

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

(Sheet 1 of 6 Sheets)

Plan: DP[#TBC] [v2 draft 03.07.26]

Plan of subdivision of Lot 1202 in DP[#to be inserted], covered by Council Subdivision Certificate No. [#to be inserted]

**Full Name and Address
of the owner of the land:**

Birling Estate Pty Ltd ACN 657 548 073
975 The Northern Road, Barker 2556

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 lot(s), road(s), bodies or Prescribed Authorities
1	Easement for Support & Maintenance 0.9 Wide (A)	3 4 5 6	2 3 4 5
2	Easement to Drain Water 1.5 Wide (C)	2 3 4 5 6	1 1, 2 1, 2, 3 1, 2, 3, 4 1, 2, 3, 4, 5
3	Restriction on the Use of Land (<i>Double Storey</i>)	2 3 4 5 6	104/1298342, 3, 4, 5, 6 104/1298342, 2, 4, 5, 6 104/1298342, 2, 3, 5, 6 104/1298342, 2, 3, 4, 6 104/1298342, 2, 3, 4, 5
4	Restriction on the Use of Land (<i>Front Fencing – Fence Type 3</i>)	2 3 4 5 6	104/1298342, 3, 4, 5, 6 104/1298342, 2, 4, 5, 6 104/1298342, 2, 3, 5, 6 104/1298342, 2, 3, 4, 6 104/1298342, 2, 3, 4, 5

Plan:

Plan of subdivision of Lot 1202 in DP[**##to be inserted**], covered by Council Subdivision Certificate No. [**##to be inserted**]

5	Restriction on the Use of Land (<i>Lot Classification and Salinity Assessment</i>)	Each and every lot (except 1)	Camden Council
6	Restriction on the Use of Land (<i>No Subdivision, Dual Occupancy or Secondary Dwelling</i>)	Each and every lot (except 1)	Each and every other lot (except 1) and 104/1298342

PART 2 (Terms)

Dictionary

Defined Terms

The following terms have the following meanings where used in this Instrument:

- (a) **Agent** means a person authorised by the Owner.
- (b) **Birling Design & Landscape Guidelines** means the design guidelines (as may be varied from time to time) specified by the Design Review Panel which regulate all building and ancillary landscaping work as applicable to the Development.
- (c) **Design Review Panel** means design review panel constituted from time to time by Birling Estate Developments Pty Ltd ACN 668 807 663.
- (d) **Development** means the whole of the multi-staged development known as "Birling" comprised of the land known as Lots 101 to 108 (both inclusive) in Deposited Plan 1298342, Lot 121 in Deposited Plan 1284706 and Lot 4 in Deposited plan 1218798 (prior to subdivision for the purpose of the development of Birling) and the lots created by the further subdivisions of these lots.
- (e) **Instrument** means this s88B instrument.
- (f) **Owner** means a person who is entitled to an estate or interest in possession in a lot from time to time.

1 Terms of Easement for Support & Maintenance 0.9 wide (A) numbered 1 in the abovementioned plan

1.1 The Owner of the lot burdened grants:

- (a) to the Owner of the lot benefited full and free right and liberty to have a building or any part of a building or any structure erected on the lot benefited, supported, upheld and maintained by the soil and structure erected in that portion of the lot burdened denoted (A) in the abovementioned plan; and
- (b) to the Owner of the lot benefited, and every Agent of the Owner of the lot benefited, full and free right and liberty to enter upon the lot burdened with any tools, implements or machinery necessary and remain there for any reasonable time for the purpose of repairing and maintaining any part of the soil and structure erected on that portion of the lot burdened denoted (A) in the abovementioned plan.

1.2 The Owner of the lot burdened must not allow any part of a building or any structure or item to be constructed or to remain on that portion of the lot burdened denoted (A) in the abovementioned plan that would prevent or constrain access by the Owner of the lot benefited to that portion of the lot burdened denoted (A) in the abovementioned plan. For the avoidance of doubt, the granting of this easement is subject to the right of Owner of the lot burdened constructing or having in existence, eaves and guttering on a building or structure on the lot burdened that overhang that portion of the lot burdened denoted (A) in the abovementioned plan, provided they do not prevent or constrain reasonable access and use by the Owner of the lot benefited to that portion of the lot denoted (A) in

Plan: Plan of subdivision of Lot 1202 in DP[**##to be inserted**], covered by Council Subdivision Certificate No. [**##to be inserted**]

the abovementioned plan for its intended purpose pursuant to the easement created under this clause 1.

1.3 The Owner of the lot benefited may:

- (a) at the expiration of a reasonable notice period (in the circumstances) given to the Owner or occupier of the lot burdened, use that portion of the lot burdened denoted (A) in the abovementioned plan, for the purpose of carrying out necessary work (including but not limited to construction, maintenance and repair) on:
 - (i) the lot benefited; and
 - (ii) any structure constructed or to be constructed by the Owner of the lot benefited, which cannot otherwise reasonably be carried out;
- (b) do anything reasonably necessary for the purpose set out in clause 1.3(a) including:
 - (i) entering into the lot burdened;
 - (ii) taking anything onto the lot burdened; and
 - (iii) carrying out the necessary works.

1.4 In exercising the powers in this easement, the Owner of the lot benefited must:

- (a) ensure all work on the lot benefited is done properly and carried out as quickly as is practicable;
- (b) cause as little inconvenience as is practicable to the Owner and any occupier of the lot burdened;
- (c) cause as little damage as is practicable to the lot burdened and any improvement on it;
- (d) restore the lot burdened as nearly as is practicable to its former condition, and
- (e) make good any collateral damage.

Name of person or authority whose consent is required to release, vary or modify the Easement for Support & Maintenance 0.9 wide (A) numbered 1 in the abovementioned plan

Camden Council

The cost and expense of such release, variation or modification shall be borne by the person or corporation requesting same in all respects.

2 Terms of Easement to Drain Water 1.5 wide (A) numbered 2 in the abovementioned plan

- 2.1 An easement for drainage of water on the terms set out in Part 3 of Schedule 8 of the *Conveyancing Act, 1919*, as amended, is created.
- 2.2 The Owner of the lot burdened is not permitted to alter the surface level, carry out any excavation or restrict access within that part of the lot burdened denoted (C) in the abovementioned plan.

Name of person or authority empowered to release, vary or modify the Easement for to Drain Water 1.5 wide (C) numbered 2 in the abovementioned plan

Camden Council

3 Terms of restriction on Use of Land (*Height of Dwellings*) numbered 3 in the abovementioned plan

- 3.1 No dwelling shall be constructed or permitted to be constructed or remain on the lots burdened other than double storey dwellings.

Name of person or authority empowered to release, vary or modify the restriction on Use of Land '*Height of Dwellings*' numbered 3 in the abovementioned plan

Plan: Plan of subdivision of Lot 1202 in DP[**##to be inserted**], covered by Council Subdivision Certificate No. [**##to be inserted**]

Birling Estate Pty Ltd ACN 657 548 073 and/or its successors, nominees and/or assigns (other than purchasers on sales) for such period as it is the Owner of any lot or any part or interest in any lot in the abovementioned plan or is the Owner of any lot or any part or interest in any lot benefited by this restriction on Use of Land.

The cost and expense of such release, variation or modification shall be borne by the person or corporation requesting same in all respects.

4 Terms of Restriction on the Use of Land (*Front Fencing – Fence Type 3*) numbered 4 in the abovementioned plan

4.1 No dwelling shall be constructed or permitted to be constructed or remain on a lot burdened unless a front fence (facing the street) is also constructed or established on the lot burdened and that the front fence complies with:

- (a) the Fence Type 3 requirements in the Birling Design & Landscape Guidelines; and
- (b) any other conditions required by any relevant consent authority.

4.2 These restrictions shall expire and have no further force or effect on the date being two years after the date an occupancy certificate is issued to the Owner of a dwelling approved by the Design Review Panel on the last remaining lot in the Development such that there are no further vacant lots in the Development (excluding any lots upon which no dwelling is permitted to be constructed).

Name of person or authority empowered to release, vary or modify the Restriction on the Use of Land (*Front Fencing – Fencing Type 3*) numbered 4 in the abovementioned plan

Birling Estate Pty Ltd ACN 657 548 073 and/or its successors, nominees and/or assigns (other than purchasers on sales) for such period as it is the Owner of any lot or any part or interest in any lot in the abovementioned plan or is the Owner of any lot or any part or interest in any lot benefited by this restriction on Use of Land.

The cost and expense of such release, variation or modification shall be borne by the person or corporation requesting same in all respects.

5 Terms of Restriction on the Use of Land (*Lot Classification and Salinity Assessment*) numbered 5 in the abovementioned plan

5.1 In this restriction " **Lot Classification and Salinity Assessment**" means the [**##Report on Lot Classification and Salinity Assessment – Stage 1A Birling Project XXXX dated XXXX # to be completed when Stage 1A works are carried out and the report is available##**] prepared by Douglas Partners Pty Ltd.

5.2 No construction work including earthworks, imported fill, landscaping, buildings, and associated infrastructure is permitted on the lot burdened unless carried out, or constructed in accordance with the Lot Classification and Salinity Assessment.

5.3 No building shall be constructed on the lot burdened unless the footings / foundations have been designed by a qualified civil and or structural engineer.

Name of person or authority empowered to release, vary or modify the Restriction on the Use of Land (*Lot Classification and Salinity Assessment*) numbered 5 in the abovementioned plan

Camden Council

The cost and expense of such release, variation or modification shall be borne by the person or corporation requesting same in all respects.

Plan:

Plan of subdivision of Lot 1202 in DP[**##to be inserted**], covered by Council Subdivision Certificate No. [**##to be inserted**]

6 Terms of restriction on the Use of Land (No Subdivision, Dual Occupancy or Secondary Dwellings) numbered 6 in the abovementioned plan

- 6.1 The Owner of the lot burdened must not undertake or allow to be undertaken any Prohibited Development on the lot burdened notwithstanding the permissibility of the Prohibited Development.
- 6.2 **Prohibited Development** means:
- (a) any subdivision of the lot including but not limited to a strata or deposited plan subdivision; or
 - (b) the erection of a dual occupancy being either:
 - (i) 2 dwellings on the lot attached to each other; or
 - (ii) 2 detached dwellings on the lot; or
 - (c) a secondary dwelling on the lot including but not limited to 'granny flat' secondary dwellings.

Name of person or authority empowered to release, vary or modify the restriction on Use of Land (No Subdivision, Dual Occupancy or Secondary Dwellings) numbered 6 in the abovementioned plan

Birling Estate Pty Ltd ACN 657 548 073 and/or its successors, nominees and/or assigns (other than purchasers on sales) for such period as it is the Owner of any lot or any part or interest in any lot in the abovementioned plan or is the Owner of any lot or any part or interest in any lot benefited by this restriction on Use of Land.

The cost and expense of such release, variation or modification shall be borne by the person or corporation requesting same in all respects.

Plan:

Plan of subdivision of Lot 1202 in DP[**##to be inserted**],
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Execution by Registered Proprietor

Executed by Birling Estate Pty Ltd ACN 657 548

073 in accordance with section 127 of the
Corporations Act 2001

.....
Signature of director

.....
Signature of director/secretary

.....
Name of director – BLOCK LETTERS

.....
Name of director/secretary – BLOCK LETTERS

Execution by Camden Council

Signed on behalf of **The Council of Camden** ABN 31 117 341 764
by its Authorised Delegate pursuant to s.377 of the Local Government Act 1993

.....
Signature of Authorised Delegate

.....
Name of Authorised Delegate – BLOCK LETTERS

I certify that I am an eligible witness and that the Authorised Delegate signed in my presence:

.....
Signature of witness

.....
Name of witness – BLOCK LETTERS

.....
Address of witness

Execution by Mortgagee