

**POSITIVE COVENANT
AFFECTING LAND VESTED IN
A PRESCRIBED AUTHORITY**

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New South Wales

Section 88D(3) Conveyancing Act 1919

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) TORRENS TITLE

Lots 8 - 12 (inclusive) in Deposited Plan 1136859 and Lots 4000 - 4003 (inclusive) and 4006 and 4007 in Deposited Plan 1194309	
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(B) LODGED BY

Document Collection Box 185H	Name, Address or DX, Telephone, and Customer Account Number if any Clayton Utz, Lawyers DX 370 Sydney Telephone: 9353 4000	CODE PR
	Reference: C. Eggleton (80155937) 315342151	

(C) PRESCRIBED AUTHORITY

From the date of this instrument until _____, UrbanGrowth NSW Development Corporation and from _____ onwards Council of the City of Sydney.

(D) The prescribed authority, being the registered proprietor of the abovementioned land, applies to have a recording made in the Register of a positive covenant affecting the above land the terms of which are set out in a true copy of the relevant order dated _____ annexed hereto and marked A _____ and certifies that no person or corporation has acquired an interest in the above land.

DATE

(E) I certify that I am an eligible witness and that an authorised officer of the prescribed authority signed this dealing in my presence. [See note* below].

Certified correct for the purposes of the Real Property Act 1900 by an authorised officer of the prescribed authority.

Signature of witness:

Signature:

Name of witness:

Name:

Address of witness:

Position: Refer to page 8 of

Annexure A

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Order made pursuant to Section 88D of the Conveyancing Act 1919

1. Definitions and Interpretation

1.1 Definitions

Authority means:

- (a) from the date of this instrument until the Change Date, UrbanGrowth; and
- (b) from the Change Date, Council.

Buildings means any buildings located on the Land.

Cost means any cost, charge, expense or other expenditure (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process and whether incurred by or awarded against a party) whether or not paid or due.

Council means the Council of the City of Sydney, its successors and assigns or any other body serving the same or a similar function and, where not repugnant to the context, includes the servants, agents and contractors of the Council (or the body serving the same or a similar function).

Change Date means the date which is 2 years from the date of this instrument.

Liability means any liability whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Loss means any loss whether:

- (a) arising from or in connection with any proceeding or claim or not;
- (b) liquidated or not;
- (c) present, prospective or contingent; or
- (d) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Oval means the area known as "Vice-Chancellor's Oval" and marked [] on the plan accompanying the Oval Easement.

Oval Easement means the easement granted by the Proprietor to the Authority over the Oval.

Proprietor means the owner of the lot burdened by this instrument and includes every person who is at any time entitled to an estate or interest in the lot burdened, including without limitation, any freehold or leasehold estate or interest in possession in the lot burdened.

Public Access Areas means the area the subject of the proposed easements for public access referred to in the plan accompanying the Public Access Easement and the common areas of the Buildings.

Public Access Easement means the easement granted by the Proprietor to the Authority over the Public Access Areas.

Tennis and Basketball Courts means that part of the Land on which the tennis courts and basketball courts are located and marked [] on the plan accompanying the Tennis and Basketball Court Easement.

Tennis and Basketball Court Easement means the easement granted by the Proprietor to the Authority over the Tennis and Basketball Courts.

UrbanGrowth means UrbanGrowth NSW Development Corporation its successors and assigns or any other body serving the same or a similar function and, where not repugnant to the context, includes the servants, agents and contractors of UrbanGrowth (or the body serving the same or a similar function).

1.2 Interpretation

In this instrument:

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

and unless the context indicates a contrary intention:

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

(b) "**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;

(c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(d) a reference to a document (including this instrument) is to that document as varied, novated, ratified or replaced from time to time;

(e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this instrument, and a reference to this instrument includes all schedules, exhibits, attachments and annexures to it;

(h) 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;

(i) "**includes**" in any form is not a word of limitation; and

- (j) a reference to "\$" or "dollar" is to Australian currency.

2. Run with the Land

The conditions, covenants and restrictions, including in this clause 2, in this instrument are covenants and agreements between:

- (a) the Authority for itself and its successors, assigns and transferees; and
- (b) the Proprietor 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.

3. Public Access Areas

3.1 Terms

The Proprietor:

- (a) must maintain, repair and replace the Public Access Areas in good order and condition and so that it is suitable for passive recreation and thoroughfare, including the surface of and any improvements on the site of the Public Access Easement (**Maintenance**);
- (b) must keep the Public Access Areas clean and free of rubbish and obstructions; and
- (c) is solely responsible for the cost of the Maintenance and the cleaning;
- (d) must provide suitable lighting to all parts of the Public Access Areas and must pay for all lighting costs including electricity;
- (e) must effect and maintain insurance policies which cover:
 - (i) loss or damage from any cause whatsoever to the Public Access Areas on a full reinstatement or replacement basis;
 - (ii) any liability to any party whatsoever for the death of or injury to or Loss or damage to property of any person arising out of or in the course of or caused by the exercise by any person of its rights under the Public Access Easement; and
- (f) is solely responsible for the cost of all such insurance.

3.2 Risk, release and indemnity

- (a) The Authority enters the Public Access Areas at its own risk except to the extent that any injury is caused or materially contributed to by the act or negligence of the Proprietor (or its employees or agents).
- (b) The Proprietor releases the Authority from all claims, demands and actions that may arise from any accident or damage to any property, or death or injury of any person, within the Public Access Areas except to the extent that any claim, demand or action in respect of such accident, damage, death or injury is caused or materially contributed to by the act or negligence of the Authority (or its employees or agents).

- (c) The Proprietor indemnifies the Authority from and against all Loss, Liability and Cost incurred by the Authority or for which the Authority may become liable in respect of any Loss, damage, death, or injury from any cause to the Public Access Areas or to any person within the Public Access Areas caused or materially contributed to by any act, negligence or breach of this covenant by the Proprietor (or its employees or agents).
- (d) The Authority indemnifies the Proprietor from and against all Loss, Liability and Cost incurred by the Proprietor in respect of Loss, damage, death or injury from any cause to the Public Access Areas or to any person within the Public Access Areas caused or materially contributed to by any act, negligence or breach of the Public Access Easement by the Authority.

3.3 Release etc

The Authority is the prescribed authority empowered to release, vary or modify this covenant.

4. Oval

4.1 Use as oval

The Proprietor:

- (a) must maintain, repair and replace the Oval in good order and condition and so that it is suitable for passive recreation, exercise and ball games, including the surface of and any improvements on the Oval (**Maintenance**);
- (b) must keep the Oval clean and free of rubbish and obstructions;
- (c) is solely responsible for the cost of the Maintenance and the cleaning;
- (d) must provide suitable lighting to the Oval and must pay for all lighting costs including electricity;
- (e) must effect and maintain insurance policies which cover:
 - (i) loss or damage from any cause whatsoever to the Oval on a full reinstatement or replacement basis;
 - (ii) any liability to any party whatsoever for the death of or injury to or Loss or damage to property of any person arising out of or in the course of or caused by the exercise by any person of its rights under the Oval Easement; and
- (f) is solely responsible for the cost of all such insurance.

4.2 Stormwater detention

- (a) The Proprietor is responsible to keep clear, maintain and repair the Oval as a stormwater detention basin.
- (b) The Proprietor must not prevent runoff draining to the Oval.
- (c) The Proprietor and a consulting engineer must inspect the Oval annually and provide a certification to the Authority that the Oval has been maintained as a stormwater detention basin and that any rectification works have been properly carried out.
- (d) The Authority has a right to enter upon the Lot Burdened:

- (i) with a consulting engineer to inspect the Oval and to assess its function as a stormwater detention basin; and
 - (ii) with or without work equipment at all reasonable times to carry out any necessary works to ensure that the Oval acts as a stormwater detention basin if the Proprietor has failed to do so and to recover the costs of any such works from the Proprietor.
- (e) The Proprietor indemnifies the Authority from any Loss, Cost or Liability arising from or in connection with the failure of the Oval as a stormwater detention basin.

4.3 Risk, release and indemnity

- (a) The Authority enters the Oval at its own risk except to the extent that any injury is caused or materially contributed to by the act or negligence of the Proprietor (or its employees or agents).
- (b) The Proprietor releases the Authority from all claims, demands and actions that may arise from any accident or damage to any property, or death or injury of any person, within the Oval except to the extent that any claim, demand or action in respect of such accident, damage, death or injury is caused or materially contributed to by the act or negligence of the Authority.

4.4 Release etc

The Authority is the prescribed authority empowered to release, vary or modify this easement.

5. Tennis and Basketball Courts

5.1 Terms

The Proprietor:

- (a) must manage and operate the Tennis and Basketball Court Site in substantially the same way that the Tennis and Basketball Court Site is being managed and operated as at the date of this instrument (subject to any changes approved by the Authority (which approval may with withheld in its unfettered discretion));
- (b) must maintain, repair and replace the Tennis and Basketball Court Site in good order and condition and so that it is suitable for the purpose of playing tennis and basketball and every purpose reasonably incidental to those games, including the surface of and any improvements on the Tennis and Basketball Court Site **(Maintenance)**;
- (c) must keep the Tennis and Basketball Court Site clean and free of rubbish and obstructions; and
- (d) is solely responsible for the cost of the Maintenance and the cleaning;
- (e) must provide suitable lighting to the Oval and must pay for all lighting costs including electricity;
- (f) must effect and maintain insurance policies which cover:
 - (i) loss or damage from any cause whatsoever to the Tennis and Basketball Court Site on a full reinstatement or replacement basis;
 - (ii) any liability to any party whatsoever for the death of or injury to or Loss or damage to property of any person arising out of or in the course of or

caused by the exercise by any person of its rights under the Tennis and Basketball Court Easement; and

- (g) is solely responsible for the cost of all such insurance.

5.2 Risk, release and indemnity

- (a) The Authority enters the Tennis and Basketball Courts at its own risk except to the extent that any injury is caused or materially contributed to by the act or negligence of the Proprietor (or its employees or agents).
- (b) The Proprietor releases the Authority from all claims, demands and actions that may arise from any accident or damage to any property, or death or injury of any person, within the Tennis and Basketball Courts except to the extent that any claim, demand or action in respect of such accident, damage, death or injury is caused or materially contributed to by the act or negligence of the Authority.
- (c) The Proprietor indemnifies the Authority from and against all Loss, Liability and Cost incurred by the Authority or for which the Authority may become liable in respect of any Loss, damage, death, or injury from any cause to the Public Access Areas or to any person within the Tennis and Basketball Courts caused or materially contributed to by any act, negligence or breach of this covenant by the Proprietor (or its employees or agents).

5.3 Release etc

The Authority is the prescribed authority empowered to release, vary or modify this covenant.

6. Indemnities

- (a) Each indemnity in this instrument is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this instrument.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this instrument.
- (c) A party must pay on demand any amount it must pay under an indemnity in this instrument.

I certify that I am an eligible witness and that an authorised officer of the Prescribed Authority signed this dealing in my presence.

Signature of witness:

Name of witness:

Address of witness:

I certify that I am an eligible witness and that an authorised officer of the Prescribed Authority signed this dealing in my presence.

Signature of witness:

Name of witness:

Address of witness:

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of authorised officer:

Authorised officer's name:

Authority of officer:

Signing on behalf of: UrbanGrowth NSW
Development Corporation

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of authorised officer:

Authorised officer's name:

Authority of officer:

Signing on behalf of: Council of the City of Sydney

