

EASEMENT



705123524

\$90.80

18/10/2001 10:20

BE 601

Stamp Duty Imprint

Queensland Stamp Duty Paid \$1⁵⁰
 On the Amount of \$1⁰⁰ Duty Code CONV

13A:BNE:16152 Transaction Number 293/01
 Signed: [Signature]
 Lodger Name, address & phone number 6/10/01

1. **Grantor**
 BODY CORPORATE FOR OYSTER COVE
 WATERFRONT COMMUNITY TITLES SCHEME 28389

Lodger Name, address & phone number
 McCullough Robertson
 Lawyers
 66 Eagle Street
 BRISBANE QLD 4000
 Phone: (07) 3233 8888
 DAP:VAN053/338

Lodger Code
 26

2. Description of Easement/Lot	County	Parish	Title Reference
Servient Tenement (burdened land) Easement D in the common property of Oyster Cove Waterfront CTS 28389 on SP 145319	Ward	Coomera	503265220
Easement G in the common property of Oyster Cove Waterfront CTS 28389 on SP 145337	Ward	Coomera	503265220

*Dominant Tenement (benefited land)

* not applicable if easement in gross

3. **Interest being burdened**
 Fee simple

*4. **Interest being benefited**
 * not applicable if easement in gross

5. **Grantee** Given names Surname/Company name and number (include tenancy if more than one)

COUNCIL OF THE CITY OF THE GOLD COAST

6. **Consideration**
 \$1.00

7. **Purpose of easement**
 Right of way and drainage

8. Grant/Execution

The Grantor for the above consideration grants to the Grantee the easement over the servient tenement for the purpose stated in item 7 and the Grantor and Grantee covenant with each other in terms of the attached schedule and standard terms document no. 701622417

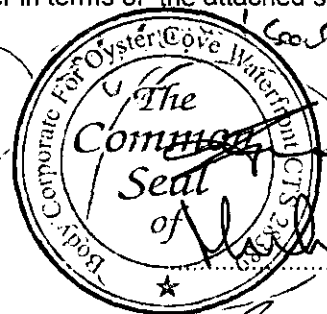
Witnessing Officer

.....signature
full name
qualification

as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

Execution Date

15/10/01



Grantor's Signature

[Signature]
Chairman
Secretary

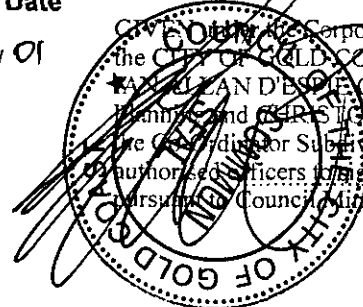
Witnessing Officer

.....signature
full name
qualification

as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

Execution Date

12/10/01



Grantee's Signature

Given by the Corporate Seal of the COUNCIL of the CITY OF GOLD COAST signed by
 *ALLAN D'ESQUELLEW the Manager Statutory Planning and *PETER JOPHER JAMES NETHERWAY the Council Director Submission Services they being the authorised officers to sign, affix and witness such seal...
 pursuant to Council Minute Number C99.0730.016

Title Reference

1. DEFINITIONS INTERPRETATION

1.1 In this document:

'Access Card' means an access card, key or other similar device required to enable the operation of the Lock.

'Act' means the *Body Corporate and Community Management Act 1997*.

'Admin Fund Requirement' means the total amount:

- (a) provided for in the Body Corporate's annual or other budget under section 94(2) of the Standard Module (or equivalent provision of the Module applying to the Scheme at a relevant time) for:
 - (i) cost of maintaining the Lock and Waterway and body corporate assets acquired for use in and about, or for maintenance of, the Lock or Waterway;
 - (ii) cost of insurance of or in relation to the Lock, Waterway, and those body corporate assets (or a reasonable proportion, if the insurance policy or policies concerned are not solely of or in relation to the Lock, Waterway and those body corporate assets); and
- (b) any other expenditure of a recurrent nature in relation to the Lock, Waterway and those body corporate assets (or a reasonable proportion if the expenditure concerned is not solely in relation to the Lock, Waterway and those body corporate assets);
- (a) determined by the Body Corporate at any time to be raised by special or interim contribution under sections 95(2)(a) or (3) of the Standard Module (or equivalent provisions of the Module applying to the Scheme at a relevant time) in relation to the Lock, Waterway and those body corporate assets.

'Beneficiaries' means the persons who are from time to time the registered owners or lawful occupiers of the Contiguous Land and their invitees, of a class previously approved by the Body Corporate (acting reasonably).

'Beneficiaries' Proportion' means the proportion of the Waterway Funds Requirements, for which each owner of the Contiguous Land would be liable under sections 94(2)(b) and 94(3)(b) of the Standard Module (or equivalent provisions of the Module applying to the Scheme at a relevant time) if:

- (a) each such lot were part of the scheme land of the Scheme;
- (b) each such lot had a contribution schedule lot entitlement of one; and
- (c) the aggregate contribution schedule lot entitlements for the Scheme were the actual number at the date the Beneficiaries' Proportion is being notified plus the total number calculated under paragraph (b) of this definition.

'Body Corporate' means the *Body corporate for Oyster Cove Waterfront community titles scheme 28389*.

'By-Laws' means the by-laws of the Scheme.

'Contiguous Land' means the land described, at the date of this document, as Lots 19 to 33 on GTP 105202; Lots 76 to 81 on RP 889802; Lots 1 to 13 on GTP 105201; Lots 15 to 33 on GTP of Resubdivision 106011; Lots 138 to 140 on RP 889803; Lots 287 to 288 on SP 103348; Lots 318 to 322 on SP 103348 and Lot 323 on SP 145320 in the County of Ward, Parish of Coomera.

'Fishing Vessel' means a vessel equipped for catching any seafood for wholesale or retail sale.

'GST' has the same meaning as in the GST Act.

'GST Act' means a new tax system (Goods and Services Tax) Act 1999 as amended.

'Interest Rate' means 1% per annum over the rate of interest charge by Westpac Banking Corporation (or its successor) at the date the interest becomes due on overdraft facilities in excess of \$100,000.

'Lock' means the lock constructed on Easement G on SP 145337 for equalising water levels between the Waterway and lock and/or lock and Saltwater Creek (as the case requires) to allow passage of water craft from and to the Waterway to and from Saltwater Creek, and includes the motors and other apparatus by which the lock is operated.

SCHEDULE

Title Reference

'Module' means a regulation module other than the Standard Module.

'Mooring' means any buoy, pile, jetty, pontoon or other structure used or to be used for the mooring of a Vessel.

'Scheme' means *Oyster Cove Waterfront community titles scheme 28389*.

'Sinking Fund Requirement' means the amount provided for in the Body Corporate's annual or other budget under section 94(3)(a) of the Standard Module (or equivalent provision of the Module applying to the Scheme at a relevant time) in relation to the Lock, Waterway and body corporate assets acquired for use in and about, or for maintenance of, the Lock and Waterway for the year or other period covered by the budget.

'Standard Module' means the *Body Corporate and Community Management (Standard Module) Regulation 1997*.

'Supply' has the same meaning as in the GST Act.

'Taxable Supply' has the same meaning as in the GST Act.

'Tax Invoice' has the same meaning as in the GST Act.

'Value' has the same meaning as in the GST Act.

'Vessel' has the meaning same meaning as in the *Harbours Act 1955* and includes a sailboard, jet ski and similar pleasure craft, but excludes a Fishing Vessel.

'Waterway' means the inundated part of the servient tenement described in item 2 of the Form 9 Easement to which this schedule is annexed.

'Waterway Funds Requirement' means the Admin Fund Requirement and Sinking Fund Requirement.

1.2 Terms defined in the Act and used in this document have the same meanings as in the Act.

1.3 The covenants of this easement bind all persons deriving title to the Servient Tenement from the Grantor.

2. GRANT

The Grantor grants to the Grantee, subject to subsequent provisions the right for:

- (a) the Grantee to use in common with other lawfully entitled persons the Lock and Waterway for access by Vessel to all parts of the Waterway at all reasonable times to inspect the state of repair and maintenance of the Lock and Waterway;
- (b) each Beneficiary to use in common with other lawfully entitled persons at all reasonable times;
 - (i) the Lock for access by Vessel to and from the Waterway from Saltwater Creek;
 - (ii) that part of the Waterway reasonably required for access in the most direct route practicable by Vessel to and from that part of the Contiguous Land of that Beneficiary from and to the Lock.
 - (iii) that part of the Waterway reasonably required for access to the parts of the Contiguous Land of that Beneficiary adjoining the Waterway with or without consultants, contractors, sub-contractors or workmen previously approved in writing by the Grantor (acting reasonably), with equipment, machinery, tools and materials previously approved in writing by the Grantor (acting reasonably), to construct, maintain, repair, replace or remove a Mooring previously approved by the Grantor to the extent that cannot be done from the Contiguous Land of that Beneficiary.

3. RULES FOR USE OF LOCK

The Grantee and Beneficiaries:

- (a) must operate the Lock only in accordance with approved operating methods from time to time notified by the Grantor;
- (b) must not attempt to use the Lock for passage of a Vessel beyond the Lock's capacity;
- (c) do not by this grant have priority in use of the Lock over any other person lawfully entitled to use it;

SCHEDULE**Title Reference**

- (d) must not during any period when the Lock is inoperative while undergoing maintenance, repair or replacement use or attempt to use or operate the Lock;
- (e) have no right against the Grantor for compensation or otherwise on account of the Lock being inoperative for such a reason; and
- (f) must comply with such of the By-Laws as would, were the Grantee or a Beneficiary an owner or occupier referred to in the By-Laws, have application to the conduct of the Grantee and each Beneficiary within or in relation to the Lock.

4. ACCESS CARD

Provided a Beneficiary complies with its obligations under this easement and the By-laws the Grantor will provide to that Beneficiary an Access Card for use in relation to the Lock in exchange for a security deposit from the Beneficiary in an amount reasonably determined by the Grantor not in excess of an amount equal to that Beneficiary's Proportion.

5. RULES FOR USE OF WATERWAY

The Grantee and Beneficiaries must observe the following rules:

- (a) no water craft except Vessels, and any others for which the Grantor has given specific written approval (which the Grantor may give unconditionally, give subject to conditions or refuse in its discretion) on a written application for consent by the Grantee or Beneficiaries, may be used within the Waterway;
- (b) no person under 16 may operate a Vessel within the Waterway;
- (c) if a Vessel is:
 - (i) of such a kind;
 - (ii) is powered in such a way; or
 - (iii) is powered by means of propulsion of such power,that the law requires its operator or person in charge to be licensed, no one except a person holding a current licence of the requisite kind may operate the Vessel within the Waterway;
- (d) if a Vessel is:
 - (i) of such a kind;
 - (ii) is powered in such a way; or
 - (iii) is powered by means of propulsion of such power,that the law requires the Vessel to be registered, the Vessel may not be operated within the Waterway at any time while it is not so registered;
- (e) Vessels may not be moored in the Waterway except in places approved by the Grantor or in accordance with notices posted by the Grantor in or about the Waterway;
- (f) Vessels may not be driven at a speed in excess of 4 knots within the Waterway;
- (g) Vessels may not be used within the Waterway for accommodation;
- (h) without derogating from any preceding provision, Vessels being operated within the Waterway must at all times be operated and moored strictly in compliance with all relevant laws; and
- (i) the Grantee and Beneficiaries must comply with such of the By-Laws as would, were the Grantee or a Beneficiary an owner or occupier referred to in the By-Laws, have application to the conduct of the Grantee and Beneficiary within the Waterway including abiding by any exclusive use By-Laws in relation to any part or parts of the Waterway over which exclusive use has been given pursuant to the By-Laws.

SCHEDULE**Title Reference****6. RULES FOR MOORINGS****6.1 A Beneficiary:**

- (a) may only construct, maintain, repair, replace or remove a mooring immediately adjacent to the Contiguous Land of a Beneficiary:
 - (i) only with the Grantor's prior written approval;
 - (ii) in accordance with the By-laws;
 - (iii) provided all necessary approvals have been obtained from any relevant authority;
 - (iv) in accordance with the construction design in accordance with the By-laws and previously approved in writing by the Grantor;
- (b) must comply with all By-laws which relate to the use of the Mooring;
- (c) only use the mooring for private use in relation to the Beneficiaries Contiguous Land;
- (d) maintain the Beneficiaries private mooring (if any) in good and substantial repair at the Beneficiaries cost failing which the Grantor may repair the mooring and recover the cost as a liquidated debt from the Beneficiary;
- (e) must comply with such of the By-laws as were the Beneficiary an owner or occupier referred to in the By-laws, have application to the construction, repair, maintained use of a Mooring of a Beneficiary.

7. INFORMATION TO GRANTEE: BY-LAWS AND FUNDS REQUIREMENTS

- 7.1 Upon written request by the Grantee or a Beneficiary the Grantor must at the Grantee's or Beneficiary's reasonable cost promptly provide a copy of the By Laws to the Grantee or Beneficiary as the case requires.
- 7.2 The Grantor will provide to the Beneficiary detail of the Waterway Funds Requirements when ever such amount is determined by the Grantor.

8. CONTRIBUTIONS TO MAINTENANCE AND SINKING FUND REQUIREMENTS

- 8.1 A Beneficiary must pay to the Grantor the Beneficiaries' Proportion and/or within 14 days after receiving from the Grantor:
 - (a) a copy of the budget or resolution evidencing the Waterway Funds Requirement, certified to be a true copy by a member of the Committee of the Body Corporate; and
 - (b) an invoice for the Beneficiaries Proportion (of the Waterway Funds Requirement detailed in that budget or resolution).
- 8.2 If a Beneficiary has not paid the invoiced amount (including any GST under clause 9) in full within 30 days after receiving the documents provided for in clause 6.1, the Body Corporate (by decision of the committee) may by notice to that Beneficiary:
 - (a) suspend the rights granted to that Beneficiary under this easement until that amount, and interest under clause 12, is paid in full; and
 - (b) withdrew and/or disable any Access Card given to the Beneficiary.

9. BENEFICIARY TO MAKE GOOD

- 9.1 The Beneficiaries must exercise the rights conferred by this easement so as to cause as little damage to the Servient Tenement or adjoining land of the Grantor or inconvenience to the Grantor or any other person as is reasonably practicable and immediately make good any damage so caused to the Servient Tenement or such adjoining land by Beneficiary.
- 9.2 Clause 9 of standard document 701622417 applies in relation to the Grantee's rights and obligations regarding damage or destruction of any matter as defined in that clause.

SCHEDULE

Title Reference

10. INDEMNITY TO GRANTOR

- 10.1 The Beneficiaries indemnify the Grantor against any loss or damage, costs and expenses suffered or incurred by the Grantor (whether in relation to loss of or damage to property or injury to or death of any person) by reason or in any way related to or arising out of a person's presence in or on the Lock or the Waterway (whether or not in or on a Vessel) in purported reliance on the rights conferred by this easement.
- 10.2 Except as specified in clause 9.2 the Grantee is not otherwise responsible for any damage to or destruction of any matter (as defined in standard document 701622417) in the course of exercise of its rights under this easement.

11. GST

- 11.1 If any Supply made under or in connection with this easement is a Taxable Supply then the recipient of that Supply shall pay the GST in respect of that Supply to the Supplier where the GST is calculated in accordance with the GST Act and on the basis that the consideration otherwise payable under this easement is the Value of the Taxable Supply.
- 11.2 The supplier must provide a Tax Invoice to the recipient on or before the due date for payment of the consideration payable.

12. DEFAULT INTEREST

- 12.1 Without limiting the strict effect of any other provision, if any money payable by the Grantee under this easement is not paid when due, that money will bear interest from the due date for payment to the actual date of payment (both dates inclusive) at the Interest Rate per annum simple interest, payable contemporaneously with the balance of the money on which it is accruing.
- 12.2 Any judgment for any such money will likewise bear interest from the date of judgment to the date of payment, both dates inclusive.

13. RESOLUTION OF DISPUTES

- 13.1 If any dispute or difference arises between the Grantor, Grantee and/or Beneficiary concerning the interpretation or operation of any other provision of this easement, then the matter will be determined by a solicitor ('**Mediator**') to be nominated:
- (a) by mutual agreement between the parties; and
 - (b) in the absence of such mutual agreement then by a nominee of the President for the time being of the Queensland Law Society Incorporated.
- 13.2 The decision of the Mediator will be:
- (a) that of an expert, not an arbitrator; and
 - (b) final and binding upon the Grantor, Grantee and/or Beneficiary.
- 13.3 The costs of such expert determination are to be paid in accordance with the order of the Mediator.

14. RELEASE

After the date the Grantor ceases to be the registered proprietor of the Servient Tenement ('**Relevant Date**') it will be under no further liability to the Grantee to the Grantee's successors or to the other Beneficiaries for any thing connected with this easement which arises subsequent to the Relevant Date.

15. SEVERABILITY (READING DOWN)

- 15.1 If reading down a provision of this easement would prevent the provision being invalid or voidable it must be read down to the extent that it is necessary and capable of being read down.

SCHEDULE**Title Reference**

15.2 If, notwithstanding clause 15.1, a provision of this easement is still invalid or voidable:

- (a) if the provision would not be invalid or voidable if a word or words were omitted, that word or those words must be deleted; and
 - (b) in any other case, the whole provision must be deleted,
- and the remainder of this easement continues to have full force and effect.

16. AMENDMENTS TO EASEMENT DOCUMENT 701622417

Standard document 701622417 is amended as follows:

- (a) clause 2.3 is replaced with:

'Where the purpose of the easement specified in item 7 of the Form 9 is 'Drainage' – overland drains and channels for the passage or conveyance of rainwater and other lawful discharges to local authority drainage through or across the servient tenement together with field inlet pits and other usual or necessary fittings and attachments as well as works for the protection and/or support of all such things.'

4. NEW COMMUNITY MANAGEMENT STATEMENT

RESOLVED BY ORDINARY RESOLUTION:-

That the Body Corporate consents to the recording of a New Community Management Statement (in terms of draft furnished with this Notice of Meeting) in compliance with the Body Corporate and Community Management Act, and consistent with the Community Management Statement currently registered, to accompany registration of SP 145320 which in effect;

1. Amends the real property description in item 4 of the Community Management Statement.
2. Amends the description and lot entitlement for lots in schedule A within the Community Management Statement.
3. Amends the explanation of the development in Schedule B to update the proposed development upon registration.

FURTHER that the Body Corporate authorises the execution of all forms necessary to record the New Community Management Statement by the affixing of the Common Seal of the Body Corporate under the signature of the Body Corporate Chairman and Secretary.

VOTING YES 2 NO 0 ABSTAIN 0

5. NEW COMMUNITY MANAGEMENT STATEMENT

RESOLVED BY ORDINARY RESOLUTION:-

That the Body Corporate consents to the recording of a New Community Management Statement (in terms of draft furnished with this Notice of Meeting) in compliance with the Body Corporate and Community Management Act, and consistent with the Community Management Statement currently registered, to accompany registration of SP 145321 creating the Body Corporate for Sabrina Avenue and which in effect;

1. Amends the real property description in item 4 on the New Community Management Statement.
2. Amends the description and lot entitlement for lots in schedule A within the New Community Management Statement.
3. Amends the explanation of the development in Schedule B to update the proposed development upon registration.

FURTHER that the Body Corporate authorises the execution of all forms necessary to record the New Community Management Statement by the affixing of the Common Seal of the Body Corporate under the signature of the Body Corporate Chairman and Secretary.

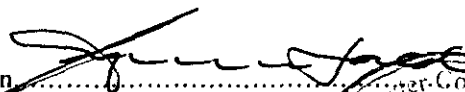
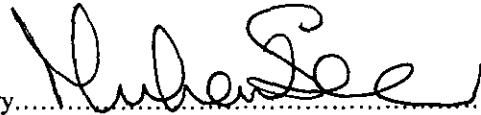
VOTING YES 2 NO 0 ABSTAIN 0


CLOSURE

There being no further business the Chairman declared the meeting closed at 8.20 am

Certified to be a true and correct copy of a Resolution without Dissent of the
Oyster Cove Waterfront Community Titles Scheme 28389.

Dated 15th day of October 2001

Chairman  Secretary 



MINUTES OF THE EXTRAORDINARY GENERAL MEETING OF THE BODY CORPORATE FOR
OYSTER COVE WATERFRONT COMMUNITY TITLES SCHEME 28389
 HELD IN THE OFFICES OF OYSTER COVE MANAGEMENT PTY LTD 3 WISEMANS COURT
 OYSTER COVE, HOPE ISLAND, QUEENSLAND ON THE 15TH OCTOBER 2001 AT 11.00 AM

PRESENT IN PERSON

Grant Archibald (Chairman), Richard Griffiths

LOTS REPRESENTED

Lot 636 Represented by Grant Archibald
 Lot 620 In person by Grant Archibald
 Lot 635 In person by Grant Archibald

IN ATTENDANCE

Michael Silver (Secretary) and Leah Davison of Stewart Silver King & Burns (Gold Coast) Pty Ltd

QUORUM

The Chairman advised that a quorum existed and declared the meeting open at 11.00 am.

MOTIONS FOR CONSIDERATION

1 CONFIRMATION OF MINUTES

RESOLVED BY ORDINARY RESOLUTION:-

That the Minutes of the 1st Annual General Meeting dated 30th May 2001, previously forwarded to Owners, be confirmed as a true and correct record of the meeting and that any consents and agreements executed pursuant to any resolution of the meeting be ratified.

VOTING	YES 2	NO 0	ABSTAIN 0
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2 CONSENT TO THE RECORDING OF EASEMENTS

Note: The easements annexed to this notice of meeting are in a draft form and contains all the substantive terms, however this draft may be altered by the Gold Coast City Council also to be approved by the Body Corporate Committee.

RESOLVED BY RESOLUTION WITHOUT DISSENT:-

That pursuant to Section 112 of the Standard Module, the Body Corporate be authorised to enter into easements, which will be granted by the Body Corporate for Oyster Cove Waterfront CTS 28389 to the Gold Coast City Council, in a form and content approved by the Committee and the Body Corporate's legal adviser, such easements to be as follows;

1. Easement D in the Common Property for the Oyster Cove Waterfront Community Titles Scheme 28389 on SP 145319 in favour of the Gold Coast City Council for access rights to existing waterfront owners, not part of the scheme, for stormwater drainage.
2. Easement E in the Common Property for Oyster Cove Waterfront Community Titles Scheme 28389 on SP 145320 in favour of the Gold Coast City Council for drainage.
3. Easement F in the Common Property for Oyster Cove Waterfront Community Titles Scheme 28389 on SP 145319 in favour of the Gold Coast City Council for drainage.

FURTHER that the Body Corporate Chairman and Secretary be authorised to sign the easement documents in a form and content approved by the Committee and the Body Corporate's legal adviser and affix the Seal of the Body Corporate.

VOTING	YES 2	NO 0	ABSTAIN 0
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3. NEW COMMUNITY MANAGEMENT STATEMENT

RESOLVED BY RESOLUTION WITHOUT DISSENT

That the Body Corporate consents to the recording of a new Community Management Statement (in terms of draft furnished with this Notice of Meeting) in compliance with the Body Corporate and Community Management Act 1997 to accompany registration of SP 145319 which in effect;

1. Amends the real property description in item 4 of the Community Management Statement.
2. Amends the description and lot entitlement for lots in schedule A within the Community Management Statement.
3. Amends the explanation of the development in Schedule B to update the proposed development upon registration.
4. Amends paragraph (b) in Schedule B relating to "Stage 10".
5. Amends the lot entitlement for stage 3 as set out in the paragraph subheaded "lot entitlements"
6. Amends the concept plan B.

FURTHER that the Body Corporate authorises the execution of all forms necessary to record the New Community Management Statement by the affixing of the Common Seal of the Body Corporate under the signature of the Body Corporate Chairman and Secretary.

VOTING	YES 2	NO 0	ABSTAIN 0
---------------	-----------------	-----------------	---------------------

Title Reference

1. DEFINITIONS INTERPRETATION

1.1 In this document:

'Access Card' means an access card, key or other similar device required to enable the operation of the Lock.

'Act' means the *Body Corporate and Community Management Act 1997*.

'Admin Fund Requirement' means the total amount:

- (a) provided for in the Body Corporate's annual or other budget under section 94(2) of the Standard Module (or equivalent provision of the Module applying to the Scheme at a relevant time) for:
 - (i) cost of maintaining the Lock and Waterway and body corporate assets acquired for use in and about, or for maintenance of, the Lock or Waterway;
 - (ii) cost of insurance of or in relation to the Lock, Waterway, and those body corporate assets (or a reasonable proportion, if the insurance policy or policies concerned are not solely of or in relation to the Lock, Waterway and those body corporate assets); and
- (b) any other expenditure of a recurrent nature in relation to the Lock, Waterway and those body corporate assets (or a reasonable proportion if the expenditure concerned is not solely in relation to the Lock, Waterway and those body corporate assets);
- (a) determined by the Body Corporate at any time to be raised by special or interim contribution under sections 95(2)(a) or (3) of the Standard Module (or equivalent provisions of the Module applying to the Scheme at a relevant time) in relation to the Lock, Waterway and those body corporate assets.

'Beneficiaries' means the persons who are from time to time the registered owners or lawful occupiers of the Contiguous Land and their invitees, of a class previously approved by the Body Corporate (acting reasonably).

'Beneficiaries' Proportion' means the proportion of the Waterway Funds Requirements, for which each owner of the Contiguous Land would be liable under sections 94(2)(b) and 94(3)(b) of the Standard Module (or equivalent provisions of the Module applying to the Scheme at a relevant time) if:

- (a) each such lot were part of the scheme land of the Scheme;
- (b) each such lot had a contribution schedule lot entitlement of one; and
- (c) the aggregate contribution schedule lot entitlements for the Scheme were the actual number at the date the Beneficiaries' Proportion is being notified plus the total number calculated under paragraph (b) of this definition.

'Body Corporate' means the *Body corporate for Oyster Cove Waterfront community titles scheme 28389*.

'By-Laws' means the by-laws of the Scheme.

'Contiguous Land' means the land described, at the date of this document, as Lots 19 to 33 on GTP 105202; Lots 76 to 81 on RP 889802; Lots 1 to 13 on GTP 105201; Lots 15 to 33 on GTP of Resubdivision 106011; Lots 138 to 140 on RP 889803; Lots 287 to 288 on SP 103348; Lots 318 to 322 on SP 103348 and Lot 323 on SP 145320 in the County of Ward, Parish of Coomera.

'Fishing Vessel' means a vessel equipped for catching any seafood for wholesale or retail sale.

'GST' has the same meaning as in the GST Act.

'GST Act' means a new tax system (Goods and Services Tax) Act 1999 as amended.

'Interest Rate' means 1% per annum over the rate of interest charge by Westpac Banking Corporation (or its successor) at the date the interest becomes due on overdraft facilities in excess of \$100,000.

Title Reference

'Lock' means the lock, if any, constructed on or adjoining the servient tenement for equalising water levels between the Waterway and lock and/or lock and Saltwater Creek (as the case requires) to allow passage of water craft from and to the Waterway to and from Saltwater Creek, and includes the motors and other apparatus by which the lock is operated.

'Module' means a regulation module other than the Standard Module.

'Mooring' means any buoy, pile, jetty, pontoon or other structure used or to be used for the mooring of a Vessel.

'Scheme' means *Oyster Cove Waterfront community titles scheme 28389*.

'Sinking Fund Requirement' means the amount provided for in the Body Corporate's annual or other budget under section 94(3)(a) of the Standard Module (or equivalent provision of the Module applying to the Scheme at a relevant time) in relation to the Lock, Waterway and body corporate assets acquired for use in and about, or for maintenance of, the Lock and Waterway for the year or other period covered by the budget.

'Standard Module' means the *Body Corporate and Community Management (Standard Module) Regulation 1997*.

'Supply' has the same meaning as in the GST Act.

'Taxable Supply' has the same meaning as in the GST Act.

'Tax Invoice' has the same meaning as in the GST Act.

'Value' has the same meaning as in the GST Act.

'Vessel' has the meaning same meaning as in the *Harbours Act 1955* and includes a sailboard, jet ski and similar pleasure craft, but excludes a Fishing Vessel.

'Waterway' means the inundated part of the servient tenement described in item 2 of the Form 9 Easement to which this schedule is annexed.

'Waterway Funds Requirement' means the Admin Fund Requirement and Sinking Fund Requirement.

1.2 Terms defined in the Act and used in this document have the same meanings as in the Act.

1.3 The covenants of this easement bind all persons deriving title to the Servient Tenement from the Grantor.

2. GRANT

The Grantor grants to the Grantee, subject to subsequent provisions the right for:

- (a) the Grantee to use in common with other lawfully entitled persons the Lock and Waterway for access by Vessel to all parts of the Waterway at all reasonable times to inspect the state of repair and maintenance of the Lock and Waterway;
- (b) each Beneficiary to use in common with other lawfully entitled persons at all reasonable times;
 - (i) the Lock for access by Vessel to and from the Waterway from Saltwater Creek;
 - (ii) that part of the Waterway reasonably required for access in the most direct route practicable by Vessel to and from that part of the Contiguous Land of that Beneficiary from and to the Lock.
 - (iii) that part of the Waterway reasonably required for access to the parts of the Contiguous Land of that Beneficiary adjoining the Waterway with or without consultants, contractors, sub-contractors or workmen previously approved in writing by the Grantor (acting reasonably), with equipment, machinery, tools and materials previously approved in writing by the Grantor (acting reasonably), to construct, maintain, repair, replace or remove a Mooring previously approved by the Grantor to the extent that cannot be done from the Contiguous Land of that Beneficiary.

3. RULES FOR USE OF LOCK

The Grantee and Beneficiaries:

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- (a) must operate the Lock only in accordance with approved operating methods from time to time notified by the Grantor;
- (b) must not attempt to use the Lock for passage of a Vessel beyond the Lock's capacity;
- (c) do not by this grant have priority in use of the Lock over any other person lawfully entitled to use it;
- (d) must not during any period when the Lock is inoperative while undergoing maintenance, repair or replacement use or attempt to use or operate the Lock;
- (e) have no right against the Grantor for compensation or otherwise on account of the Lock being inoperative for such a reason; and
- (f) must comply with such of the By-Laws as would, were the Grantee or a Beneficiary an owner or occupier referred to in the By-Laws, have application to the conduct of the Grantee and each Beneficiary within or in relation to the Lock.

4. ACCESS CARD

Provided a Beneficiary complies with its obligations under this easement and the By-laws the Grantor will provide to that Beneficiary an Access Card for use in relation to the Lock in exchange for a security deposit from the Beneficiary in an amount reasonably determined by the Grantor not in excess of an amount equal to that Beneficiaries Proportion.

5. RULES FOR USE OF WATERWAY

The Grantee and Beneficiaries must observe the following rules:

- (a) no water craft except Vessels, and any others for which the Grantor has given specific written approval (which the Grantor may give unconditionally, give subject to conditions or refuse in its discretion) on a written application for consent by the Grantee or Beneficiaries, may be used within the Waterway;
- (b) no person under 16 may operate a Vessel within the Waterway;
- (c) if a Vessel is:
 - (i) of such a kind;
 - (ii) is powered in such a way; or
 - (iii) is powered by means of propulsion of such power,

that the law requires its operator or person in charge to be licensed, no one except a person holding a current licence of the requisite kind may operate the Vessel within the Waterway;

- (d) if a Vessel is:
 - (i) of such a kind;
 - (ii) is powered in such a way; or
 - (iii) is powered by means of propulsion of such power,

that the law requires the Vessel to be registered, the Vessel may not be operated within the Waterway at any time while it is not so registered;

- (e) Vessels may not be moored in the Waterway except in places approved by the Grantor or in accordance with notices posted by the Grantor in or about the Waterway;
- (f) Vessels may not be driven at a speed in excess of 4 knots within the Waterway;
- (g) Vessels may not be used within the Waterway for accommodation;
- (h) without derogating from any preceding provision, Vessels being operated within the Waterway must at all times be operated and moored strictly in compliance with all relevant laws; and
- (i) the Grantee and Beneficiaries must comply with such of the By-Laws as would, were the Grantee or a

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Beneficiary an owner or occupier referred to in the By-Laws, have application to the conduct of the *Grantee and Beneficiary within the Waterway including abiding by any exclusive use By-Laws in relation to any part or parts of the Waterway over which exclusive use has been given pursuant to the By-Laws.*

6. RULES FOR MOORINGS

6.1 A Beneficiary:

- (a) may only construct, maintain, repair, replace or remove a mooring immediately adjacent to the Contiguous Land of a Beneficiary:
 - (i) only with the Grantor's prior written approval;
 - (ii) in accordance with the By-laws;
 - (iii) provided all necessary approvals have been obtained from any relevant authority;
 - (iv) in accordance with the construction design in accordance with the By-laws and previously approved in writing by the Grantor;
- (b) must comply with all By-laws which relate to the use of the Mooring;
- (c) only use the mooring for private use in relation to the Beneficiaries Contiguous Land;
- (d) maintain the Beneficiaries private mooring (if any) in good and substantial repair at the Beneficiaries cost failing which the Grantor may repair the mooring and recover the cost as a liquidated debt from the Beneficiary;
- (e) must comply with such of the By-laws as were the Beneficiary an owner or occupier referred to in the By-laws, have application to the construction, repair, maintained use of a Mooring of a Beneficiary.

7. INFORMATION TO GRANTEE: BY-LAWS AND FUNDS REQUIREMENTS

- 7.1 Upon written request by the Grantee or a Beneficiary the Grantor must at the Grantee's or Beneficiary's reasonable cost promptly provide a copy of the By Laws to the Grantee or Beneficiary as the case requires.
- 7.2 The Grantor will provide to the Beneficiary detail of the Waterway Funds Requirements when ever such amount is determined by the Grantor.

8. CONTRIBUTIONS TO MAINTENANCE AND SINKING FUND REQUIREMENTS

- 8.1 A Beneficiary must pay to the Grantor the Beneficiaries' Proportion and/or within 14 days after receiving from the Grantor:
 - (a) a copy of the budget or resolution evidencing the Waterway Funds Requirement, certified to be a true copy by a member of the Committee of the Body Corporate; and
 - (b) an invoice for the Beneficiaries Proportion (of the Waterway Funds Requirement detailed in that budget or resolution).
- 8.2 If a Beneficiary has not paid the invoiced amount (including any GST under clause 9) in full within 30 days after receiving the documents provided for in clause 6.1, the Body Corporate (by decision of the committee) may by notice to that Beneficiary:
 - (a) suspend the rights granted to that Beneficiary under this easement until that amount, and interest under clause 12, is paid in full; and
 - (b) withdrew and/or disable any Access Card given to the Beneficiary.

9. GRANTEE TO MAKE GOOD

The Grantee and Beneficiaries must exercise the rights conferred by this easement so as to cause as little damage to

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the Servient Tenement or adjoining land of the Grantor or inconvenience to the Grantor or any other person as is reasonably practicable and immediately make good any damage so caused to the Servient Tenement or such adjoining land by the Grantee or Beneficiary.

10. **INDEMNITY TO GRANTOR**

The Grantee and Beneficiary indemnify the Grantor against any loss or damage, costs and expenses suffered or incurred by the Grantor (whether in relation to loss of or damage to property or injury to or death of any person) by reason or in any way related to or arising out of a person's presence in or on the Lock or the Waterway (whether or not in or on a Vessel) in purported reliance on the rights conferred by this easement.

11. **GST**

11.1 If any Supply made under or in connection with this easement is a Taxable Supply then the recipient of that Supply shall pay the GST in respect of that Supply to the Supplier where the GST is calculated in accordance with the GST Act and on the basis that the consideration otherwise payable under this easement is the Value of the Taxable Supply.

11.2 The supplier must provide a Tax Invoice to the recipient on or before the due date for payment of the consideration payable.

12. **DEFAULT INTEREST**

12.1 Without limiting the strict effect of any other provision, if any money payable by the Grantee under this easement is not paid when due, that money will bear interest from the due date for payment to the actual date of payment (both dates inclusive) at the Interest Rate per annum simple interest, payable contemporaneously with the balance of the money on which it is accruing.

12.2 Any judgment for any such money will likewise bear interest from the date of judgment to the date of payment, both dates inclusive.

13. **RESOLUTION OF DISPUTES**

13.1 If any dispute or difference arises between the Grantor, Grantee and/or Beneficiary concerning the interpretation or operation of any other provision of this easement, then the matter will be determined by a solicitor ('Mediator') to be nominated:

- (a) by mutual agreement between the parties; and
- (b) in the absence of such mutual agreement then by a nominee of the President for the time being of the Queensland Law Society Incorporated.

13.2 The decision of the Mediator will be:

- (a) that of an expert, not an arbitrator; and
- (b) final and binding upon the Grantor, Grantee and/or Beneficiary.

13.3 The costs of such expert determination are to be paid in accordance with the order of the Mediator.

14. **RELEASE**

After the date the Grantor ceases to be the registered proprietor of the Servient Tenement ('Relevant Date') it will be under no further liability to the Grantee to the Grantee's successors or to the other Beneficiaries for any thing connected with this easement which arises subsequent to the Relevant Date.

Title Reference

15. SEVERABILITY (READING DOWN)

15.1 If reading down a provision of this easement would prevent the provision being invalid or voidable it must be read down to the extent that it is necessary and capable of being read down.

15.2 If, notwithstanding clause 15.1, a provision of this easement is still invalid or voidable:

(a) if the provision would not be invalid or voidable if a word or words were omitted, that word or those words must be deleted; and

(b) in any other case, the whole provision must be deleted,

and the remainder of this easement continues to have full force and effect.

16. AMENDMENTS TO EASEMENT DOCUMENT 701622417

Standard document 701622417 is amended as follows:

(a) clause 2.3 is replaced with:

'Where the purpose of the easement specified in item 7 of the Form 9 is 'Drainage' – overland drains and channels for the passage or conveyance of rainwater and other lawful discharges to local authority drainage through or across the servient tenement together with field inlet pits and other usual or necessary fittings and attachments as well as works for the protection and/or support of all such things.'



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l a w y e r s

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23 October 2001

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Delivery

Dear Sir

REQUISITION - DEALING NUMBER 705123524 – EASEMENT IN GROSS

We refer to your requisition dated 22 October 2001.

You will note that the draft easement annexed to the minutes of meeting expressly contemplates that the easement would be over what is described as the lock. The lock is simply more particularly described as easement G.

The body corporate resolution permits the easement to be in a form and content approved by the committee and the body corporate legal advisors. Accordingly the reference to easement G is simply a matter of description and is contemplated by the body corporate resolution.

It is submitted that the easement should be registered.

In any event the registration of the easement should not delay registration of any document which has been lodged for registration prior to this document.

Thank you for your assistance.

Yours faithfully

Andrew Muir
Senior Associate

359701/S3

Partners

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 David Searles
 Brett Heading
 Tim Whitney
 Peter McKnoulty
 Ian Hughes
 Rodney Bell

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