

**LEGAL SERVICES PRECEDENT DOCUMENT**

**EASEMENT IN GROSS - SERVICES**

**NOTES**

* Easement in Gross for services including water supply, sewerage and stormwater
* Permits access with or without vehicles or machinery
* For construction, inspection and maintenance of Infrastructure
* Requires grantor to maintain surface of Servient Tenement grantee to maintain access and services constructed or placed for benefit of Grantee
* Remove this page prior to completion

VERSION 1

DATE CREATED: 25/11/2024

LAST REVIEWED 17/02/2025

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

Land Title Act 1994 and Land Act 1994 *Duty Imprint* Page 1 of 6

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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** WATER SUPPLY/SEWERAGE/ 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.

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

**Grantee’s Agents** means the Grantee’s officers, employees, contractors, engineers, surveyors, 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*.

**Infrastructure** means drains, pipes, conduits and channels and all associated manholes, manhole chamber inlets, pipelines, pumps, meters and other usual equipment and fittings, as relevant for the Purpose.

 **Purpose** means the purpose for which this easement is granted, as specified in item 7 of the Form 9.

## 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 and Ancillary Rights

## Right to use Infrastructure

The Grantor grants to the Grantee the non-exclusive right to use the Easement Area for the passage or conveyance through Infrastructure constructed on or under the surface of the Easement Area of:

### if the Purpose is Drainage (Stormwater): stormwater and other lawful discharges;

### if the Purpose is Water Supply: reticulated water; or

### if the Purpose is Sewerage: sewage.

## Grantee's Right of Access

The Grantee and the Grantee's Agents have the right at all reasonable times with or without vehicles or machinery and to go onto the Easement Area (and for that purpose may pass over the Grantor's land between the Easement Area and the nearest access point) for the purpose of:

### constructing, installing or extending Infrastructure on or under the Easement Area;

### deepening or widening any open channel or culvert on the Easement Area;

### inspecting the Infrastructure; and

### cleaning, maintaining, repairing and, where necessary, removing and replacing any Infrastructure.

## Grantee's Ancillary Rights

In exercising its rights under clause 2.1, the Grantee and the Grantee's Agents will be entitled to:

### dig into, sink shafts in, and erect scaffolding on the Easement Area, and open and break up the soil of the Easement Area, including the sub-surface and remove and dispose of soil;

### clear the Easement Area by any means or method, including cutting and removal of timber, trees and undergrowth from the Easement Area;

### demolish or break open any fencing on or adjacent to the Easement Area;

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

### prevent other persons, including the Grantor, from entering the Easement Area whilst works are being carried out or whilst vehicles, materials, tools and other things to be used in completing the works are on the Easement Area.

## Notice of Access

The Grantee must give the Grantor at least 48 hours prior notice of its intention to access the Easement Area, except in an emergency in which case no notice is required.

## Ownership of Infrastructure

All Infrastructure on the Easement Area is and remains the property of the Grantee despite any actual or apparent affixation to the Easement Area and the Grantee is solely responsible for the operation and maintenance of the Infrastructure.

# Grantee's Obligations

## Grantee to minimise damage

The Grantee must take all reasonable steps to ensure that the Grantee’s Agents, in exercising the rights given under this easement cause as little damage as possible to the Easement Area and the Grantor’s land.

## Grantee to reinstate and repair

The Grantee must:

### reinstate any paved surface, gate or fence which the Grantee damages or removes in accordance with clause 2.3; and

### repair any damage to any building, structure or other improvement or any property of the Grantor on or about the Easement Area caused by the negligent or wilful act or omission of the Grantee or the Grantee’s Agents whilst exercising rights under this easement.

However, nothing in this clause 3.2 obliges the Grantee to:

### reinstate or repair any improvement constructed on the Easement Area in breach of clause 4.2;

### replace any vegetation which is damaged, disturbed or removed from the Easement Area; or

### reinstate the surface of the Easement Area to the condition it was in prior to the Grantee accessing the Easement Area provided the Easement Area is left in a safe condition.

## Indemnity by Grantee

The Grantee indemnifies the Grantor against all actions, claims, demands, loss, damage, costs and expenses arising from:

### a breach of this easement by the Grantee; or

### any loss, damage or injury caused by the negligence or wilful act or omission of the Grantee or the Grantee's Agents whilst exercising its rights under this easement.

# Grantor's Obligations

## No obstruction

The Grantor must not:

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

### take any action likely to jeopardise or prejudicially affect the safety or reliable working of the Infrastructure.

## No Structures on Easement Area

Without limiting clause 4.1, the Grantor must not, at any time, without the written permission of the Grantee:

### erect any building or structures (other than fences) on the Easement Area;

### construct any pavement, path, driveways, gardens or landscaping involving concrete, bitumen, brick or other permanent materials on the Easement Area;

### remove or stockpile, or permit the removal or stockpiling of any soil, sand, gravel, or other substance or material on the Easement Area, or

### construct any dam, dam walls or other earthworks on the Easement Area.

## Removal of Unauthorised Structures

If the Grantor fails to comply with clause 4.2, the Grantee may, in addition to any other remedies, and after having given the Grantor reasonable notice of its intention:

### enter the Easement Area and remove or demolish the relevant improvements;

### dispose of the improvements or any resultant demolition materials in such manner as it sees fit without being liable to account to the Grantor; and

### recover, in any Court of competent jurisdiction, all costs incurred in taking that action less any moneys actually received by the Grantor as a result of the disposal.

## Indemnity by Grantor

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

### arising from any interference by the Grantee with the Infrastructure on the Easement Area;

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

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

### in any way connected to or resulting from the Grantee or the Grantee’s Agent 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 Agents.

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

# 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.