

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED
AND OF RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO
SECTION 88B, CONVEYANCING ACT, 1919**

Lengths are in metres

(Sheet 1 of 14 Sheets)

Plan of Subdivision of Lot 9 in DP1205673

Plan:

DP

Full name and address of proprietor of the land:

Orica Limited ACN 004 145 868

Level 3, 1 Nicholson Street, East Melbourne, Victoria 3002

Part 1 – Creation

Number of item shown in the intention panel on the plan:	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan:	Burdened Lot(s) or parcel(s):	Benefited Lot(s), road(s), bodies or Prescribed Authorities:
1	Easement for access variable width [C]	Lot 1	Lot 2
2	Easement for access variable width [D] (limited in stratum)	Lot 1	Lot 2
3	Easement for access 5, 8.5, 10 & variable width [P]	Lot 1	Lot 2

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(Sheet 2 of 14 Sheets)

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Number of item shown in the intention panel on the plan:	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan:	Burdened Lot(s) or parcel(s):	Benefited Lot(s), road(s), bodies or Prescribed Authorities:
4	Easement for access 10 wide [L] (limited in stratum minimum 2.5 clearance)	Lot 1	Lot 2

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Part 1A – Release

Number of item shown in the intention panel on the plan:	Identity of easement or profit a prendre to be released and referred to in the plan:	Burdened Lot(s) or parcel(s):	Benefited Lot(s), road(s), bodies or Prescribed Authorities:

Part 2 – Terms

1 Definitions and interpretation

1.1 Definitions

These meanings, in any form, apply unless the contrary intention appears:

- (a) **Act** means the *Conveyancing Act 1919* (NSW).
- (b) **Authorised User** means every other person authorised by the Grantee or the Grantor, as applicable, for the purposes of an easement, positive covenant and restriction on use created by this instrument. Subject to the terms of an easement, positive covenant and restriction on use, an Authorised User includes, without limitation the employees, agents, contractors, licensees and invitees of the Grantee or Grantor or the EPA, as applicable and, in the case of the Grantor only, includes the Grantor's tenants and any subtenants.
- (c) **Authority** means a government or any governmental, semi-governmental, administrative, fiscal or judicial department or entity, commission, statutory or other authority, tribunal, agency or entity or the local council or a Minister of the Crown having jurisdiction over any Lot from time to time.

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- (d) **Easement Site** means the site of that easement as identified on the Plan.
- (e) **Engineer's Specification** means the specifications contained in Schedule 1.
- (f) **Environmental Law** means any law, whether statute or common law, concerning environmental matters, and includes but is not limited to law concerning land use, development, pollution, Contamination, waste disposal, toxic and hazardous substances, conservation of natural or cultural resources and resource allocation including any law relating to exploration for, or development or exploitation of, any natural resource and includes the *Environmental Planning and Assessment Act 1979* (NSW), the *Contaminated Land Management Act 1997* (NSW) and the *Protection of the Environment Operations Act 1997* (NSW).
- (g) **EPA** means the New South Wales Environment Protection Authority.
- (h) **Grantee** means the registered proprietor or mortgagee in possession of the Lot Benefited.
- (i) **Grantor** means the registered proprietor or mortgagee in possession of a Lot Burdened.
- (j) **Lot** means a Lot as shown in the Plan.
- (k) **Lot Benefited** means a Lot benefited by an easement, positive covenant or restriction on use in this instrument.
- (l) **Lot Burdened** means a Lot burdened by an easement, positive covenant or restriction on use in this instrument.
- (m) **Plan** means the plan of subdivision to which this instrument relates.

1.2 References to certain terms

Unless a contrary intention appears, a reference in this instrument to:

- (a) **(reference to any thing)** a reference to any thing is a reference to the whole or each part of it;
- (b) **(reference to statute)** a law, ordinance or code includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacement of them;
- (c) **(singular includes plural)** the singular includes the plural and vice versa; and
- (d) **(meaning not limited)** the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

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1.3 Headings

Headings do not affect the interpretation of this instrument.

1.4 Positive covenants and maintenance requirements

A requirement in an easement, positive covenant or restriction on use in this instrument which requires a Grantee or Grantor to maintain or repair an Easement Site or a Lot Burdened or anything in an Easement Site or a Lot Burdened is a positive covenant according to section 88BA of the Act.

2 General provisions

2.1 Application of this clause

This clause applies to each easement, positive covenant and restriction on use in this instrument, except where the contrary intention is expressed.

2.2 Covenants and agreements

The easements, positive covenants and restrictions on use, including in this clause 2 and in each of the easements, positive covenants and restrictions on use in this instrument, are covenants and agreements between:

- (a) each Grantee for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefited or any part of it with which the right is capable of enjoyment; and
- (b) each Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment,

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easements, positive covenants and restrictions on use.

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3 Complying with this instrument

3.1 Obligations of Grantees and Grantors

Each Grantee and Grantor must, as appropriate, comply with the terms of the easements, positive covenants and restrictions on use in this instrument.

3.2 Obligations for Authorised Users

For each easement, positive covenant and restriction on use in this instrument, the Grantee must procure that its Authorised Users comply with the terms of this instrument when they exercise their rights or comply with their obligations under this instrument.

3.3 Grantee's acknowledgement

The Grantee acknowledges and agrees that the Grantor may erect signage, structures or other improvements on the Lot Burdened at any time, subject to the access and related rights granted under this instrument.

4 Terms of easement for access variable width [C] numbered 1 in the Plan

[Drafting note only: Easement "C" Under the General Deck]

4.1 Grant of easement

The Grantor grants to the Grantee and its Authorised Users full and free right and liberty to enter upon the Easement Site with or without vehicles, machines, equipment, implements or tools, for the purpose of:

- (a) inspecting, testing, measuring, surveying and evaluating the land within the Easement Site;
- (b) performing or causing to be performed environmental testing and remediation that may require the installation of monitoring wells, groundwater wells (including for the purposes of recirculation, extraction and reinjection systems), taking groundwater samples, soil samples, excavation and other minor earthwork activities;

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- (c) complying with its obligations under any environmental agreements which apply or relate to the Lot Burdened;
- (d) complying with any obligations which may be imposed on it under any Environmental Law; and
- (e) complying with any obligations which may be imposed on it by the EPA or any other Authority.

4.2 Obligations on Grantee

The Grantee must:

- (a) cause as little inconvenience as is reasonably possible to the Grantor and its Authorised Users;
- (b) not unreasonably restrict, impede or otherwise interfere with access to or use of the Easement Site by the Grantor and its Authorised Users; and
- (c) comply with the reasonable directions of the Grantor or its nominee while on the Easement Site.

4.3 Right to install and leave equipment

The Grantor acknowledges and agrees that the Grantee may install and leave equipment on the Easement Site for the purposes of the Grantee exercising its rights under this clause 4.

4.4 Obligations on Grantor

The Grantor must:

- (a) carry out earthworks on the Easement Site and prepare the surface in accordance with the Engineer's Specification at Schedule 1;
- (b) maintain the surface of the Easement Site in accordance with the Engineer's Specification and promptly make good any damage caused to the surface of the Easement Site (except to the extent caused or contributed to by the act, omission or negligence of the Grantee or its Authorised Users);
- (c) maintain a clear area above to any structure or service of R.L of 5.15 in the Easement Site and in any event ensure a minimum clearance of 2 meters from the floor of the Easement Site to the underside of any structure or service; and
- (d) if the Grantor or its Authorised Users intend to carry out any excavation to the surface of the Easement Site then the Grantor's consent must be obtained

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before any such excavation work is completed and the Grantor may grant that consent subject to conditions.

5 Terms of easement for access variable width [D] (limited in stratum) numbered 2 in the Plan

[Drafting note only: Easement "D" Turning Circle]

5.1 Grant of easement

The Grantor grants to the Grantee and its Authorised Users full and free right and liberty to enter upon the Easement Site with or without vehicles, machines, equipment, implements or tools, for the purpose of:

- (a) turning vehicles;
- (b) complying with its obligations under any environmental agreements which apply or relate to the Lot Burdened;
- (c) complying with any obligations which may be imposed on it under any Environmental Law; and
- (d) complying with any obligations which may be imposed on it by the EPA or any other Authority.

5.2 Obligations on Grantee

The Grantee must:

- (a) cause as little inconvenience as is reasonably possible to the Grantor and its Authorised Users;
- (b) not unreasonably restrict, impede or otherwise interfere with access to or use of the Easement Site by the Grantor and its Authorised Users; and
- (c) comply with the reasonable directions of the Grantor or its nominee while on the Easement Site.

5.3 Obligations on Grantor

The Grantor must:

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- (a) carry out earthworks on the Easement Site and prepare the surface in accordance with the Engineer's Specification at Schedule 1;
- (b) maintain the surface of the Easement Site in accordance with the Engineer's Specification and promptly make good any damage caused to the surface of the Easement Site (except to the extent caused or contributed to by the act, omission or negligence of the Grantee or its Authorised Users);
- (c) maintain a clear area above to any structure or service of R.L of 5.65 in the Easement Site and in any event ensure a minimum clearance of 2.5 meters from the floor of the Easement Site to the underside of any structure or Service in order that the Grantee can pass and repass, in a forward and reverse motion with a vehicle over the Easement Site; and
- (d) if the Grantor or its Authorised Users intend to carry out any excavation to the surface of the Easement Site then the Grantor's consent must be obtained before any such excavation work is completed and the Grantor may grant that consent subject to conditions.

6 Terms of easement for access 5, 8.5, 10 & variable width [P] numbered 3 in the Plan

[Drafting note only: Easement "P" around the Edge of the Deck]

6.1 Grant of easement

The Grantor grants to the Grantee and its Authorised Users full and free right and liberty to enter upon the Easement Site with or without vehicles, machines, equipment, implements or tools, for the purpose of:

- (a) inspecting, testing, measuring, surveying and evaluating the land within the Easement Site;
- (b) performing or causing to be performed environmental testing and remediation that may require the installation of monitoring wells, groundwater wells (including for the purposes of recirculation, extraction and reinjection systems), taking groundwater samples, soil samples, excavation and other minor earthwork activities;
- (c) complying with its obligations under any environmental agreements which apply or relate to the Lot Burdened;

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- (d) complying with any obligations which may be imposed on it under any Environmental Law; and
- (e) complying with any obligations which may be imposed on it by the EPA or any other Authority.

6.2 Obligations on Grantee

The Grantee must:

- (a) cause as little inconvenience as possible to the Grantor and its Authorised Users;
- (b) not unreasonably restrict, impede or otherwise interfere with access to or use of the Easement Site by the Grantor and its Authorised Users;
- (c) not damage any improvements or property on the Lot Burdened and must promptly make good any such damage to the reasonable satisfaction of the Grantor;
- (d) comply with all reasonable requirements and directions notified to it by the Grantor in relation to the carrying out of any works on the Easement Site; and
- (e) ensure that all work is completed properly and in a workmanlike manner.

6.3 Obligations on Grantor

The Grantor must:

- (a) carry out any earthworks on the Easement Site and prepare the surface in accordance with the Engineer's Specification at Schedule 1 to allow passage for a vehicle 2.55 metres wide;
- (b) maintain the surface of the Easement Site in accordance with the Engineer's Specification and promptly make good any damage caused to the surface of the Easement Site (except to the extent caused or contributed to by the act, omission or negligence of the Grantee or its Authorised Users);
- (c) if the Grantor or its Authorised Users intend to carry out any excavation to the surface of the Easement Site then the Grantor's consent must be obtained before any such excavation work is completed and the Grantor may grant that consent subject to conditions; and
- (d) keep the Easement Site clean, clear and tidy.

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6.4 Safety

Despite anything else in this easement, the Grantee acknowledges and agrees that the Grantor may install fire stairs and pedestrian fire egress from any improvement on the Lot Burdened into the Easement Site as required to comply with any laws and regulations; however, the Grantor must ensure that any stairs are installed in a manner which does not prevent access through the Easement Site for vehicles up to 2.55 metres wide.

7 Terms of easement for access 10 wide [L] (limited in stratum minimum 2.5 clearance) numbered 4 in the Plan

[Drafting note only: Easement "L" Main Vehicle Access under Deck]

7.1 Grant of easement

The Grantor grants to the Grantee and its Authorised Users full and free right and liberty to enter upon the Easement Site with or without vehicles, machines, equipment, implements or tools, for the purpose of:

- (a) inspecting, testing, measuring, surveying and evaluating the land within the Easement Site;
- (b) performing or causing to be performed environmental testing and remediation that may require the installation of monitoring wells, groundwater wells (including for the purposes of recirculation, extraction and reinjection systems), taking groundwater samples, soil samples, excavation and other minor earthwork activities;
- (c) complying with its obligations under any environmental agreements which apply or relate to the Lot Burdened;
- (d) complying with any obligations which may be imposed on it under any Environmental Law; and
- (e) complying with any obligations which may be imposed on it by the EPA or any other Authority.

7.2 Obligations on Grantee

The Grantee must:

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- (a) cause as little inconvenience as possible to the Grantor and its Authorised Users;
- (b) not unreasonably restrict, impede or otherwise interfere with access to or use of the Easement Site by the Grantor and its Authorised Users;
- (c) not damage any improvements or property on the Lot Burdened and must promptly make good any such damage to the reasonable satisfaction of the Grantor;
- (d) comply with all reasonable requirements and directions notified to it by the Grantor in relation to the carrying out of any works on the Easement Site; and
- (e) ensure that all work is completed properly and in a workmanlike manner.

7.3 Obligations on Grantor

The Grantor must:

- (a) carry out earthworks on the Easement Site and prepare the surface in accordance with the Engineer's Specification at Schedule 1 to allow passage for a vehicle 2.55 metres wide;
- (b) maintain the surface of the Easement Site in accordance with the Engineer's Specification and promptly make good any damage caused to the surface of the Easement Site (except to the extent caused or contributed to by the act, omission or negligence of the Grantee or its Authorised Users);
- (c) maintain a clear area above to any structure or service of R.L of 5.65 in the Easement Site and in any event ensure a minimum clearance of 2.5 meters from the floor of the Easement Site to the underside of any structure or service in order that the Grantee can pass and repass, in a forward and reverse motion with a vehicle over the Easement Site; and
- (d) if the Grantor or its Authorised Users intend to carry out any excavation to the surface of the Easement Site then the Grantor's consent must be obtained before any such excavation work is completed and the Grantor may grant that consent subject to conditions.

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Schedule 1

Engineer's Specification

DRAFT

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED
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Registered Proprietor

Signed sealed and delivered for
Orica Limited ACN 004 145 868

by its attorney under power of attorney
dated _____ registered book
_____ no. _____

in the presence of

sign here ►

Attorney

sign here ►

Witness

print name

print name

print
address

By executing this contract the attorney
states that the attorney received no notice
of revocation of the power of attorney