

**LEGAL SERVICES PRECEDENT DOCUMENT**

**EASEMENT IN GROSS – ACCESS**

**NOTES**

* Access on foot or with vehicles (not suitable as a public access easement)
* For access only, does not permit carrying out of works – other than for construction, maintenance and repair of access
* Requires grantor to maintain surface of easement area
* Remove this page prior to completion

VERSION 1

DATE CREATED: 24/05/2023

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

Land Title Act 1994 and Land Act 1994 *Duty Imprint* Page 1 of 5

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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) | **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)# insert “Not applicable” if easement in gross Not applicable |  |  |
| **3. Interest being burdened** Fee Simple | \***4. Interest being benefited** Not applicable# insert “Not applicable” if easement in gross |
| **5. Grantee** Given names  | Surname/Company name and numberTOWNSVILLE CITY COUNCILabn 44 741 992 072 | (include tenancy if more than one) |
| **6. Consideration** $1.00 | **7. Purpose of easement** Access |

**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.

**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
of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

 For and on behalf of **Townsville City Council**

# Definitions

## Definitions

In this easement, unless the context otherwise requires:

**Easement Area** means the land over which this easement is granted, being the servient tenement described in item 2 of the Form 9.

**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 Townsville City Council and includes its successors and assigns.

**Grantee’s Authorised Users** means the Grantee’s officers, employees, contractors, consultants and agents and any other person acting under the authority of the Grantee.

**Grantor** means the Grantor and the Grantor’s successors in title as owners of the land comprising the Easement Area from time to time.

**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*.

## 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 a reference to that person’s 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

## Right of Access

The Grantor grants to the Grantee the right to pass and repass over the surface of the Easement Area [for the purpose of gaining access to and from [specify any particular purpose for the access where applicable].

## Conditions Applying to Right

The rights granted under this easement:

### may be exercised by the Grantee and the Grantee’s Authorised Users;

### may be exercised at any time [without notice / on giving 3 days prior written notice to the Grantor, except in the case of emergency when no notice is required];

### may be exercised by persons on foot or on bicycles, wheelchairs or 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 Easement Area from time to time, to use or continue to use the Easement Area in any way which does not derogate from the rights granted under this easement.

## Grantee’s Ancillary Rights

## In exercising its rights under clause 2.1, the Grantee and the Grantee’s Authorised Users will be entitled to:

### pull down or break open any fence, sign, wall or other barrier on or adjacent to the Easement Area; and

### construct and maintain on the Easement Area access tracks, gates and ancillary works as it considers reasonably necessary.

## No interference by Grantee

The Grantee must take all reasonable steps to ensure that the Grantee's Authorised Users do not, in exercising the rights given under this easement:

### interfere with the use by the Grantor and all others permitted by the Grantor of the Easement Area or any other part of the Grantor's land; or

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

## Repair of damage

The Grantee must repair any damage caused by the Grantee or the Grantee’s Authorised Users to the Easement Area but nothing in this clause obliges the Grantee to repair damage:

### to improvements constructed or placed on the Easement Area contrary to clause 3.1; or

### to any road, path or other improvement resulting from fair wear and tear having regard to the nature of the rights granted under this easement.

# Grantor's Obligations

## No obstruction

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

### construct any improvements on the Easement Area without the prior written consent of the Grantee; or

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

## Grantor to maintain

The Grantor must:

### properly repair and maintain (which includes renew and replace) the surface of the Easement Area (including any roads and footpaths) and any other improvements on the Easement Area (for example gates or fences) and maintain all vegetation on the Easement Area to ensure that at all times the Easement Area:

#### is in a reasonable trafficable condition having regard to the frequency and type of use by people entitled to pass over the Easement Area;

#### 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 Easement Area;

### keep the Easement Area 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 Easement Area.

However, the obligations of the Grantor under this clause do not apply to anything constructed by the Grantee under clause 2.3.

## 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 (“Claims”):

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

### by any lessee or other occupier of the Easement Area or any other person having a right of access to the Easement Area; or

### in any way connected to or resulting from the Grantee or the Grantees Authorised Users accessing the Easement Area 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.

## Release

The Grantor releases the Grantee to the full extent the law permits from all Claims relating to the use of the Easement Area by the Grantee and the Grantee’s Authorised Uses 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.

# Registration and Costs

## Easement to run with the land

This easement runs with the land comprising the Easement Area and is binding on the Grantor and its successors and any lessee or other occupier of the Easement Area.

## Registration

The Grantor must promptly following execution by the Grantor attend to stamping and registration of this easement and must 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 Easement Area.

## Duty and Registration Fees

The Grantor must pay:

### [the Grantee’s legal costs for the preparation and negotiation of this Easement;]

### the duty (if any) assessed on this easement;

### the Titles Office registration fees; and

### for preparation of a survey plan of the Easement Area.

# 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.