

**LEGAL SERVICES PRECEDENT DOCUMENT**

**DRAINAGE (STORMWATER/OVER LAND FLOW EASEMENT)**

VERSION 1

DATE CREATED: 10/05/2024

LAST REVIEWED 4/10/2024

**NOTES**

* Easement for stormwater / drainage purposes over freehold land
* Permits to convey stormwater and conduct drainage works if required
* Requires grantor to maintain surface of Servient Tenement Grantee to maintain drainage infrastructure
* Remove this page prior to completion

QUEENSLAND TITLES REGISTRY **EASEMENT Form 9** Version 4

Land Title Act 1994 and Land Act 1994 *Duty Imprint* Page 1 of 7

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| --- | --- | --- | --- |
|  | *Dealing Number* |  |  |
|  | Barcode Black OFFICE USE ONLY**Privacy Statement**Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department’s website. |  |  |
| **1. Grantor** [Name of registered owner of burdened land] | **Lodger** (Name, address, E-mail & phone number)**Tel**: **Ref**:                      | **Lodger****Code** |
| **2. Description of Easement/Lot on Plan** Servient Tenement (burdened land) [Description of burdened land from survey plan, eg Easement A in Lot xx on SP xxx on SP xxx] |  | **Title Reference**[title reference (burdened land)] |
|  \*Dominant Tenement (benefited land) Lot XX on SP XXXX\* not applicable if easement in gross |  |  |
| **3. Interest being burdened** Fee Simple | \***4. Interest being benefited** Not applicable\* not applicable if easement in gross |
| **5. Grantee** Given names  | Surname/Company name and number[Name of Grantee] | (include tenancy if more than one) |
| **6. Consideration** $1 | **7. Purpose of easement** DRAINAGE (STORMWATER) |

**8. Grant/Execution**

The Grantor for the above consideration grants to the Grantee the easement over the servient tenement for the purpose stated in item 7 and the Grantor and Grantee covenant with each other in terms of 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**

 signature

 full name

 qualification / /

**Witnessing Officer Execution Date Grantor'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 Grantee's Signature**

(Witnessing officer must be in accordance with Schedule 1 [Name, Position]
of Land Title Act 1994 eg Legal Practitioner, JP, C Dec) authorised delegate]

For and on behalf of Townsville City Council

# Definitions

## Definitions

In this easement, unless the context otherwise requires:

**Authorised Users** means those persons or entities deriving a right to occupy or use the Servient Tenement by permission or authorisation of the Grantee or Grantor as the context requires

**Dominant Tenement** means the land described at Item 2 of the Form 9 Easement.

**Drainage** means drains, surface drains, formed land, pipelines, conduits, inlets, culverts and all appurtenances constructed on the Servient Tenement for the purpose of or reasonably associated with the conveying of Water.

**Easement** means the Form 9 Easement to which this Schedule is attached the terms and conditions contained therein and the Servient Tenement.

**Government Authority** means the State, a Minister, a Government, a Government Department and government owned or controlled corporation or authority (acting in a regulatory role), a local government, a Court, Tribunal or Board or any officer or agent of them acting in their capacity as an officer or agent.

**Grantee** means the registered owner from time to time of the Dominant Tenement and includes their successors and assigns and all persons permitted or authorised to use the Easement by the Grantee.

**Grantor** means the registered owner from time to time of the Servient Tenement and includes their successors and assigns and all persons deriving an interest in the Servient Tenement through the Grantor.

**GST** has the meaning set out in the *GST Act*.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the *GST Act*.

**Servient Tenement** means that part of the Grantor’s land described as such in Item 2 of the Form 9 Easement.

 **Water** means water on land caused by a rainfall or flood event and includes rainwater, overland flow water and other water falling, originating or flowing over the Dominant Tenement

## Interpretation

In this Easement, unless the contrary intention appears:

### the singular includes the plural and vice versa;

### a reference to a thing or to land includes each part of that thing or land; and

### a reference to a person includes to a corporation or other legal entity as the context requires and includes executors, administrators, successors and assigns;

### a reference to any body (for example, an institute, association or authority) that ceases to exist or whose powers or functions are transferred refers to the body that replaces it or substantially succeeds to its powers or functions;

### a reference to a law or legislation includes all regulations and other instruments under it and amendments or replacements of any of them; and

### an obligation, representation or warranty:

#### in favour of two or more persons is for their benefit jointly and severally; and

#### by two or more persons binds them jointly and each of them severally.

# Grant of Easement

## Easement for Drainage

The Grantor grants to the Grantee the full and free right and liberty at all times hereafter to use the Servient Tenement or any part or parts thereof for Drainage purposes inclusive of the right to receive and convey Water, whether flowing continuously intermittently or occasionally, in over and along the Servient Tenement via the Drainage.

## Grantee’s Ancillary Rights

## In exercising its rights under clause 2.1, the Grantee and the Grantee’s Authorised Users will be entitled to full and free right and liberty to enter upon the Servient Tenement for the purposes of undertaking works to construct and thereafter forever use, maintain, repair and replace such Drainage as the Grantee deems fit from time to time and in so doing it shall have the right to:-

1. pull down, break open or relocate any fence, wall, other barrier or thing on or adjacent to the Servient Tenement restricting the Grantee or Authorised Users access;
2. construct, extend, deepen, widen, inspect, maintain and repair the Drainage;
3. replace any Drainage with new Drainage;
4. excavate sink shafts and remove and dispose of soil;
5. clear and keep clear the Servient Tenement by any means or method including cutting and removal of trees and undergrowth from the Servient Tenement;
6. construct and maintain on the Servient Tenement such access and other appurtenant works as the Grantee considers necessary for access to the Drainage and the exercise of these ancillary rights;
7. enter upon and remain, pass and repass on the Servient Tenement with or without vehicles, plant, machinery and materials of any description whatsoever do such other works and things through, across or in the Servient Tenement which are incidental to the proper exercise of the rights granted to the Grantee by this Easement;
8. enter and exit to and from the Servient Tenement over such part or part of the Grantor’s land adjoining or adjacent to the Servient Tenement as the Grantee reasonably considers most convenient or necessary for the purpose of passing between the Servient Tenement and the most convenient point of entry to or exit from the Grantor’s land, whether adjoining a constructed road or not; and
9. prevent other persons, including the Grantor, from entering the Servient Tenement whilst works are being carried out or whilst vehicles, materials, tools and other things to be used in completing the works are on the Servient Tenement.

## Conditions Applying to Right

The rights granted under this Easement:

### may be exercised by the Grantee and their Authorised Users;

### may be exercised:

### during normal business hours on any Monday to Friday other than a public holiday in Queensland on the giving of not less than forty eight (48) hours notice; or

### in the case of emergency at any time without notice when access and works may be undertaken as required to end the emergency;

### may be exercised in vehicles of any kind, with or without plant, machinery, equipment, materials, tools or other chattels; and

### are subject to the right of the Grantor and other persons lawfully entitled to use the Servient Tenement, in any way which does not derogate from the rights granted under this Easement.

## No Interference by Grantee

In exercising the rights granted under this Easement the Grantee must take all reasonable steps to ensure that the Grantee and any Authorised Users do not:

### unreasonably interfere with the use and enjoyment by the Grantor of the Grantor's adjoining land; or

### interfere with the provision of services to the Grantor's land.

## Maintenance and Repair

The Grantee must:

### repair any damage caused by the Grantee or the Grantee’s Authorised Users to both the Servient Tenement and the Grantor’s adjoining land; and

### maintain and repair any improvements constructed or placed on the Servient Tenement by the Grantee (with the exception of any grassed open drain or swale),

### but nothing in this clause obliges the Grantee to repair damage:

### to improvements constructed or placed on the Servient Tenement contrary to clause 3.1; or

### to any road, path or other improvement not constructed by the Grantee pursuant to clause 2.2; or

### caused by the negligent act or omission of the Grantor or the Grantor’s Authorised Users.

## Ownership of Infrastructure

All infrastructure associated with the Drainage on the Servient Tenement is and remains the property of the Grantee despite any actual or apparent affixation to the Servient Tenement and the Grantee is solely responsible for the operation and maintenance of the Infrastructure.

# Grantor's Obligations

## No Obstruction

The Grantor must not (and must not permit any other person to):

### construct any improvements of any description on the Servient Tenement without the prior written consent of the Grantee; or

### otherwise obstruct or permit any obstruction of the Servient Tenement in any way which may prevent or unreasonably restrict the Grantee’s exercise of its rights under this Easement; or

### plant any tree upon the Servient Tenement without the prior written consent of the Grantee.

## Grantor to Maintain

The Grantor must:

### Without interfering with any open or overland drainage, maintain the surface of the Servient Tenement (including any roads and footpaths) and any other improvements on the Servient Tenement (for example gates or fences) and maintain all vegetation on the Servient Tenement to ensure that at all times the Servient Tenement:

#### is in a reasonably trafficable condition having regard to the frequency and type of use by people entitled to pass over the Servient Tenement;

#### is in a safe condition and complies with all laws and lawful requirements of Government Authorities; and

#### remains fit for use by the Grantee and the Grantee's Authorised Users for the purposes contemplated by this Easement;

### maintain the support of the land comprising the Servient Tenement;

### keep the Servient Tenement in a clean and tidy condition by regular inspection, cleaning, removal of rubbish and maintenance of landscaping; and

### rectify (where necessary) any defective or damaged water supply, drainage and sewerage connections or any other equipment of the Grantor which is on or under any part of the Servient Tenement.

However, the obligations of the Grantor to maintain the Servient Tenement under this clause do not apply to anything constructed by the Grantee under clause 2.2.

## Grantee may Remedy Breach

If the Grantor breaches clause 3.1 or 3.2, the Grantee may:

### carry out works or take such other steps as are reasonably necessary to remedy the breach and enable the Grantee to fully enjoy the benefit of this Easement; and

### recover the costs of doing so from the Grantor as a debt.

# release and indemnity

## Indemnity by Grantor

The Grantor indemnifies the Grantee against all actions, claims, demands, loss, damage, costs and expenses (“Claim”):

### arising from a breach of this Easement by the Grantor; or

### in any way connected to or resulting from the Grantor or the Grantor’s permitees or invitees accessing the Grantor’s land, passing over the Servient Tenement or lawfully exercising any rights conferred by the Easement,

### except to the extent caused or contributed to by the wilful or negligent act or omission of the Grantee or the Grantee’s Authorised Users.

## Indemnity by Grantee

The Grantee indemnifies the Grantor against all actions, claims, demands, loss, damage, costs and expenses (“Claim”):

### arising from a breach of this Easement by the Grantee; or

### in any way connected to or resulting from the Grantee or the Grantee’s Authorised Users accessing the Servient Tenement or lawfully exercising any rights conferred by the Easement,

### except to the extent any such Claim is caused or contributed to by the wilful or negligent act or omission of the Grantor.

## Mutual Release

The Grantor and Grantee mutually release and discharge the other party to the full extent the law permits from any and all Claims relating to the use of the Servient Tenement by the other party and their Authorised Users save to the extent any such Claim is caused or contributed to by the wilful or negligent act or omission of the other party or their Authorised Users.

# Registration and Costs

## Easement to Run with the Land

This Easement and all of the rights and obligations contained herein runs with the land and is binding on the Grantor and any lessee or other occupier of the Grantor’s land containing the Servient Tenement.

## Registration

1. The Grantor must promptly following execution by the Grantor and Grantee and on receipt from the Grantee of registration fees and any stamp duty assessed on the Easement attend to stamping and registration of this Easement.
2. The Grantor must, at the Grantor’s cost, produce all consents, approvals and other documents required to enable registration and to provide indefeasibility of this Easement against any prior registered interests in the Servient Tenement.

## Duty and Registration Fees

### Unless agreed otherwise in writing with the Grantor, the Grantee must pay all duty, registration fees and survey costs of and incidental to the preparation, execution and registration of this Easement in the Land Titles Office.

### The Grantor will be responsible for the cost of obtaining all consents required to register the Easement.

# GST

### If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this document, the recipient will pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply, subject to receipt of a tax invoice.

### If a party is required to make any payment or reimbursement, that payment or reimbursement will be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.

### This clause is subject to any other specific agreement regarding the payment of GST on supplies.

### For the purposes of this clause, words and phrases defined in the *GST Act* have the same meaning when the context indicates otherwise.

# Nature of Obligations

### Any provision in this Easement which binds more than one person, binds all of those persons jointly and each of them severally.

### Each obligation imposed on a party by this Easement in favour of another is a separate obligation. Unless specified otherwise, the performance of one obligation is not dependent or conditional on the performance of any other obligation.

# No Adverse Construction

This Easement, and any provision of this Easement, is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

# Further Assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Easement.

# Entire Agreement

This Easement comprises the entire agreement between the parties.

# Waiver

No waiver by either party of any breach of any covenant, obligation or provision in this Easement contained or implied will operate as a waiver unless such waiver is in writing and no waiver by either party of any breach shall operate as a waiver of another breach.

# Severance

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

# No Variation

This Easement cannot be amended or varied except in writing signed by the parties.

# Notices

A notice to be given under this Easement must be in writing and is treated as being properly given if:

### it is served personally on a party; or

### it is delivered or sent by prepaid post to an address which is the principal place of business or residence of a party; or

### it is sent by email to the email address provided by a party.

# Governing Law

### This Easement is governed by and shall be construed in accordance with the laws of Queensland and applicable Statutes.