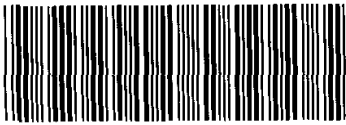


QUEENSLAND TITLES REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

GENERAL REQUEST

FORM 14 Version 4
Page 1 of 12

**718630483****NO FEE**

13/03/2018 11:30

RN 608

1. Nature of request REQUEST TO REGISTER STANDARD TERMS DOCUMENT FOR EASEMENT	Lodger (Name, address, E-mail & phone number) CONNOLLY, SCHIRMER & BATTS SOLICITORS 6 WILLIAM STREET ROCKHAMPTON PHONE: 07 4927 3988 EMAIL: batts@csbatts.com.au	Lodger Code 630
2. Lot on Plan Description NOT APPLICABLE	Title Reference	
3. Registered Proprietor/State Lessee NOT APPLICABLE		
4. Interest NOT APPLICABLE		
5. Applicant LIVINGSTONE SHIRE COUNCIL		
6. Request I hereby request that: pursuant to Section 168 of the Land Title Act 1994 the attached Standard Terms Document containing Easement conditions for Livingstone Shire Council be registered.		

7. Execution by applicant

8, 3, 2018
Execution Date

ALLAN CONNOLLY BATTS

Solicitor

CONNOLLY SCHIRMER & BATTS
Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

This is the Schedule referred to in Easement in Gross in Form 9 dated
the day of 201

Title Reference:

1.0 OBJECTS OF THE GRANT OF EASEMENT

1.1 The objects of this Instrument of Easement include -

- 1.1.1 allowing the Council to better exercise the jurisdiction of local government within its local government area for the provision of services, facilities and activities under or pursuant to a power or requirement of a Local Government Act; and
- 1.1.2 effectively vesting the grant by the Owner of the Easement in the Council; and
- 1.1.3 defining the purposes for which the Council may use the Easement Area; and
- 1.1.4 defining the rights and obligations of the Owner and the Council in the use of the Land and the Easement Area.

2.0 INTERPRETATION

2.1 In this Instrument of Easement -

'Council' means **LIVINGSTONE SHIRE COUNCIL** as the local government named as Grantee at the date of grant of this Easement and the successors in title of the named local government;

'Easement Area' means the area of land affected by the Easement in the lot burdened by the Easement without limitation as to height or depth;

'Land' means each lot burdened by the Easement;

'Land Title Act' means the *Land Title Act 1994*;

'local government' has the same meaning as the term 'local government' under the *Local Government Act 2009*;

'Local Government Act' has the same meaning as the term 'Local Government Act' under the *Local Government Act 2009*;

'local government area' has the same meaning as the term 'local government area' under the *Local Government Act 2009*;

'Owner' means each registered owner of an interest in the lot burdened by the Easement named as Grantor at the date of grant of this Easement and the successors in title of each registered owner;

'purpose of the Easement' has the meaning in Article 3 hereof;

'structure' means anything built or constructed, whether or not attached to land;

'Works' means the Council's works at any time constructed, in the course of construction or to be constructed wholly or partly upon, beneath or above the surface of the Easement Area determined by the Council to be necessary for or in connection with the purpose of the Easement as well as works or structures for the protection and/or support of all such things AND without limiting the generality of the abovementioned, where the purpose of the Easement is -

“sewerage” – includes but is not limited to sewer(s) and/or pipeline(s) for the purpose of conveying sewage, water and other substances together with, chambers, including access or inspection chambers, valves and all other usual or necessary fittings and attachments including pumps and/or pump stations where required;

“supply of water” – includes but is not limited to water reticulation mains and/or pipelines for the purpose of conveying water, including recycled water, together with, chambers, including access or inspection chambers meters, valves, pumps and/or pump stations and reservoirs;

“drainage” – includes but is not limited to overland or underground drains, pipes, conduits and channels for the passage or conveyance of rainwater and other lawful discharges through, across or under the Easement Area together with chambers, including access or inspection chambers, field inlet pits and all other usual or necessary fittings and attachments and includes overland drains created by excavation and incision which substantially alter the natural surface levels and contours of the Easement Area together with activities for the maintenance of natural or formed channels, levels and contours within the Easement Area.

- 2.2 If any covenant or its application to the Owner, the Easement Area or circumstances shall be or become invalid or unenforceable, the remaining covenants of this

Instrument of Easement are not to be affected and each covenant is to be valid and enforceable to the fullest extent permitted by law.

- 2.3 References to statutes, regulations, local laws or subordinate local laws extend to all statutes, regulations, local laws or subordinate local laws amending consolidating or replacing the same.
- 2.4 If the Owner comprises two or more legal entities, their covenants in this Instrument of Easement bind them jointly and each of them severally.

3.0 PURPOSE OF THE EASEMENT

- 3.1 This Easement is granted by the Owner to the Council for the Council to use the Easement Area for -
 - 3.1.1 The purpose stated at Item 7 of the Instrument of Easement in Form 9 which adopts this Schedule; and
 - 3.1.2 Any service, facility or activity of whatever description which the Council has authority to undertake, directly or indirectly in the exercise by the Council of its powers under the Local Government Act within its local government area or otherwise directly or indirectly referable to the purpose stated at Item 7 of the Instrument of Easement in Form 9 which adopts this Schedule.
- 3.2 For the purpose of the Land Title Act -
 - 3.2.1 the Council is a public utility provider; and
 - 3.2.2 the purpose for which this Easement is granted is a public utility service.

4.0 WHAT THE COUNCIL IS ALLOWED TO DO

- 4.1 To enable the Council to fully use the Easement Area for the purpose of the Easement, the Owner must allow the Council at any time without any interruption from the Owner or any occupier of the Land or any part of the Land to do all things upon, beneath or above the surface of the Easement Area at any time determined by the Council to be necessary for or in respect of the purpose of the Easement.
- 4.2 Without limiting the generality of the lastmentioned but by way of example, the Owner or any other occupier of any part of the Land must allow the Council -
 - 4.2.1 to place or construct Works wholly or partly upon, beneath or above the surface of the Easement Area;

-
- 4.2.2 to construct, operate, test, inspect, cleanse, maintain and repair the Works, any structure or the Easement Area;
 - 4.2.3 to alter, add to, augment, replace, extend or deviate the Works;
 - 4.2.4 to dig up the surface and sub-surface of the Easement Area and remove any soil sediment or other substance from the Easement Area;
 - 4.2.5 to enter upon and remain, pass and repass on and over the Easement Area for all or any of the authorised purposes with or without vehicles, plant and equipment of any description whatsoever;
 - 4.2.6 to take down any fencing on the boundary of or within the Easement Area which obstructs or interferes with the purpose of the Easement;
 - 4.2.7 to run and pass water, sewage, fluids, stormwater, substances of any description, electric current, electric and gas transmissions, electronic signals and electronic transmissions through, from, to or about the Works or the Easement Area;
 - 4.2.8 to clear and keep clear the Easement Area by any means or method and to cut and remove timber, trees, vegetation and undergrowth from the Easement Area and dispose of the same by any method;
 - 4.2.9 to construct and maintain on the Easement Area such access tracks, gates and appurtenant works as the Council shall consider necessary;
 - 4.2.10 to enter and exit to and from the Easement Area over such part or parts of the Owner's land adjoining or adjacent to the Easement Area as the Council shall consider most convenient or necessary for the purpose of passing between the Easement Area and the most convenient point of entry to or exit from the Owner's land (whether adjoining a constructed road or not);
 - 4.2.11 to temporarily use such part or parts of the Owner's land immediately adjacent to or adjoining either side of the Easement Area as the Council considers reasonable or necessary for the proper exercise of its rights;
 - 4.2.12 to do such other matters and things through, across, in or under the Easement Area as are incidental to the proper exercise of the rights granted to the Council under this Easement.
- 4.3 In doing anything allowed in respect of the Easement, the Council is entitled to do those things by its employees, agents and invitees and with or without the use of all necessary motor vehicles, machinery, equipment and implements.

-
- 4.4 All soil which the Council determines is to be dug up from the Easement Area for or in respect of the Works -
- 4.4.1 at the Council's option, becomes the property of the Council without Council being under any liability whatever to pay any amount to the Owner by way of compensation or otherwise; and
- 4.4.2 may be removed by the Council from the Easement Area at the cost and expense of the Council.
- 4.5 When an employee, agent or invitee of the Council enters onto and remains on the Easement Area for the purpose of the Easement and with or without the use of all necessary motor vehicles, machinery, equipment and implements -
- 4.5.1 the employee, agent or invitee of the Council is able to do so at any time;
- 4.5.2 the employee, agent or invitee of the Council may do so without any requirement for the Council or the employee or agent or invitee to obtain the further agreement of the Owner and/or any occupier of the Land;
- 4.5.3 consistent with the nature of the activity undertaken for or in respect of the purpose of the Easement, the Council is to reinstate, replace or restore the Easement Area or that part of the Easement Area to a condition determined by the Council to be appropriate in the then prevailing circumstances and the particular situation. Nevertheless, neither the Council nor any employee, agent or invitee of the Council so doing is liable to compensate the Owner or any occupier of the Land for any loss or damage incurred by the Owner or any occupier of the Land whether under this Easement or otherwise. However, if this Article is not effective to relieve the Council and any employee or agent or invitee of the Council from liability to compensate the Owner or any occupier of the Land for any loss or damage incurred, the Owner for the Owner and any occupier of the Land deriving title from the Owner agrees that the total amount of compensation payable in respect of all occurrences of loss or damage shall not exceed Ten Dollars (\$10.00);
- 4.5.4 to the fullest extent permitted by law, the Owner for the Owner and any occupier of the Land deriving title from the Owner irrevocably waives and forever abandons all and every entitlement to exercise any right or remedy which but for this Article the Owner and any occupier of the Land has or might have at any time against the Council or any employee or agent or invitee of the Council under the Local Government Act.
- 4.6 If the Council exercises a right conferred by Article 4.2.10 or 4.2.11, then -

-
- 4.6.1 the temporary occupation or use of the Owner's Land is deemed pursuant to a licence granted by the Owner to enable the Council to exercise its rights; and
 - 4.6.2 Article 4.5 applies, *mutatis mutandis*, to the Council's access, occupation or use of the Owner's Land;
 - 4.6.3 the rights conferred upon the Council are in addition to and not in substitution for any statutory rights of entry, access and temporary occupation of land granted to a local government for lawfully authorised purposes.

5.0 WHAT THE OWNER IS TO DO

- 5.1 To enable the Council to fully use the Easement Area for the purpose of the Easement, neither the Owner nor any occupier of the Land or part of the Land is to do or permit to be done anything on or in respect of the Works or the Easement Area which could obstruct or interfere with the Easement Area or the Works or the proper and effective use of the Works by the Council.
- 5.2 Without limiting the generality of the lastmentioned but by way of example, the Owner or any other occupier of any part of the Land is not to -
 - 5.2.1 build or erect any structure on, under or over the Easement Area;
 - 5.2.2 grow or promote any trees, shrubs or plants within the Easement Area or immediately adjacent to the Easement Area and, in the latter case, which could obstruct or interfere with the purpose of the Easement or the Works or the proper and effective use of the Works by the Council;
 - 5.2.3 install concrete, bitumen or other pavement or driveways on the Easement Area or gardens or landscaping involving concrete, brick or other permanent materials which could obstruct or interfere with the purpose of the Easement or the Works or the proper and effective use of the Works by the Council;
 - 5.2.4 remove or stockpile or permit the removal or stockpiling of any soil, sand, gravel or other substance or material on the Easement Area or construct any roads, paths, dam wall or other earthworks on the Easement Area which would in any way obstruct or interfere with the proper and effective use of the Easement Area or the Works by the Council;
 - 5.2.5 fence the boundaries of the Easement Area in such a manner that Council's access to the Easement Area or the Works could be obstructed or interfered with;

-
- 5.2.6 where the Works comprise or include a surface drainage channel or flow path, place or allow to be placed in on or adjacent to the Easement Area material which could lessen the depth or alter the flow path of the channel or hinder or restrict the drainage;
- 5.2.7 erect any fence or other devices across any channel, gully or watercourse within the Easement Area or on the Easement boundary, or anywhere else within the Easement Area, where such a fence or device could obstruct the overland flow of water within the Easement Area;
- 5.2.8 alter the ground surface level of the Easement Area or reduce or increase the depth of ground over the Works nor place anything of any description in or on the Easement Area or on Land adjacent to the Easement Area which may affect the integrity of the Works or the purpose of the Easement;
- 5.2.9 do any act or make any omission which would or might jeopardise or prejudicially affect the safety or reliable working of the Works.
- 5.3 On the written application of the Owner, the Council may, at its absolute discretion, grant the Owner in writing a dispensation from compliance with one or more of the sub-Articles specified in Article 5.2 on such terms and conditions as the Council may determine, reserving nevertheless the absolute right to withdraw or vary such dispensation at any time upon reasonable grounds.
- 5.4 If the Owner or any occupier of the Land or part of the Land does or permits to be done anything on or in respect of the Works or the Easement Area which could obstruct or interfere with the purpose of the Easement or the Works or the proper and effective use of the Works by the Council, the Owner is to do immediately all things at the cost and expense of the Owner as are necessary to cease the obstruction or interference with the Works or the proper and effective use of the Works or the Easement Area by the Council.
- 5.5 If, having failed to comply with Article 5.4, the Owner fails to comply with a notice from Council specifying -
- 5.5.1 what Council requires the Owner to do to remove the obstruction or stem the interference;
- 5.5.2 the period within which Council requires the Owner to take that action (which period is to be determined by Council having regard to the nature and extent of the obstruction or interference);

Council may enter the Easement Area and remove the obstruction or stem the interference or otherwise do such acts or things as may be necessary to enforce or protect the Council's rights hereunder.

-
- 5.6 All costs incurred by the Council (including the Council's usual administrative on costs and legal costs calculated on an indemnity basis) in acting under Article 5.5 are a debt due and owing by the Owner to the Council payable by the Owner to the Council on demand.

6.0 REMOVAL AND REINSTATEMENT OF FENCING

- 6.1 To gain access to the Easement Area or to undertake any activity for the purpose of the Easement the Council may pull down or break open any boundary fencing or any fencing on or adjacent to the Easement Area. However, if animals are contained within the fenced area, the Council must -
- 6.1.1 give reasonable notice to the Owner to enable the Owner to secure the animals;
 - 6.1.2 take all reasonable precautions to ensure against escape of animals including the construction of temporary fencing.
- 6.2 Subject to Article 6.5, the Council must reinstate all fences pulled down or broken open, other than a fence erected in contravention of the exercise and performance of any of the rights and liberties granted to the Council under this Easement.
- 6.3 If the Council requires permanent access to the Easement, it may install a gate using materials and employing workmanship which is not less than the quality of the materials and workmanship in the existing fence. The gate installed pursuant to this Article becomes the property of the Owner of the fence in which the gate is installed and after installation must be maintained by the Owner.
- 6.4 If Article 6.3 applies and the gate is lockable -
- 6.4.1 the Council must supply the Owner with a key or other device capable of locking and unlocking the gate when the gate is installed and;
 - 6.4.2 the owner must not interfere with or change the gates locking device without the Council's written approval.
- 6.5 If any fence or part of a fence is a safety barrier for a swimming pool under the *pool safety standard*, the Council must -
- 6.5.1 if the fence is within the boundaries of the Land, notify the Owner or occupier of the Land in writing, a reasonable time before pulling down or breaking open the fence (except in case of emergency when no notice is required);

-
- 6.5.2 where the fence is a common boundary fence and safety barrier, also notify the Owner or occupier of the neighbouring land with that common boundary in the same manner (emergency exception applying);
- 6.5.3 where the fence is a common boundary fence and barrier for a pool located on the neighbouring land, notify the Owner or occupier of the Land and the Owner or occupier of that neighbouring land in the same manner (emergency exception applying);
- 6.5.4 where practical, erect a temporary fence or other construction which prevents access to the swimming pool and otherwise complies with the *pool safety standard*;
- 6.5.5 where, for good reason, Article 6.5.4 cannot or is impracticable to apply, post a person to remain present at the site during the whole of the period the fence is down or open during the Council's presence at the site to prevent access to the pool;
- 6.5.6 not vacate the Land at the conclusion of working hours without restoring the fence to its pre-existing condition or complying with Article 6.5.4;
- 6.5.7 if the fence cannot be restored to its pre-existing condition for just cause, at Council's expense, obtain a fresh safety inspection and the issue of a Pool Safety Certificate on behalf of each affected landowner as soon as practicable.
- 6.6 Nothing in Article 6.5 requires the Council to restore a pool fence to a standard beyond that which existed before the fence was pulled down or broken open. However, if the pre-existing fence obstructs or interferes with the purpose of the Easement, the Council may reconstruct the fence in such manner as is reasonably necessary to fulfil the purpose of the Easement provided that the Council complies with the *pool safety standard*.
- 6.7 For the purposes of Articles 6.5 and 6.6 -
- 'fence'** includes any barrier or construction of any description but not part of a building;
- 'pool safety standard'** has the meaning given in section 231(D) of the *Building Act 1975*;
- 'pull down'** or **'break open'** includes any action which interferes in a material way to compromise the safety of the fence;
- 'swimming pool'** or **'pool'** means a regulated pool as defined in the *Building Act 1975*;

words or terms used have the same meaning as in the *Building Act 1975*, the *Building Regulations* or the *pool safety standard*;

a **'common boundary fence'** does not have to be constructed on the surveyed boundary.

7.0 PROPERTY IN WORKS

- 7.1 The Works are and remain the property of the Council notwithstanding any actual or apparent affixing to or placing on, above or under the Easement Area. The Council shall be solely responsible for the operation and maintenance of the Works.

8.0 WHO IS RESPONSIBLE FOR MAINTAINING THE EASEMENT AREA

- 8.1 In the exercise of the Owner's right to use of the Easement Area (but in a manner not inconsistent with or in any way prejudicing the rights of the Council), the Owner is to keep and maintain the Easement Area, subject nevertheless to the exceptions referred to in Article 8.2.

- 8.2 The Owner's obligation to keep and maintain the Easement Area does not apply in the following circumstances -

- 8.2.1 there is no obligation on the Owner to maintain the Works or any part of the Works constructed by the Council;
- 8.2.2 there is no obligation on the Owner to address subsidence, erosion or other adverse effects resulting from the installation or continuing existence or operation of such Works;
- 8.2.3 there is no obligation on the Owner to address or maintain drainage or passage of water over the Easement Area, where applicable;

all of which remain the obligation and responsibility of the Council.

- 8.3 Notwithstanding anything to the contrary, the Council is not liable to maintain, rectify, compensate or pay damages for or in any way relating to any of the following -

- 8.3.1 subsidence, erosion or other adverse effects (all hereafter "adverse effects") naturally occurring;

-
- 8.3.2 adverse effects caused or contributed to by acts or omissions of the Owner or the Owner's servants, agents or contractors;
- 8.3.3 adverse effects caused or contributed to by Third Parties whether on the Land, adjacent land or some other land.
- 8.4 The Council is under no liability pursuant to the Land Title Act or otherwise to contribute towards the cost of keeping of the Easement Area in a condition appropriate for enjoyment of the easement.
- 8.5 A provision of the Land Title Act or another Act, entitling the Owner to recover from Council a contribution to the costs of keeping the Easement Area in a condition appropriate for Council to enjoy this Easement, is inapplicable to the Easement and hereby negated.
- 8.6 Nothing in this Instrument of Easement is to operate or to take effect to relieve or to be deemed to relieve the Owner from the continuing need to comply at all times with the requirements of any Local Government Act, local law or subordinate local law that may have application to the Land or the Easement Area.

9 RESOLUTION OF DISPUTES

- 9.1 Each dispute between the parties concerning this Easement or any issue arising therefrom must firstly be mediated by using the following mediation procedure -
- 9.1.1 *any party may initiate the procedure by serving a notice ("mediation notice") on the other;*
- 9.1.2 *the mediation notice must state that a dispute has arisen and identify what the dispute is about;*
- 9.1.3 *the parties must appoint a mediator within fourteen (14) days of service of the mediation notice, but if they fail to agree, a mediator must be appointed by the President of the Queensland Law Society Incorporated or any successor of that Society;*
- 9.1.4 *the parties must observe the instructions of the mediator about the conduct of the mediation;*
- 9.1.5 *if the dispute is not settled in thirty (30) days after the mediator is appointed, the mediation ceases.*
- 9.2 The parties must share the costs of the mediation as to one half by the Grantor and one half by the Grantee.