

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.

Plan: Plan of Subdivision of Lot 2121 DP1296584 covered by Subdivision Certificate No.

Full name and address of the owner of the land: BD NSW (MR) PROJECT O007 Pty Ltd
Level 7, 100 Edward Street
BRISBANE QLD 4000 and

(Sheet 1 of 12 Sheets)

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 lots(s), road(s), bodies or Prescribed Authorities:
1.	Positive Covenant	2133-2135 incl. & 2152-2168 incl.	Hawkesbury Council
2.	Restriction on the Use of Land	each lot except 2169	every other lot except 2169
3.	Positive Covenant	2131-2168 incl.	Hawkesbury Council
4.	Positive Covenant	2131-2168 incl.	Hawkesbury Council
5.	Restriction on the Use of Land	2131-2168 incl	Hawkesbury Council
6.	Easement to Drain Water 1.7 wide (E2)	2132 2133 2134 2152 2153 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167	2133, 2134 & 2135 2134 & 2135 2135 2155-2168 incl. 2154 2156-2168 incl. 2157-2168 incl. 2158-2168 incl. 2159-2168 incl 2160-2168 incl. 2161-2168 incl. 2162-2168 incl. 2163-2168 incl. 2164-2168 incl. 2165-2168 incl. 2166-2168 incl. 2167 & 2168 2168

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BD NSW (MR) PROJECT

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Authorised Person
Hawkesbury Council

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Plan: Plan of Subdivision of Lot 2121 DP1296584
covered by Subdivision Certificate No.

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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 lots(s), road(s), bodies or Prescribed Authorities:
7.	Easement for retaining wall support 1.5 wide (E6)	2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2152	2168 2166 & 2167 2165 & 2166 2164 & 2165 2163 & 2164 2162 & 2163 2161 & 2162 2160 & 2161 2159 & 2160 2158 & 2159 2157 & 2158 2156 & 2157 2151 & 2155 2151 2153 & 2154
8.	Restriction on the Use of Land	2131-2168 incl	Hawkesbury Council
9.	Restriction on the Use of Land	2131-2168 incl	Hawkesbury Council

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Part 2 (Terms)

1. Terms of Positive Covenant numbered one in the abovementioned plan

The owners of the lots burdened covenant with Hawkesbury Council (**Council**) to maintain and repair the retaining wall on the burdened lots in accordance with the following terms and conditions:

- (a) each owner of a lot burdened will, at their cost, maintain and repair and keep the retaining wall as the same material, dimensions and levels, which existed at the time of registration, as well as, maintained and repaired, so that the retaining wall functions in a safe and effective manner as determined by Council;
- (b) for the purpose of ensuring compliance with this covenant, Council may by its servants or agents at any reasonable time and upon giving an owner of a burdened lot not less than 2 days' notice (but at any time without notice in the case of an emergency), enter the land and view the state of construction, maintenance or repair of the retaining wall on the burdened lot and any works on the burdened lot;
- (c) by written notice Council may require each owner of a burdened lot to attend to any matter or carry out any work within such time as Council may require to ensure the proper and efficient performance of the retaining wall on that owner's burdened lot;
- (d) Section 88F(2)(a) of the Act will apply to any works performed under clause 1(c);
- (e) pursuant to section 88F(3) of the Act, Council has the following additional powers:
 - (i) in the event that an owner of a burdened lot fails to comply with the terms of any written notice issued by Council as set out in (c) above, Council or its authorised agents may enter that burdened lot with all necessary equipment and carry out any work which Council in its discretion considers reasonable;
 - (ii) Council may recover from each owner of a burdened lot:

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Part 2 (Terms)

1. any expense reasonably incurred by Council in exercising its powers under clause 1(e)(i) in respect of that owner's lot. For the purposes of this clause 1(e)(ii) 1 such expense will include, without limitation:
 - i. reasonable wages for Council's employees engaged in effecting, supervising and administering the works; and
 - ii. any costs reasonably incurred by Council in connection with the works;
2. legal costs on an indemnity basis for issuing any notice and for recovering any cost or expense (including any cost associated with registering a covenant charge on the relevant burdened lot pursuant to Section 88F of the Act or providing any certificate required pursuant to Section 88G of the Act or obtaining any injunction pursuant to Section 88H of the Act.

(f) This covenant shall bind all persons who claim under the owners of the lots burdened as stipulated in Section 88E(5) of the Act.

(g) For the purposes of this positive covenant "**the Act**" means the *Conveyancing Act 1919 (NSW)* (as amended from time to time).

2. Terms of Restriction on the Use of Land numbered two in the abovementioned plan.

2.1 No building shall be erected or permitted to remain erected on each lot burdened without the prior written consent of the Developer to the plans and specifications for the building which consent shall not be withheld if:

2.1.1 The plans and specifications have attached to it a report from a registered surveyor, architect, building designer or licensed builder certifying that on completion in accordance with the plans and specifications, the proposed building will comply with the Hawkesbury Development Control Plan ("DCP"), and the Redbank Design and Landscape Guidelines; and

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Part 2 (Terms)

2.1.2 the Developer in its absolute discretion considers that the plans substantially comply with the DCP and the Redbank Design and Landscape Guidelines.

2.2 Alterations

No alterations or additions may be made to any lot or any change to any building erected on any lot altering its colour, the materials used in its construction or the façade which does not comply with the requirements of the DCP and the Design and Landscape Guidelines. Nothing in this restriction shall prevent any work in the nature of repair or refurbishing that is consistent with the original construction.

2.3 Display Homes

No building shall be erected on a burdened lot or permitted to remain on a burdened lot which is used or intended to be used as a Display Home, other than by the Developer, or with the approval of the Developer (which approval will be given or withheld in the Developer's absolute discretion.)

2.4 Dual Occupancy

The owner of the Burdened Lot covenants that no Development Consent or Construction Certificate (as those terms are defined in the Act) or other approval or modification under the Act, may be applied for in respect of Development (including but not limited to subdivision or use) of a Burdened Lot, which permits Dual Occupancy or a Semi-detached dwelling.

2.5 Centre-based Child Care

The owner of the burdened lot covenants:

- (a) that no Development Consent or Construction Certificate (as those terms are defined in the Act), or other approval or modification under the Act, may be applied for in respect of Development (including but not limited to use) of a Burdened Lot, which permits a Centre-based Child Care Facility, other than by BD NSW, or with the approval of BD NSW (which approval will be given or withheld in the BD NSW's absolute discretion); and

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(b) that it will not operate or use the Burdened lot or permit the Burdened Lot to be operated or used, as a Centre-based Child Care Facility.

2.6 Definitions:

2.6.1 "**BD NSW**" means BD NSW (MR) Project O007 Pty Ltd (ACN 123 888 773).

2.6.2 "**Developer**" means BD NSW and its successors in title to the Estate to which BD NSW assigns the benefit of this restrictive covenant, provided the successor in title has notified the other proprietors in the Estate that it is the "Developer" for the purposes of this Restriction of

2.6.3 "**Display Home**" means a structure, usually a house, which is used to market or sell houses of the same or a similar type and which is intended to show what living space and features of houses are available to be built in the Estate or elsewhere.

2.6.4 "**Estate**" means all of the land comprised in the estate known as "Redbank" being the land more particularly described in Certificate of Title 74/1187236, as it may be subdivided from time to time.

2.6.5 "**Redbank Design and Landscape Guidelines**" shall mean the Redbank Design and Landscape Guidelines issued under the name of 'Redbank North Richmond'.

2.6.6 "**Act**" means the Environmental Planning and Assessment Act 1979 (NSW). Capitalised words and expressions used in this instrument take their meaning from the Act and applicable environmental planning instruments and other statutory instruments.

2.7 This Restriction on Use was required as a condition of Hawkesbury Council development consent Development Application number DA0092/22

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3. Terms of Positive Covenant numbered three in the abovementioned plan.

Any dwelling constructed on the lot(s) hereby burdened must have a minimum of 50% of the roof area drained to a rainwater tank(s). The rainwater tanks are to have a minimum capacity of 3000 litres and be plumbed for at least one domestic internal use (toilet flushing and/or laundry use). Any rainwater tank overflows, roof and hardstand areas of future development on the lot(s) burdened must be connected to a suitable onsite storm water disposal/infiltration system.

4. Terms of Positive Covenant numbered four in the abovementioned plan.

The owner of the lot burdened must manage the entire lot burdened as Inner Protection Areas (IPA) as outlined within Appendix 4 of "Planning for Bush Fire Protection 2019" and the NSW Rural Fire Service's document "Standards for Asset Protection Zones", as it may be varied, added to or replaced from time to time.

5. Terms of Restriction on the Use of Land numbered five in the abovementioned plan.

The owner of the lot burdened may not subdivide the lot burdened despite a smaller lot size being permitted by the site specific provisions of the Development Control Plan.

6. Terms of Easement for Retaining Wall Support 1.5 wide (E6) numbered seven in the abovementioned plan

6.1 The owner of the lot burdened must not:

- 6.1.1 interfere with the retaining wall or the support it offers, or
- 6.1.2 use the site of this easement, or any other part of the lot burdened, or any other land, in a way which may detract from the stability of or the support provided by the retaining wall.

6.2 If the owner of the lot burdened does or allows anything to be done which damages the retaining wall or impairs its effectiveness or fails to do something which results in damage to the retaining wall or the impairment of its effectiveness, the owner of the lot benefited may serve a notice on the owner of the lot burdened requiring the damage to be repaired or the impairment removed within 14 days.

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Part 2 (Terms)

6.3 If the owner of the lot burdened does not comply with the notice set out in clause 9.2 within 14 days, the owner of the lot benefited may:

- 6.3.1 enter the lot burdened and repair the damage or remove the impairment, and
- 6.3.2 recover its reasonable costs from the owner of the lot burdened.

6.4 In exercising those powers, the owner of the lot benefited must:

- 6.4.1 ensure all work is done properly, and
- 6.4.2 cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
- 6.4.3 cause as little damage as is practicable to the lot burdened and any improvement on it, and
- 6.4.4 restore the lot burdened as nearly as is practicable to its former condition, and
- 6.4.5 make good any collateral damage.

7. Terms of Restriction on the Use of Land numbered eight in the abovementioned plan.

The owner of the burdened lot may not subdivide the burdened lot for the purposes of a Dual Occupancy or semi-detached dwelling, despite a smaller lot size being permitted by the site specific provisions of the Development Control Plan and/or being permitted by the relevant Local Environmental Plan.

8. Terms of Restriction on the Use of Land numbered nine in the abovementioned plan.

The owner of the burdened lot may not use the burdened lot for the purposes of a Centre-based Child Care facility, despite that use being permitted by the specific zoning as defined by the relevant Local Environmental Plan.

Name of Authority empowered to release, vary or modify terms of Easements, Positive Covenants and Restrictions numbered one, three, four, five, eight and nine in the abovementioned plan

Hawkesbury Council.

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Part 2 (Terms)

Name of persons whose consent is required to release, vary or modify Restriction numbered two in the abovementioned plan

The Developer until the later of:

- (a) the date being [five years] from the date of registration of the plan to which this instrument relates; and
- (b) the date on which the Developer ceases to own a lot within the Estate to which this instrument relates, and thereafter Hawkesbury Council.

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Signed on behalf of BD NSW (MR) PROJECT
O007 Pty. Ltd. ACN 123 888 773
By its duly authorised Attorney
being duly authorised in this behalf (who by
their execution warrant that their appointment
has not been revoked) in the presence of:-

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Signature of witness

.....
Name of witness

.....
Address of witness

.....
Signature of Attorney

.....
Name of Attorney

Power of Attorney
dated:
Book No.

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*Authorised Person
Hawkesbury Council*

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National Australia Bank Limited ACN 004 044 937

Executed by its Level Attorney

Under Power of Attorney No

this Day of

.....
(By executing this instrument the Attorney states that the Attorney has received no notice of the revocation of the Power of Attorney)

.....
(Signature of Witness)

.....
(Name of Witness)

.....
(Address of Witness)

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Authorised Person
BD NSW (MR) PROJECT

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Hawkesbury Council by its authorised delegate
pursuant to s.377 Local Govt. Act, 1993

.....
Signature of delegate

.....
Name of delegate

I certify that I am an eligible witness and that the delegate signed in my presence.

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Signature of Witness

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Name of Witness

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Address of Witness