

**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*.**

(Sheet 1 of 6 sheets)

**Plan:** Plan of easements affecting Lot 19 DP803159, Lot 20 DP803159, Lot 21 DP803159, Lot 22 DP803159 and Lot 5 DP 1209992

**Full name and address of the owner of the land:** Transport for NSW ABN 18 804 239 602  
33 James Craig Road  
ROZELLE NSW 2039

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**Part 1 (Creation)**

Number of item shown in the intention panel on the plan	Identity of easement, profit à 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 public access (A) (limited in stratum)	Lot 19 DP803159 Lot 20 DP803159 Lot 21 DP803159 Lot 22 DP803159 Lot 5 DP 1209992	Transport for NSW ABN 18 804 239 602

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## **Part 2 (Terms)**

### **1. Definitions and interpretation**

#### **1.1 Definitions**

In this Instrument:

**Authority** means any:

- (a) government, government department, government agency or government authority;
- (b) governmental, semi-governmental, municipal, judicial, quasi-judicial, administrative or fiscal entity or person carrying out any statutory authority or function; or
- (c) other entity or person (whether autonomous or not) having powers or jurisdiction under any statute, regulation, ordinance, by-law, order or proclamation, or the common law.

**Authority Benefited** means the Authority having the benefit of an Easement under this Instrument.

**Authorised User** means any person authorised by the Grantee and includes:

- (a) if the Grantee is or becomes a strata scheme, each registered proprietor of a lot in that strata scheme, and any occupier or lessee of that lot as authorised by the owners corporation;
- (b) any occupier, contractor, agent, licensee, employee, tenant or invitee of the Lot Benefited as authorised by the Grantee; and
- (c) if the Grantee is an Authority Benefited, the officers, servants, agents and workmen of the Authority Benefited and any other person authorised by the Authority Benefited to exercise its rights or comply with its obligations under this Instrument.

**Easement** includes any easement, covenant, positive covenant or restriction on use created in this Instrument.

**Easement Site**, in relation to an Easement, means:

- (a) the site of the Easement identified in the Plan; and
- (b) all items within the site of an Easement identified on the Plan which are the subject of an Easement.

**Grantee** means:

- (a) the registered proprietor or mortgagee in possession of a Lot Benefited; and

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- (b) if a strata scheme exists for a Lot Benefited, the owners corporation for that strata scheme for the common property of the Lot Benefited.

**Grantor** means:

- (a) the registered proprietor or mortgagee in possession of a Lot Burdened; and
- (b) if a strata scheme exists for a Lot Burdened, the owners corporation for that strata scheme for the common property of the Lot Burdened.

**Instrument** means this s 88B instrument.

**Lot Benefited** means the whole or any part of a lot having the benefit of an Easement.

**Lot Burdened** means the whole or any part of a lot having the burden of an Easement.

**Plan** means the plan to which this Instrument relates.

## **1.2 Words and headings**

In this Instrument, unless expressed to the contrary:

- 1.2.1 words denoting the singular include the plural and vice versa;
- 1.2.2 the word 'includes' in any form is not a word of limitation;
- 1.2.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 1.2.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Instrument; and
- 1.2.5 no rule of construction applies to the disadvantage of the party preparing this Instrument on the basis that it prepared or put forward this Instrument or any part of it.

## **1.3 Specific references**

In this Instrument, unless expressed to the contrary, a reference to:

- 1.3.1 a gender includes all other genders;
- 1.3.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 1.3.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;

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- 1.3.4 writing includes writing in digital form;
- 1.3.5 'this Instrument' is to this Instrument as amended from time to time;
- 1.3.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 1.3.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Instrument;
- 1.3.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 1.3.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 1.3.10 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 1.3.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

**2. Grantee and Grantor**

- 2.1 Each Easement is a covenant and agreement between:
  - 2.1.1 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
  - 2.1.2 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.
- 2.2 The parties' intention is for the benefit and burden of the covenant and agreement in each Easement to be annexed to, and to pass with, the benefit and burden of the Easement.
- 2.3 Each Grantor and Grantee:
  - 2.3.1 is bound by, and must comply with, the terms of each Easement; and
  - 2.3.2 must use reasonable endeavours to ensure its Authorised Users comply with the terms of each Easement.

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**3. Terms of the easement for public access firstly referred to in the Plan**

- 3.1 Subject to the conditions in this easement, the Grantor grants to the Grantee, its Authorised Users and members of the public the right to pass and repass over the Easement Site at all times, for all lawful purposes and:
- 3.1.1 on foot;
  - 3.1.2 with wheel chairs or other accessibility aids;
  - 3.1.3 on bicycles; or
  - 3.1.4 on skateboards, non-motorised scooters and other recreational wheeled vehicles without motors.
- 3.2 The Grantor may make reasonable rules about the use of the Easement Site by the Grantee, its Authorised Users and members of the public. The rules must not be inconsistent with the terms of this easement and to the extent of any inconsistency, the terms of this easement prevail.
- 3.3 The Grantee and its Authorised Users must comply with rules made by the Grantor in accordance with clause 5.2 when they exercise their rights and perform their obligation under this easement.
- 3.4 The Grantee and its Authorised Users must not:
- 3.4.1 place goods, or signage (other than with the Grantor's prior consent) in the Easement Site;
  - 3.4.2 park or stand any motor vehicle, trolley or any other item in the Easement Site; or
  - 3.4.3 otherwise obstruct or impede the use and enjoyment of the Easement Site by members of the public for the purposes in clause 5.1.

**Name of Authority Empowered to Release or Vary or Modify this Easement**

Transport for New South Wales

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Executed by the parties and certified correct for the purposes of the *Real Property Act 1900* (NSW).

**Executed** for Transport for New South Wales by its delegate  
in the presence of:

.....  
Signature of delegate

.....  
Name

.....  
Position

I certify I am an eligible witness and that the delegate of Transport for New South Wales signed this dealing in my presence:

.....  
Signature of witness

[See note \* below]

.....  
Name of witness

.....  
Address of witness