

Title Reference:

This is the schedule referred to in the Form 9 Easement dated \_\_\_\_\_, 2018.

## 1. Definitions and interpretation

### 1.1 Definitions

In this easement:

**Approval** means an approval under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, the *Sustainable Planning Act 2009* or the *Planning Act 2016*.

**Authorised Persons** means tenants, employees, agents, contractors, licensees and invitees of and other persons claiming (or authorised) by, through or under, either the Grantee or the Grantor (as the case may require).

**Easement Area** means the land described as the burdened land in Item 2 of the Form 9.

**Easement Purpose** means the purpose stated in Item 7 of the Form 9.

**Grantee** means the person shown as "Grantee" in Item 5 of the Form 9 and that person's assignees and successors.

**Grantee's Rights** means the rights granted under clause 3.

**Grantor** means the person shown as "Grantor" in Item 1 of the Form 9 and each assignee or successor of that person in respect of the Easement Area.

**Grantor's Land** means the parcel or parcels of the Grantor's land that includes the Easement Area.

**Improvements** means everything, including vegetation, on the Easement Area.

**Relevant Works** means the Sewerage Works or the Water Supply Works or, if the context permits, both.

**Sewerage Works** means all pipes for carrying, treating or disposing of sewage and other wastewater, all ancillary plant, equipment, fittings and attachments (including pumps and pump stations) and works of any nature to protect or support any of them.

**Water Supply Works** means all water reticulation mains or pipes for carrying water supplied by the Grantee, all ancillary plant, equipment (including pumps and pump stations and water reservoirs), fittings and attachments, and works of any nature to protect or support any of them.

### 1.2 Interpretation

In this grant of easement:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;

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- (e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (f) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (g) if the Easement Area is defined using a horizontal plane and references to marks on the surface of land:
  - (i) a reference to a thing on, or the doing of any thing on or in respect of, land in the Easement Area includes a reference to a thing, or the doing of the thing, through, over, across or under the land;
  - (ii) a reference to land in the Easement Area includes the land's surface, sub-surface and strata above the surface;
- (h) if the Easement Area is defined using 3 dimensionally located points to identify the position, shape and dimensions of each bounding surface:
  - (i) a reference to a thing on, or the doing of any thing on or in respect of, land in the Easement Area includes a reference to a thing, or the doing of the thing, in or through the land;
  - (ii) if the Easement Area includes a surface of land, a reference to land in the Easement Area includes that surface, and any sub-surface of, and strata above that, land (in the Easement Area);
- (i) "includes" in any form is not a word of limitation.

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**2. Public utility easement**

This easement is a public utility easement for:

- (a) the Easement Purpose;
- (b) undertaking or engaging in any service, facility or activity that directly or indirectly refers to or is related to the Easement Purpose and which the Grantee has authority to undertake or engage in under a law; and
- (c) the exercise by the Grantee of the other rights given to the Grantee by this easement.

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**3. Grantee's Rights**

The Grantor grants the Grantee the right for the Grantee and its Authorised Persons:

- (a) to transmit, or permit to be transmitted:
  - (i) sewage and other wastewater in and through Sewerage Works; and
  - (ii) water in and through Water Supply Works,on the Easement Area;
- (b) to construct, place, lay, deepen, widen, inspect, clean, maintain, change, add to, remove, repair, replace, relay, renew, use and manage the Relevant Works on, or inspect or survey, the Easement Area at all times and from time to time;

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- (c) to run and pass electric current, electric transmissions, electronic signals, electronic transmissions and other substances through the Easement Area (including the Relevant Works);
- (d) in order to exercise the rights in clauses 3 (a) to (c), the right to:
  - (i) enter the Easement Area, remain on it, and pass and repass on it, with or without vehicles, machinery, plant, equipment, tools and materials;
  - (ii) place on the Easement Area the machinery, plant, equipment, tools and materials required to exercise those rights and leave them there;
  - (iii) dig into, sink shafts in, and erect scaffolding on and open and break up the Easement Area;
  - (iv) remove and dispose of spoil created by the exercise of those rights;
  - (v) construct and maintain on the Easement Area those access tracks, gates and ancillary works that the Grantee reasonably considers necessary;
  - (vi) clear vegetation from the Easement Area by any method and burn it off;
  - (vii) cross any part of the Grantor's Land that the Grantee considers convenient or necessary to go from the Easement Area to the public road that is nearest to the Easement Area and back again;
  - (viii) remove fences or gates on the Grantor's Land; and
  - (ix) do anything else on the Easement Area that the Grantee considers reasonably necessary to exercise those rights.

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**4. Grantor's obligations**

- (a) The Grantor must:
  - (i) allow the Relevant Works to remain on the Easement Area;
  - (ii) keep the Easement Area in good order and repair and suitable for exercising the Grantee's Rights;
  - (iii) pay all rates, taxes and imposts in the nature of a tax payable in connection with the Easement Area or the Grantor's ownership of it, on time;
  - (iv) provide the Grantee with security cards and access keys to enable the Grantee and its Authorised Persons to access the Easement Area;
  - (v) not, unless it has the Grantee's written consent:
    - A. erect any structure or other thing on the Easement Area;
    - B. remove from or stockpile on the Easement Area soil, sand, gravel or any other substance or material;
    - C. install concrete, bitumen or other pavement or driveways on the Easement Area or gardens or landscaping involving concrete, brick or other permanent materials or otherwise build over the Relevant Works;
    - D. alter the ground level, or alter or disturb the existing grades of the Easement Area or change its topography;

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- E. inundate the Easement Area with water;
  - F. plant any tree or other vegetation or crop on the Easement Area;
  - G. light a fire on the Easement Area, or allow a fire to escape onto the Easement Area from the Grantor's Land (that is not part of the Easement Area);
  - H. construct any road or other earthwork on the Easement Area; or
  - I. do or cause or permit anything (including granting rights to another person) in connection with the Easement Area that could obstruct or interfere with the Relevant Works or their proper and effective use or the proper exercise of the Grantee's Rights; and
- (vi) notify the Grantee within 14 days if the Grantor receives or becomes aware of any application for, or grant of, a mining or petroleum tenement under the *Mineral Resources Act 1989*, *Petroleum Act 1923*, *Petroleum and Gas (Production and Safety) Act 2004* or any other law in respect of the Easement Area.
- (b) If the Grantor does not comply with any of its obligations under this easement (whether a positive or negative obligation) the Grantee may remedy the Grantor's breach and recover the cost of doing so from the Grantor as a debt owing to the Grantee.
- (c) The Grantor must comply with its obligations under a law relating to the Easement Area and the Relevant Works, including the *Water Supply (Safety and Reliability) Act 2008* and the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.
- (d) Where the Relevant Works are not constructed by the developer or third party at the time of registration of this easement under the Approval and the Grantee in its absolute discretion decides that the Relevant Works are not wholly comprised in the Easement Area as required by the Approval, the Grantee may issue a notice (Grantee Notice) to direct the Grantor to:
- (i) obtain a new survey plan at the Grantor's cost; and
  - (ii) surrender this easement and register a new easement on the current terms with the newly surveyed Easement Area.
- (e) If the Grantor does not comply with the Grantee's written request under clause 4(d), the Grantee may comply with the Grantor's obligations in clause 4(d) and recover from the Grantor as a debt the amount of the Grantee's loss or reasonable costs of complying with the obligations in 4(d).
- (f) The Grantor appoints the Grantee to be its attorney to surrender this Easement (as the Grantor) and sign and register the replacement easement and survey plan (as the registered owner) if the Grantor does not comply with its obligations in clause 4(d).

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**5. Property in and expenses of Relevant Works**

- (a) The Relevant Works are the Grantee's property and do not become the Grantor's property.
- (b) The Grantee is responsible for and must pay all expenses in connection with the Relevant Works.

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**6. Exercise of Grantee's Rights**

- (a) In exercising the Grantee's rights, the Grantee must, at its own cost:
  - (i) ensure all work is done in a proper and workmanlike manner;
  - (ii) comply with all relevant laws;

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- (iii) cause as little inconvenience or obstruction as practicable to the Grantor and any occupier of the Grantor's Land;
  - (iv) cause as little damage as practicable to the Grantor's Land, including the Easement Area, and any Improvements;
  - (v) if damaged by the Grantee, restore the Grantor's Land as nearly as practicable to its former condition; and
  - (vi) make good any collateral damage.
- (b) Without limiting clause 6(a), the Grantee must:
- (i) reinstate all fences and gates damaged by it in the exercise of any of the Grantee's Rights; or
  - (ii) in lieu of reinstating any such fence, install a gate the quality of materials and workmanship of which, except with the Grantor's consent, must be not less than the quality and materials of workmanship of the existing fence.
- (c) Section 85B(2) of the *Land Title Act 1994* and section 366(2) of the *Land Act 1994* are excluded from this easement.
- (d) This easement does not affect any rights or powers the Grantee may have under a statute, including the *Water Supply (Safety and Reliability) Act 2008* and the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*. The Grantee may exercise its rights and powers under a statute in respect of the Easement Area and its Relevant Works in lieu of, or without regard to, its rights and powers under this easement.

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**7. Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this easement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this easement.
- (b) A waiver or consent given by a party under this easement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this easement operates as a waiver of another breach of that term or of a breach of any other term of this easement.

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**8. Costs**

- (a) Unless stated otherwise in this easement, each party must pay its own costs and expenses in performing its obligations under this easement.
- (b) In respect of this easement, the Grantor must pay:
  - (i) the Grantee's costs and expenses in connection with negotiating, preparing and executing this easement;
  - (ii) the costs and expenses of and incidental to preparing any survey required to register it;
  - (iii) any duty payable on it; and
  - (iv) the fees for registering it and answering any requisition.

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**9. Registration**

So that this easement can be registered, the Grantor must promptly:

- (a) produce the relevant instrument of title (if any) to the Grantor's Land to the Registrar of Titles or other appropriate officer; and
- (b) obtain and produce to the Registrar of Titles or other appropriate officer any consent required from any person having any interest in that party's land.

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**10. Burden**

- (a) The burden of this easement passes with the Easement Area.
- (b) Each promise made in this easement by the Grantor binds the Grantor's successors in title and is for the benefit of the Grantee and its assignees.
- (c) Subject to clause 10(e), from the date the Grantor ceases to be the owner of the Easement Area, the Grantor is released from all obligations under this easement
- (d) Despite clause 10(c), the Grantor is not released and remains liable for breaches of obligations that occurred before the date the Grantor ceases to be the owner of the Easement Area.
- (e) The Grantor, at its own cost, must, before it sells or otherwise disposes of the Easement Area, obtain from any buyer or disponent of the Easement Area a covenant, in favour of the Grantee, by which the buyer or disponent agrees to comply with the terms (whether positive or negative) of this easement.
- (f) Clause 10(c) does not apply unless clause 10(e) is complied with.

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**11. Governing law**

The laws of Queensland govern this easement.

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**12. Severance**

If at any time a provision of this easement is or becomes illegal, invalid or unenforceable in any respect, that will not affect or impair the legality, validity or enforceability of any other provision of this easement.

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**13. Goods and Services Tax**

- (a) For the purpose of this clause unless the context otherwise requires:
  - (i) **GST Legislation** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate recapture or recoup the tax imposed by any of such Acts;
  - (ii) **Applicable GST** has the meaning ascribed to it in clause 13(b);
  - (iii) **GST** means any tax imposed by or through the GST Legislation on a supply (without regard to any input tax credit);
  - (iv) **Recipient** means the party treated by the GST Legislation as the recipient of a supply from the Supplier;

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- (v) **Representative** means a representative member of a GST group to which the relevant Supplier belongs;
  - (vi) **Supply** means any supply (within the meaning which it bears in the GST Legislation) by the Supplier under this easement;
  - (vii) **Supplier** means any party to this easement treated by the GST Legislation as making a taxable supply under or in connection with this easement;
  - (viii) where any other term is used in this clause which is defined in the GST legislation it will have the meaning which it bears in the GST Legislation.
- (b) In the case of a Supply which is a taxable supply:
- (i) the consideration payable or otherwise provided (apart from under this clause) to the Supplier (under the other provisions of this easement) will be increased by an amount equal to the Applicable GST;
  - (ii) the Applicable GST will be the GST payable on the Supply;
  - (iii) the Applicable GST will be added to the consideration payable or otherwise provided (apart from under this clause) for the Supply under the other provisions of this easement so as to form an additional part of the consideration for the Supply.
- (c) The Recipient will pay on demand to the Supplier an amount equal to any increment in consideration which is payable under this clause in respect of any Supply, and such amount will be a debt due and owing by the Recipient to the Supplier which is recoverable without setting off any refund or counter claim.
- (d) The Supplier will provide the Recipient with tax invoices and/or adjustment notes in relation to the Supply (but will not be obliged or requested to create such invoices for amounts in excess of amounts received from the Recipient) and do all things reasonably necessary to assist the Recipient to enable it to claim and obtain any input tax credit available to the Recipient in respect of the Supply.
- (e) Where the consideration for a Supply consists (in whole or in part) of the recovery by the Supplier of all or a proportion of the Supplier's costs, the amount recoverable will be reduced by the amount (or the corresponding proportion) of the input tax credits available to the Supplier in respect of such costs and then increased by any Applicable GST under clause 13(b).
- (f) In the event that liability for payment of GST in respect of a Supply under this easement is imposed upon a Representative of a Supplier this clause will nonetheless apply and the Adjustments will be calculated in all respects as if the Supplier was liable for the GST imposed on such Supply and entitled to input tax credits properly allocated to the making of that Supply.

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**14. Where the Easement Area is trust land under the Land Act 1994**

Where the Easement Area is included in trust land under the *Land Act 1994* this clause 14 will also apply:

- (a) If the trust land is a reserve, in clause 1.1 the definition of "Grantor" is replaced by the following:  
**Grantor** means the person shown as "Grantor" in Item 1 of the Form 9 and, where the context permits, any trustee of the Easement Area.
- (b) In this clause 14:  
**Minister** means the Minister administering the *Land Act 1994*;

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- (c) Despite anything else, the Grantee may not cut or remove any timber or trees from the Easement Area without first giving reasonable notice to the Grantor and obtaining all necessary approvals at law. Such notice will not be required under this clause if there is an actual or potential danger to persons or property or if there is any interference or jeopardy to the supply of the Relevant Works.
- (d) Release and Indemnity
- (i) The Grantee indemnifies and agrees to keep indemnified the Minister, the State of Queensland and the Grantor (the **Indemnified Parties**) against all actions, suits, proceedings, claims, demands, costs, losses, damages and expenses (**Claim**) arising out of or in any way connected to or resulting from the granting of this easement to the Grantee or which is connected to or resulting from the Grantee's use and occupation of the Easement Area (all of which are referred to as "the indemnified acts or omissions") save to the extent that the Claim arises as a result of any negligent act or omission of the Indemnified Parties, however, any negligent act or omission of one of the Indemnified Parties does not negate the indemnity to any of the other Indemnified Parties.
- (ii) The Grantee hereby releases and discharges the Indemnified Parties from any Claim relating to the indemnified acts or omissions which may be made against the Indemnified Parties, save to the extent that the Claim arises as a result of any negligent act or omission of the Indemnified Parties, however, any negligent act or omission of one of the Indemnified Parties does not negate the release and discharge in favour of any of the other Indemnified Parties.
- (iii) To remove doubt, the Grantee specifically agrees that the indemnity provided by the Grantee in this clause 14(d) extends to any Claim (as defined by this clause 14) arising from the use of any other area of the trust land by the Grantee.
- (e) Public Liability Insurance
- (i) The Grantee must effect a public liability insurance policy with an insurer authorised under the Insurance Act 1973 (Commonwealth) or, in any other case, to the satisfaction of the Minister, naming the Grantee as the insured covering legal liability for any loss of or damage to any property and for the injury (including death) to any person arising out of anything done or omitted on or about the Easement Area and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof subject to the terms and conditions of the insurance policy.
- Such policy must:
- A. be for an amount of not less than twenty million dollars (\$20,000,000.00) in respect of all claims arising out of a single event or such higher amounts as the Minister may reasonably require; and
- B. be effected on a "claims occurring" basis so that any claim made by the Grantee under the policy after the expiration of the period of policy cover but relating to an event occurring during the currency of the policy will be covered by the policy subject to the claim meeting the policy's other terms and conditions; and
- C. be maintained at all times during the currency of this easement, and upon receipt of any Notice of Cancellation, the Grantee must immediately effect another public liability insurance policy in accordance with the terms and conditions of this easement.
- (ii) The Grantee must forward a certificate of currency to the Grantor within 10 business days of the commencement of each respective renewal period.



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- (iii) The Grantee must, as soon as practicable, inform the Minister and the Grantor, in writing, of the occurrence of any event that the Grantee considers is likely to give rise to a claim under the policy of insurance effected and must ensure that the Minister and the Grantor are kept fully informed of subsequent actions and developments concerning the claim.
- (iv) To remove doubt, the requirements of this clause 14(e) apply to any other area of the Grantor's Land used by the Grantee.

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