

**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 1642 DP1266751 and easements over Lot 1641 DP1266751 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 4000

(Sheet 1 of 11 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	1701, 1703-1714 incl	Hawkesbury Council
2.	Restriction on the Use of Land	each lot	every other lot
3.	Positive Covenant	1701-1714 incl	Hawkesbury Council
4.	Positive Covenant	1701-1714 incl	Hawkesbury Council
5.	Restriction on the Use of Land	1701-1714 incl	Hawkesbury Council
6.	Restriction on the use of land	1701-1714 incl	Hawkesbury Council
7.	Easement for retaining wall support 1.5 wide (E7)	1641/1266751	1710-1714 incl
8.	Easement to drain water 1m wide (E11)	1641/1266751	1710
9.	Easement to drain water 1m wide (E12)	1641/1266751	1711
10.	Easement to drain water 1m wide (E13)	1641/1266751	1712
11.	Easement to drain water 1m wide (E14)	1641/1266751	1713
12.	Easement to drain water 1m wide (E15)	1641/1266751	1714
13.	Easement to drain water 3m wide (E1)	1715	Hawkesbury Council
14.	Positive Covenant (P1)	Pts. 1701-1709 & 1715 designated (P1)	Hawkesbury Council

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Authorised Person  
Hawkesbury Council

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(Sheet 2 of 11 Sheets)

## 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, existing at the time of registration, 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 day' 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 8(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;

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(Sheet 3 of 11 Sheets)

**Part 2 (Terms)**

(ii) Council may recover from each owner of a burdened lot:

1. any expense reasonably incurred by Council in exercising its powers under clause 8(e)(i) in respect of that owner’s lot. For the purposes of this clause 8(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).

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(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).

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(Sheet 4 of 11 Sheets)

## Part 2 (Terms)

### 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

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

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### 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.)

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(Sheet 5 of 11 Sheets)

## Part 2 (Terms)

### 2.4 Definitions:

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

2.4.2 "**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 Use.

2.4.3 "**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.

2.4.4 "**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.

2.4.5 "**Redbank Design and Landscape Guidelines**" shall mean the Redbank Design and Landscape Guidelines for Southern Heights Stage B (Lots 1701-1714) issued under the name of 'Redbank North Richmond'.

2.5 This Restriction on Use was required as a condition of Hawkesbury Council development consent Development Application number DA0498/18

### 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 on site storm water disposal/infiltration system.

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(Sheet 6 of 11 Sheets)

**Part 2 (Terms)**

**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 Section 4.1.3 and Appendix 5 of "Planning for Bush Fire Protection 2006" 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 Restriction on the Use of Land numbered six in the abovementioned plan.**

The owner of the lot(s) burdened must not remove or permit to be removed the fence existing within 1m of the boundary designated 'x'-y'-z' at the time of registration of the abovementioned plan, where that lot shares a common boundary with a residual lot, open space lot or public road reserve. The owner must maintain this fence to the same standard that existed at the time of registration of the abovementioned plan described as a plain, natural timber post and rail/wire fence.

**8. Terms of Easement for Retaining Wall Support 1.5 wide (E7) numbered seven in the abovementioned plan**

8.1 The owner of the lot burdened must not:

- (a) interfere with the retaining wall or the support it offers, or
- (b) 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.

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(Sheet 7 of 11 Sheets)

**Part 2 (Terms)**

- 8.2 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.
- 8.3 If the owner of the lot burdened does not comply with the notice set out in clause 8.2 within 14 days, the owner of the lot benefited may:
- (a) enter the lot burdened and repair the damage or remove the impairment, and
  - (b) recover its reasonable costs from the owner of the lot burdened.
- 8.4 In exercising those powers, the owner of the lot benefited must: (a) ensure all work is done properly, and
- (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage.

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**9. Terms of Positive Covenant (P1) numbered fourteen in the abovementioned plan.**

The owners of the Lots burdened must maintain the area designated (P1) as a landscaped vegetated zone, including the retention and maintenance of the rural style post and rail fence to the boundary of Grose Vale Road and maintenance of the vegetation at the date of registration of the plan, in accordance with the requirements of Hawkesbury Council as nominated in the DCP.

**Name of Authority empowered to release, vary or modify Easements numbered one, three, four, five, six, thirteen and fourteen in the abovementioned plan**

Hawkesbury Council.

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Authorised person BD NSW (MR) PROJECT

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(Sheet 8 of 11 Sheets)

**Name of person 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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(Sheet 9 of 11 Sheets)

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:-

.....  
Signature of witness

.....  
Signature of Attorney

.....  
Name of witness

.....  
Name of Attorney

.....  
Address of witness

Power of Attorney  
dated:  
Book                      No.

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(Sheet 10 of 11 Sheets)

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)

**DRAFT ONLY**

.....  
(Name of Witness)

.....  
(Address of Witness)

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(Sheet 11 of 11 Sheets)

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.

.....  
Signature of Witness

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Name of Witness

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Address of Witness

**DRAFT ONLY**

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Authorised person BD NSW (MR) PROJECT

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Authorised Person  
Hawkesbury Council