an interest in the Land, of the terms of this conservation agreement; and
 - (b) with an interest in the Land, when the Land has been declared as a nature refuge in accordance with section 46 of the Act.
- 3.4 The Landholder will use its best endeavours to ensure those persons with an interest in the Land that are bound by this conservation agreement comply with this conservation agreement.
- 3.5 This conservation agreement is intended to survive and continue to apply to the Land, despite any changes to the lot and plan description or underlying tenure of the Land. The Landholder must:
- (a) obtain written consent of the chief executive administering the Act before making a tenure conversion, subdivision or amalgamation application under the *Land Act 1994* in relation to the Land; and
 - (b) notify the State of any changes to the description of the Land as registered on title, including the lot and plan description, within 15 Business Days of the changes being registered in the Appropriate Register; and
 - (c) notify the State of any application to surrender all or part of a lease over the Land.

4. Management of the Land

- 4.1 From the Commencement Date, the Landholder will:
- (a) manage the Land in accordance with Schedule 4 to protect, and enhance where relevant, the Significant Natural Resources; and
 - (b) conduct Land Uses in a manner which is consistent with—
 - (i) the Management Principles;
 - (ii) the Declared Management Intent; and
 - (iii) this conservation agreement.
- 4.2 The parties agree and acknowledge that nothing in this conservation agreement can authorise or require the Landholder to do anything in relation to the Land beyond the scope of their rights and powers granted under the *Land Title Act 1994* or *Land Act 1994*.
- 4.3 The State will use its best endeavours to notify the Landholder that the Land has been declared a nature refuge as soon as practicable after the Protected Areas Regulation is made under section 46 of the Act.

5. Threatening Process

- 5.1 The Landholder will notify the State as soon as practicable after the Landholder becomes aware of the existence and nature of any Threatening Process on the Land, or on any adjoining land, or on any neighbouring land.
- 5.2 Upon receipt of that notice, the State will discuss with the Landholder what, if any, action is necessary to deal with the Threatening Process.
- 5.3 The parties' obligations under this conservation agreement will continue for the duration of any Threatening Process.

6. Emergency Event

- 6.1 Where any of the parties are unable, by reason of an Emergency Event, to carry out, wholly or in part, their obligations under this conservation agreement, they will give notice of such Emergency Event to the other parties as soon as practicable. That notice must contain full particulars of the Emergency Event and upon receipt of that notice, the obligations of the party giving the notice, (so far as they are affected by the Emergency Event) will be suspended for the duration of the Emergency Event.
- 6.2 The party giving the notice will take all steps and use all reasonable diligence to deal with the Emergency Event as soon as practicable.

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- 6.3 If the performance of any obligation under this conservation agreement is prevented by an Emergency Event, the time for performance will be extended by the duration of the Emergency Event.
- 6.4 Non-performance by any party of any obligation or condition of this conservation agreement, resulting from an Emergency Event, will not give rise to any liability to the other parties for any direct, indirect, consequential or special losses or damages of any kind arising out of, or in any way connected with, that non-performance.
- 6.5 In containing the Emergency Event, the Landholder will only take action that has a minimal effect on the Significant Natural Resources.

7. Entry by the State

- 7.1 The Landholder will permit the State and its Representatives to enter the Land, at all reasonable times, to carry out any Special Activities as specified in Schedule 7.
- 7.2 The Landholder will permit the State and its Representatives to enter the Land, at all reasonable times, after the State gives the Landholder at least 5 Business Days' notice, for the following purposes:
- (a) to determine if the Land is being managed in accordance with the terms of this conservation agreement; and
 - (b) to carry out the State's rights and obligations under this conservation agreement and the Act.
- 7.3 The right of entry under clause 7.1 and 7.2 does not include a right of entry into buildings used primarily for residential purposes.

8. Liability and indemnity

- 8.1 The Landholder releases to the full extent permitted by law, the State and its Representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) that the Landholder has, or may have in the future, against the State or its Representatives in respect of or in any way arising out of or in connection with this conservation agreement.
- 8.2 Indemnity
- (a) The Landholder indemnifies the State and its Representatives against all liability, loss, costs and expenses (including any actions, claims, proceedings or demand brought by any third party, and any legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:
 - (i) any default by the Landholder under this conservation agreement;
 - (ii) any unlawful, wilful or negligent act or omission of the Landholder, its Representatives or any person for whose conduct the Landholder is liable; or
 - (iii) personal injury (including sickness and death) or property damage or loss in connection with the performance (or attempted or purported performance or non-performance) of this conservation agreement or a breach of this conservation agreement by the Landholder or its Representatives.
 - (b) The Landholder's liability to indemnify the State under clause 8.2(a) will be reduced proportionally to the extent that any negligent act or omission or breach of this conservation agreement by the State or its Representatives caused the loss or liability.
 - (c) The indemnity granted in clause 8.2(a) is in addition to and not exclusive of any other remedies the State may have against the Landholder at law.
 - (d) It is not necessary for the State to incur expense or to make a payment before enforcing a right of indemnity conferred by this conservation agreement.
 - (e) The State indemnifies the Landholder and its Representatives against all liability, loss, costs and expenses (including any actions, claims, proceedings or demand brought by any third party, and any legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:

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- (i) any default by the State under this conservation agreement;
 - (ii) any unlawful, wilful or negligent act or omission of the State or its Representatives; or
 - (iii) personal injury (including sickness and death) or property damage or loss in connection with the performance (or attempted or purported performance or non-performance) of this conservation agreement or a breach of this conservation agreement by the State or its Representatives.
- (f) The State's liability to indemnify the Landholder under clause 8.2(e) will be reduced proportionally to the extent that any negligent act or omission or breach of this conservation agreement by the Landholder or its Representatives caused the loss or liability.
- 8.3 The State and its Representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of data or goodwill, loss of reputation, or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this conservation agreement.

9. Compliance with laws

- 9.1 This conservation agreement will be governed by and construed according to the law of the State of Queensland and the parties agree to submit to the jurisdiction of the Courts of the State of Queensland.
- 9.2 At its own expense, the Landholder will comply with and observe all legislation, regulations, local laws or rules for the time being in force which apply to the Landholder's obligations under this conservation agreement.
- 9.3 Any approval under this conservation agreement to undertake an Activity does not constitute an approval under any legislation, local law, regulation or rule referred to in clause 9.2.

10. Assistance to the Landholder

- 10.1 The State may at its discretion provide technical advice to the Landholder for the management of Natural Resources on the Land.
- 10.2 Subject to clauses 11 and 12, the State will provide Financial Assistance to the Landholder if specified in Schedule 6, in the manner specified in Schedule 6.
- 10.3 The State will carry out the Special Activities on the Land if specified in Schedule 7.
- 10.4 The State may at its discretion provide funding to the Landholder to undertake activities relevant to the conservation and management of the Natural Resources on the Land.

11. Change of Landholder

- 11.1 The Landholder will notify the State of the name and contact details of the person with whom the Landholder has entered into a contract of sale or other agreement for the sale or transfer of the whole or part of the Land. Notification will be no later than 5 Business Days after entering into the contract of sale or relevant agreement, for the purposes of the State contacting the new landholder.
- 11.2 Where Financial Assistance has been provided by the State to the Landholder under Schedule 6, the Landholder must provide the State with a Status Report 10 Business Days prior to settlement of the contract of sale or relevant agreement.
- 11.3 If a Status Report shows that a Milestone Payment has been paid to the Landholder but the associated Activity has not been completed to the satisfaction of the State, the State may issue the Landholder with a Repayment Notice stating that all, or any part of, the Milestone Payment must be repaid to the State by the date specified in the Repayment Notice.
- 11.4 If a Status Report shows that a Milestone Payment has been paid to the Landholder and the associated Activity has been completed to the satisfaction of the State but further Milestone Payments and associated Activities remain, the State may at its discretion transfer the remainder of the Activities and Milestone Payments to the new landholder once the new landholder becomes the registered owner of the Land.

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- 11.5 Where the Landholder fails to action clauses 11.1 or 11.2 (where relevant), the State may issue a Notice under clause 12 to the Landholder or commence court proceedings (and for the avoidance of doubt, clause 13 does not apply to this clause 11.5).

12. Default

- 12.1 Clause 13 of this conservation agreement does not apply to a Default which is the subject of a Notice specified in this clause 12. The State is not required to first go through the Dispute Resolution process in clause 13 before issuing a Default Notice.
- 12.2 Notwithstanding clause 12.1, if a Dispute does arise as a result of a Notice specified in this clause 12, then Milestone Payments (if any) are immediately suspended on and from the date that the Notice of Dispute is given to the other party until the Dispute is resolved in accordance with clause 13 of this conservation agreement.
- 12.3 Despite any clause within this clause 12, the State retains the right to remedy the Default, or to engage others to remedy the Default, at the cost of the Landholder who is or was the Landholder issued with the Default Notice, which will be a liquidated debt owing to the State.
- 12.4 If the Landholder is in Default of the performance of any obligation under this conservation agreement, the State may give a Default Notice to the Landholder specifying –
- (a) the Default;
 - (b) what action (if any) is required to remedy the Default; and
 - (c) the time by which the Default is to be remedied.
- 12.5 The time specified in the Default Notice by which the Landholder is to remedy the Default must be a reasonable time, having regard to the nature of the Default.
- 12.6 In determining what action is required by the Landholder to remedy the Default, the State may have regard to the financial resources of the Landholder and any Financial Assistance provided to the Landholder, and the State may also have regard to the cause of the Default, including whether the Default was as a result of intentional or reckless action on the part of the Landholder or the Landholder's Representatives.
- 12.7 Where the Default relates to Financial Assistance and/or Activities, if the Landholder fails to remedy the Default within the time limit specified in the Default Notice, the State may give the Landholder a Show Cause Notice, including a time for response, as to why one or more of the following should not occur:
- (a) suspension of further Milestone Payments;
 - (b) termination of further Milestone Payments; and/or
 - (c) repayment of all, or any part of, the Milestone Payments already paid to the Landholder by the State.
- 12.8 Where the Default relates to Financial Assistance and/or Activities, if the Landholder fails to remedy the Default by the time for response outlined in the Show Cause Notice or fails to provide a satisfactory response by the time outlined in the Show Cause Notice or fails to act in accordance with that response, then the State may give the Landholder:
- (a) a Suspension Notice that suspends any further Milestone Payments until the State is satisfied that the Default has been remedied; and/or
 - (b) a Termination Notice that terminates any further Milestone Payments; and/or
 - (c) a Repayment Notice for the repayment of any, or any part of, Milestone Payments paid to the Landholder to date.
- 12.9 An obligation under a Notice in this clause 12 remains the obligation of the entity named on the Notice who is or was the Landholder issued with the Notice, including any obligation to repay under clause 12.8(c) which will become a liquidated debt owing to the State by that entity.

13. Dispute Resolution

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- 13.1 Subject to clauses 11.3, 11.5, 12 and 13.7, the parties will adhere to the following procedure in relation to any Dispute arising from this conservation agreement, prior to the commencement of litigation or other external dispute resolution procedure.
- 13.2 If a Dispute arises in connection with this conservation agreement, a party to the Dispute must give a Notice of Dispute to the other party, providing details of the Dispute and requiring its resolution under this clause 13.
- 13.3 Each party must confer within 10 Business Days after the Notice of Dispute is given to attempt to resolve the Dispute through negotiation.
- 13.4 If the Dispute is not resolved within 15 Business Days after the Notice of Dispute is given to the receiving party, either party may refer the Dispute to a mediator and on terms agreed by the parties with costs to be shared equally between the parties. The mediation must be conducted at a place agreed by the parties, or failing agreement the place specified in Item 3 in Schedule 1.
- 13.5 If the parties have not agreed upon the mediator and the terms of the mediation within 20 Business Days after the Notice of Dispute has been given to the receiving party, either party may request the President of the Queensland Law Society to nominate a mediator and terms of the mediation.
- 13.6 Notwithstanding the existence of a Dispute, each party will continue to perform its obligations under this conservation agreement.
- 13.7 Nothing in this clause prevents either party from commencing court proceedings relating to any Dispute arising from this conservation agreement at any time where that party seeks urgent interlocutory relief.
- 13.8 For the avoidance of doubt clauses 11.3, 11.5 and 12 do not apply to this clause 13.

14. Notices

- 14.1 Notices under this conservation agreement may be delivered by hand, by pre-paid post or by facsimile to the addresses specified in Item 1 in Schedule 1, or any substitute address as may have been notified in writing by the relevant addressee from time to time.
- 14.2 Notice will be deemed to be given:
 - (a) Business Days after deposit in the mail by pre-paid post;
 - (b) immediately when delivered by hand;
 - (c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next Business Day, as the case may be.
- 14.3 Any Notice to a party may be given to the party's solicitor by hand, by pre-paid post or by facsimile to the solicitor's business address or facsimile number.
- 14.4 The parties may use email for general correspondence only. In particular, Notices under clauses 11, 12 and 13 may not be given by email alone.

15. Severability

- 15.1 Any provision in this conservation agreement which is invalid or unenforceable is to be read down if possible so as to be valid and enforceable, and if that is not possible the provision must, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

16. Waiver

- 16.1 No rights under this conservation agreement will be deemed to be waived except by written notice signed by each party. A waiver by any party will not prejudice that party's rights in respect of any subsequent breach of this conservation agreement by the other parties. Any failure by any party to enforce any clause of this conservation agreement, or any forbearance, delay, or indulgence granted by any party to the others will not be construed as a waiver of rights under this conservation agreement.

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17. Costs

- 17.1 Each party will pay its own costs of and incidental to the negotiation, preparation and execution of this conservation agreement.

18. Registration of conservation agreement on title

- 18.1 The State will notify the Registrar that this conservation agreement has been entered into for recording on the Appropriate Register.

19. Counterparts

- 19.1 This conservation agreement may be executed in any number of counterparts and by the parties on separate counterparts. The parties must exchange original counterparts. Each counterpart constitutes an original of this agreement, and all counterparts together constitute one agreement.

20. Definitions and interpretation

- 20.1 The following terms in this conservation agreement will have the meanings assigned to them unless the context otherwise requires or the contrary intention appears:

Act means the *Nature Conservation Act 1992*.

Activity or Activities has the meaning given to it in Item 2 of Schedule 6 (if any).

Appropriate Register means:

- (a) for freehold land: the freehold land register; or
- (b) for other land: the appropriate register under the *Land Act 1994*.

Biosecurity Legislation means the *Biosecurity Act 2014* and/or the *Biosecurity Regulation 2016*.

Biosecurity Plan has the same meaning as in the Biosecurity Legislation.

Business Day means a day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in Queensland.

Commencement Date means the date referred to in clause 2.4.

Contact Officer means the person named as contact officer for each relevant party in Item 1 of Schedule 1.

Contaminant includes sediment, nutrients, pesticides, fungicides and fuel.

Control Program includes baiting, shooting, trapping, poisoning, mechanical control or biological control.

Declared Management Intent means the management intent specified at the time of declaration of the Land as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*.

Default means any action or inaction by the Landholder that is not in accordance with the provisions of this conservation agreement.

Default Notice means a written notice given by the State to the Landholder under clause 12.4 specifying the Default, the action required to remedy the Default and the time by which the Default is to be remedied.

Disease means a disease impacting on Native Wildlife and/or soil which includes phytophthora, citrus canker, eucalyptus rust, chlamydia, and chytrid frog fungus.

Dispute means dispute arising under this conservation agreement.

Emergency Event means any event or circumstance (excluding drought) that is not within the control of a party and which could not have been overcome, prevented or remedied by the exercise of reasonable care on its part and includes but is not limited to:

- (a) declared natural disaster (excluding drought);
- (b) fire, flood, storm, cyclone, landslide, wash away;
- (c) outbreak of Disease;
- (d) Invasive Animal or Invasive Plant plagues;
- (e) nuclear event; and
- (f) war, riot or civil commotion.

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Financial Assistance means the amount (if any) specified in Item 1 of Schedule 6, and as apportioned in Item 3 Schedule 6 Milestone Payments, for the associated Activities in Item 2 of Schedule 6.

GST has the meaning given in the GST Legislation.

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hazardous Substances means substances or materials (including chemicals and fuel or substances containing heavy metals) that pose a pollution and/or health risk to Natural Resources, Native Wildlife or people.

Heavy Machinery includes tractors, loaders, dozers, skidders, graders and any other machinery over 2.5 tonnes.

Infrastructure means buildings, roads, formed tracks, airstrips and dams that require a foundation and/or clearing of remnant vegetation.

Instability means areas of unstable ground including exposed slip or slump faces, erosion gullies, exposed sub-soil, acid sulphate soil and hummocky geology.

Invasive Animal is an animal that:

- (a) has the meaning given to it in the Biosecurity Legislation;
- (b) is declared an invasive animal under a local law; or
- (c) is identified under an Invasive Animal Management Plan.

Invasive Animal Management Plan means a management plan:

- (a) agreed between the Landholder and the State from time to time, to be carried out on the Land by the Landholder; and/or
- (b) a Biosecurity Plan which has been prepared by local government under the Biosecurity Legislation.

Invasive Plant is a plant that:

- (a) has the meaning given to it in the Biosecurity Legislation;
- (b) is declared an invasive plant under a local law; or
- (c) is identified under an Invasive Plant Management Plan.

Invasive Plant Management Plan means a management plan:

- (a) agreed between the Landholder and the State from time to time, to be carried out on the Land by the Landholder; and/or
- (b) a Biosecurity Plan which has been prepared by local government under the Biosecurity Legislation.

Land means the land described in Item 2 in Schedule 1.

Land Uses means the land uses and land management activities which may be undertaken on the Land including those consistent with the Landholder's rights and powers granted under the *Land Title Act 1994* or *Land Act 1994*.

Landholder means the party specified as the Landholder in Item 1 of Schedule 1 to this conservation agreement.

Management Principles means those principles for nature refuges specified in section 22 of the Act.

Milestone Payment means the milestone payment amount to be paid to the Landholder as specified in Item 3 of Schedule 6 (if any).

Minister means the Minister administering the Act to the extent that it relates to a nature refuge.

Native Wildlife has the same meaning as in the Act.

Natural Resources has the same meaning as in the Act.

Notice means any written notice under the conservation agreement.

Notice of Dispute means a written notice given by one party to the other party under clause 13 that provides details of the Dispute.

Prohibited Matter means an Invasive Animal or Invasive Plant declared as prohibited matter under the Biosecurity Legislation.

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Protected Area Plan means the plan in Schedule 5.

Protected Areas Regulation means the *Nature Conservation (Protected Areas) Regulation 1994*.

Registrar means:

- (a) for an instrument or action relating to freehold land: the registrar of titles; or
- (b) for an instrument or action relating to other land: the chief executive administering the *Land Act 1994*.

Repayment Notice means a written notice given by the State to the Landholder under clause 12.8 that requires repayment of all, or any part of, Milestone Payments paid to the Landholder under this conservation agreement.

Representatives means, for a party, its employees, officers, directors, agents, invitees and contractors.

Restricted Matter means an Invasive Animal or Invasive Plant declared as restricted matter under the Biosecurity Legislation.

Show Cause Notice means a written notice given by the State to the Landholder under clause 12.7 requiring the Landholder to show cause as to why the Milestone Payments (or remainder of Milestone Payments) should not be suspended, and/or terminated, and/or required to be repaid to the State, as the case may be.

Significant Natural Resources means those Natural Resources specified in Schedule 3.

Special Activities means the special activities (if any) specified in Schedule 7.

Status Report means a report provided by the Landholder to the State, completed to the satisfaction of the State, detailing the expenditure of the Financial Assistance and extent of completion of the Activities to date. The template for this report will be provided by the State to the Landholder when required.

Suspension Notice means a written notice given by the State to the Landholder under clause 12.8 that suspends any further Milestone Payments until the State is satisfied the Default has been remedied or is superseded by another Notice under clause 12.8.

Tax Invoice has the meaning given in the GST Legislation.

Termination Notice means a written notice given by the State to the Landholder under clause 12.8 that terminates any further Milestone Payments under this conservation agreement.

Threatening Process has the same meaning as in the Act.

Unnatural Encouragement means the direct or indirect (such as, but not limited to, unsecured Waste containers) feeding of animals that are Native Wildlife.

Waste means anything that is left over, an unwanted by-product or surplus to the activity generating the waste, including a gas, liquid, solid or energy, or a combination of any of these.

Water Values include water quality, water availability, aquatic habitat values, riparian environments and ground water.

Watercourse includes streams, rivers, creeks, gullies, waterways and drainage lines.

Wetland means an area of permanent or periodic/intermittent inundation with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres and the area has one or more of the following attributes:

- (a) at least periodically, the land supports Native Wildlife that are adapted to and dependent on living in wet conditions for at least part of their life cycle; or
- (b) the substratum is predominantly undrained soils that are saturated, flooded or ponded long enough to develop anaerobic conditions in the upper layers; or
- (c) the substratum is not soil and is saturated with water, or covered by water at some time.

20.2 A reference to a person includes a reference to corporations and other entities recognised by law.

20.3 A reference to a statute, regulation, ordinance or local law will be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them.

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- 20.4 In this conservation agreement the headings to the clauses have been inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, any of the terms and conditions of this conservation agreement.
- 20.5 The singular includes the plural and vice versa.
- 20.6 Words indicating a gender include each other gender.
- 20.7 If more than one person is identified as the Landholder, then that expression refers to them, and the obligations of the Landholder under this conservation agreement bind them, jointly and severally.
- 20.8 A reference to a party, clause, schedule or attachment is a reference to a party, clause, schedule or attachment to or of this conservation agreement and includes any amendments to them made in accordance with this conservation agreement which includes all schedules, attachments and annexures to it.
- 20.9 Terms used in this conservation agreement and which are defined in the Act, have the same meaning as those terms in the Act unless defined in this conservation agreement.
- 20.10 A reference to a party includes that party's executors, administrators, successors and permitted assigns, and in the case of trustee, includes a substituted or an additional trustee.
- 20.11 "Includes" in any form is not a word of limitation.
- 20.12 Any reference to a dollar amount is in Australian dollars (\$AUD) and is inclusive of GST.
- 20.13 No rule of construction will apply to a provision of this conservation agreement to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it.

EXAMPLE AGREEMENT ONLY



Conservation Agreement to Establish Nature Refuge

Schedule 3 – Significant Natural Resources of the Land

The following items have been identified as the Significant Natural Resources of the Land. Items have cross-references to specific management conditions in Schedule 4 that are of highest importance for that item. However all management conditions in Schedule 4 must be complied with to ensure the viability of the nature refuge now and into the future.

Item 1:

Significance:

Management Condition(s) of highest importance:

Item : All other Natural Resources of the Land.



Conservation Agreement to Establish Nature Refuge

Schedule 4 – Management conditions

Item 1 Natural Resource protection

Ecosystems

- a) Protection of the Significant Natural Resources on the Land by:
 - i) Conducting Land Uses in such a way that ecological integrity and diversity of ecosystems are protected.
 - ii) Not applying for a reconfiguration of a lot which will have the effect of subdividing or altering the defined boundary or extent of the Land, except where prior written consent is provided by the State.
 - iii) Where applicable, maintaining the outcomes of activities (if any) as provided for under a separate agreement between the Landholder and the State.

Wildlife and habitat

- b) Protection of populations of Native Wildlife, including their habitat, from Threatening Processes by:
 - i) Not killing, damaging, marking, moving or removing any Native Wildlife, except where consent is given in this conservation agreement, or in writing by the State.
 - ii) Not damaging, destroying, marking, moving, removing, digging up or otherwise interfering with native animal habitat including nests, burrows, roosts, caves, hollows or other natural objects used by native animals, except where consent is given in this conservation agreement.
 - iii) Avoiding interruption to breeding cycles, food sources, roosting, migration, spawning and flowering patterns, and avoiding Unnatural Encouragement.

Water, Watercourses and Wetlands

- c) Protection of Wetlands, Watercourses and Water Values on the Land by:
 - i) Not wilfully allowing Contaminants to enter Wetlands and Watercourses, with the exception of Control Programs.
 - ii) Minimising Land Uses that produce Contaminant run-off.
 - iii) Minimising disturbance to Wetland and riparian vegetation, with the exception of Invasive Plants.
 - iv) Minimising disturbance to natural water flows and processes.
 - v) Minimising disturbance to the bed or banks of Wetlands and Watercourses by restricting Heavy Machinery and vehicle use in such areas, except at established crossings.

Soil

- d) Protection of soil productivity and integrity on the Land by:
 - i) Minimising mechanical disturbance, soil erosion, compaction or any wilful deterioration of the soil's physical, biological or chemical properties.
 - ii) Minimising Land Uses in areas of Instability, with the exception of site rehabilitation activities.

Item 2 Land protection and threat abatement

Invasive Animals and Invasive Plants

- a) Protection of Significant Natural Resources on the Land by:
 - i) Minimising the introduction of Invasive Animals and controlling existing populations of Invasive Animals on the Land.
 - ii) Minimising the introduction, establishment and spread of Invasive Plants and controlling existing infestations of Invasive Plants on the Land.
 - iii) Ensuring Control Programs for Invasive Animals and Invasive Plants are timed and managed, as far as practicable, to prevent the illness, capture, injury or death of non-target Native Wildlife.
 - iv) Informing the State about any new occurrences of Prohibited Matter and/or Restricted Matter.
 - v) Complying with any Invasive Animal Management Plan and/or Invasive Plant Management Plan.

Disease

- b) Protection of Significant Natural Resources on the Land by:
 - i) Minimising the introduction, establishment and spread of Disease.
 - ii) Reporting to the State any unusual plant and animal death, damage or Disease activity.

Item 3 Land use and management

Fencing

- a) Protection of the Significant Natural Resources on the Land by:
 - i) Not constructing fencing in areas mapped as remnant vegetation under the *Vegetation Management Act 1999*, except where approved in this conservation agreement or with the prior written approval of the State's Contact Officer.
 - ii) Ensuring fencing is constructed and maintained in such a way as to minimise impacts.

Fire

- b) Protection of the Significant Natural Resources on the Land by:
 - i) Developing and implementing fire management strategies that are appropriate to conserving the Significant Natural Resources on the Land.

Infrastructure

- c) Protection of the Significant Natural Resources on the Land by:
 - i) Not constructing Infrastructure except where approved in this conservation agreement or with the prior written approval of the State's Contact Officer.
 - ii) Ensuring any new approved Infrastructure is constructed and maintained in such a way as to minimise impacts.
 - iii) Ensuring that repairs, alterations or maintenance of Infrastructure is undertaken in such a way as to minimise impacts.

Waste and Hazardous Substances

- d) Protection of the Significant Natural Resources on the Land by:

- i) Conducting Land Uses in such a way as to minimise the risk of land and water pollution, or other degradation from Wastes, Hazardous Substances or Contaminants.
- ii) Not burying or disposing of any Hazardous Substances on the Land, unless otherwise approved in this conservation agreement.

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Schedule 5 – Protected Area Plan

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Schedule 6 – Financial Assistance

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Conservation Agreement to Establish Nature Refuge

Schedule 7 – Special Activities to be carried out by the State

EXAMPLE AGREEMENT ONLY



Conservation Agreement to Establish Nature Refuge

Executed as a deed

SIGNED, SEALED AND DELIVERED by

this day of 20

in the presence of:

.....
(print name of witness)

)
.....
(signature)

)
.....
(signature of witness)

SIGNED, SEALED AND DELIVERED for and on behalf of the STATE OF QUEENSLAND by the HONOURABLE

the Minister administering the *Nature Conservation Act 1992*

this day of 20

in the presence of:

.....
(print name of witness)

)
.....
(signature)

)
.....
(signature of witness)

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