

Conveyancing By Localegal

LAWYERS

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15 June 2010

Mr Don Ross

Dear Don,

RE: Covenant for riparian restriction
PROPERTY: at Wonboyn Lake

We refer to the above matter and attach version 2 (with the amendments) of the covenant.

In the absence of specific definition in the covenant, the definition set out below applies:

*“**building** includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure or part of a manufactured home, moveable dwelling or associated structure.”* (dictionary in EPA Act).

Probably, no one will remember the difference between "building" and "moveable dwelling". In the absence of a definition in the covenant, the existence of a moveable dwelling in the zone is permissible.

As it now reads, the non-statutory interpretation is clear in relation to a "building". The statutory interpretation has an unintended consequence.

Does the riparian zone extend beyond Wonboyn Lake around into Wonboyn River? The definition will be fixed by the survey. For the purpose of drafting, I have only referred to Wonboyn Lake.

This covenant and other matters need to go into the section 88B instrument.

Comments, please!

Yours faithfully,
Conveyancing by Localegal

Per:

Instrument setting out Terms of Easements, Positive Covenants and Restrictions on the Use of Land intended to be created pursuant to Section 88B of the Conveyancing Act 1919

(Sheet 2 of 2 sheets)

**Subdivision of Lot B DP 33573 and
Portion 14 having Subdivision
Certificate No.**

Part 2 (Terms)

1. Terms of restriction on use in Core Riparian Zone 40 wide

- a) No building may be constructed within the core riparian zone
- b) No land clearing for non-permitted purposes may occur within the core riparian zone.

"Core riparian zone" means that part of the land so described from the mean high water mark of Wonboyn Lake landwards to a distance of 40 m

"Non-permitted purposes" means any purpose not permitted by statute, rules or regulations, proclamations, directions or determinations of any statutory authority authorised or permitted to deal with riparian vegetation in or near a proclaimed lake.

"Land clearing" does not include walking paths or other means of access to a landing area on Wonboyn Lake

Name of authority empowered to release, vary or modify the easement, restriction on use firstly referred to in the plan:

Bega Valley Shire Council or Department of Environment, Climate Change and Water