

## **5.4. SAFE PLACES ACCOMMODATION LOT 57 RP800869 BOW STREET MOSSMAN-REGISTRATION OF COVENANT**

<b>REPORT AUTHOR</b>	Robert Donovan, Team Leader Property
<b>MANAGER</b>	Lisa Golding, Manager People and Community Services
<b>DEPARTMENT</b>	People and Community Services

### **RECOMMENDATION**

#### **That Council resolves:**

- 1. To register a Covenant on the title of Lot 57 RP800869 Title Reference 21438016 for a period of 15 years naming the Covenantee as the Commonwealth of Australia as Represented by the Department of Health and Ageing ABN 83 605 426 759**
- 2. Delegates authority under Section 257 of the *Local Government Act 2009* to the Chief Executive Officer to determine and finalise all matters associated with the execution of the FORM 31**

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### **EXECUTIVE SUMMARY**

Douglas Shire Council was successful in obtaining a Commonwealth Grant from the Department of Social Services for Safe Places Emergency Accommodation. The grant was executed by both parties on 27 March 2021.

A condition of the grant is that all Queensland based organisations including Local Government are required to provide executed securities in the form of a First Registered Mortgage/Covenant.

### **BACKGROUND**

In January 2021 Council purchased a vacant block of land in Mossman for the provision of Safe Places emergency accommodation. With design works completed and the tender awarded construction will take place immediately.

Section K.1 of the grant states;

The Grantee must grant the following security in favour of the Commonwealth, as prepared by the Commonwealth, and deliver the security in registrable form to the Commonwealth on or before the date specified in the Milestone Schedule:

(a) A restrictive covenant on the title of the property, in terms acceptable to the Commonwealth, until expiry of the Designated Use Period.

The Designated Use Period is 15 years from Douglas Shire Council (DSC) notifying the Commonwealth of Practical Completion. During this period DSC will not be able to use this property (unit development) for anything other than what is set out in the Agreement for the period of the Agreement.

## COMMENT

This Covenant is based on Council's obligation in Section 2K1 of the 'Commonwealth Standard Grant Agreement' as signed by Council on 27 March 2021.

Council should only grant a Covenant over the property as a Mortgage would be classed as a "financial arrangement" and prior approval would be needed under the *Statutory Bodies Financial Arrangements Act 1982*.

The Grantee has approved the use of a Covenant over the property.

## PROPOSAL

Recommend the Chief Executive Officer execute the Form 31 and lodge with the Titles Office for registration on the title.

## FINANCIAL/RESOURCE IMPLICATIONS

The cost to prepare and lodge the Form 31 will be paid out of the grant funding.

## RISK MANAGEMENT IMPLICATIONS

Lodgment of the Form 31 with the Titles office will ensure Council is abiding by the grant conditions, which will mitigate nonpayment of grant funds to Council

## SUSTAINABILITY IMPLICATIONS

**Economic:** Safe Place Emergency Accommodation-Domestic and family violence is estimated to cost Queensland \$3 billion annually. Facilitating the provisions of best practice services to assist vulnerable residence will lesson this impost on the community

**Environmental:** Nil

**Social:** Douglas Shire community has been advocating for crisis or emergency accommodation to keep woman and children safe in the community while they rebuild their lives after escaping domestic violence.

## CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

### Corporate Plan 2019-2024 Initiatives:

#### Theme 1 - Celebrating Our Communities

Douglas Shire Council embraces the diversity of our communities and values the contribution that all people make to the Shire. We recognise that it is a core strength of the region. We acknowledge our past so that it may guide us in the future. We recognise the wrongs done to our Indigenous community and we actively seek to reconcile so that we may all benefit from and enjoy our Shire. We acknowledge early European settlers who forged an agricultural base for our economy and we welcome all new arrivals as part of our broader community.

**Goal 3** - *We will develop programs that promote health, well-being and safety in the community.*

### **Operational Plan 2021-2022 Actions:**

**1.1.5** - Work with the Department of Housing, providers and stakeholders to identify gaps in social housing in the Shire and advocate for an improved business model that will increase housing stock and reduce wait times.

### **COUNCIL'S ROLE**

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

**Agent**                      On occasion, Council delivers services or builds infrastructure on behalf of other levels of government or organisations.

### **CONSULTATION**

**Internal:**                      Internal staff

**External:**                      Prestons Law

### **ATTACHMENTS**

1. Covenant Bow St Form 31 [**5.4.1** - 4 pages]

Dealing Number

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

Lodger

Preston Law

Code

P.O. Box 707N

789

North Cairns QLD 4870

Email: info@prestonlaw.com.au

Ph: 07 4052 0700

Ref: MRS:20210068



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1. Covenantor

Douglas Shire Council ABN 71 241 237 800

2. Description of Covenant / Lot on Plan

Lot 57 Registered Plan 800869

Title Reference

21438016

3. Covenantee

Commonwealth of Australia as Represented by the Department of Health and Ageing ABN 83 605 426 759

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

Use of a building proposed to be built on the lot pursuant to Section 97A(3)(a)(ii) 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.

\* delete if not applicable

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

DOUGLAS SHIRE COUNCIL

..... signature

..... full name

..... qualification

Witnessing Officer

/ /  
Execution Date

.....  
Chief Executive Officer  
Delegated Officer  
Covenantor's Signature

(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

/ /  
Execution Date

.....  
Covenantee's Signature

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

Title Reference 21438016

This is the Scheduled referred to in Covenant dated

2021

**1. Interpretation**

Unless the context otherwise requires or the contrary intention appears, the following terms shall have the meanings respectively assigned to them –

**“Safe Places Emergency Accommodation Purposes”** means the use of a building proposed to be built on the Land and used only for emergency or crisis accommodation for women and children experiencing domestic or family violence.

**“Covenant Area”** means that area referred to in item 2 of the Form 31.

**“Covenantee”** means the person named in Item 3 of the Form 31 together with its successors and includes all persons authorised by the Covenantee.

**“Covenantor”** means the person named in Item 1 of the Form 31 and its successors in title, lessees, trustees and occupiers of the registered proprietor's interest in the Land and any other person deriving an interest in the Land or any part thereof.

**“Land”** means the Lot specified 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 airspace; 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.

**2. Description of Covenant**

This Covenant is for the purpose of ensuring that the Covenant Area may only be used for Safe Places Emergency Accommodation Purposes for a term of 15 years from the date of this Covenant.

**3. Covenantor's Obligations**

The Covenantor covenants, and agrees with the Covenantee, that:

- (a) the Covenant Area may be used only for Safe Places Emergency Accommodation Purposes;
- (b) nothing prevents the Covenantor from using the covenant Area, provided such use is consistent with the obligations imposed by this Covenant.

**4. Rights of Access**

The Covenantor covenants, and agrees with the Covenantee, that the Covenantee may inspect the Covenant Area at any reasonable time after the giving of notice for the purposes of:-

- (a) examining, inspecting and monitoring the state and condition of the building proposed to be built in the Covenant Area; and
- (b) ascertaining whether the Covenantor's Obligations under this covenant have been duly performed and fulfilled.

**Title Reference 21438016**

**5. Registration**

The Covenantor agrees to do everything necessary to ensure that this Covenant is registered against the title to the Land.

**6. Waiver**

Any alleged waiver of any breach of this Covenant is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Covenant does not operate as a waiver of any other breach of this Covenant.

**7. Service**

Any certificate demand or notice by or from the Covenantee to or upon the Covenantor will be sufficiently made given or served if forwarded by registered mail in an envelope addressed to the Covenantor at its address. Such certificate, demand or notice shall be deemed to have been served at the time when in due course of post it would be delivered at the address to which it is sent.

**8. Severance**

If any part of this Covenant is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Covenant and the rest of this Covenant remains in force unaffected by that holding or by the severance of that part.

**9. Enurement**

This Covenant binds the parties to it and their respective successors in title to the Land.

