

8.1 DA 2019/206 - Variation to 88b Instrument - 79 Plateau Drive.DOC

Box:e-DeX /Doc:DP 1230198 B /Rev:28-Apr-2017 /Sts:SC.OK /Prt:01-May-2017 09:27 /Pgs:ALL /Seq:1 of 8
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ePlan

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 8 Sheets)

Lengths are in metres
 Plan: DP

DP1230198

Subdivision of Lot 7 DP 1201077
 Parish of Tuckombil County of Rous
 being the land contained in Folio
 Identifier 7/1201077 being
 subdivision covered by Ballina
 Shire Council Subdivision
 Certificate No. 38.1/2016

**Full name and address
 of proprietor of the land:**

Ellis Lindsay Smith, Margaret Grace Smith, Sally-
 Anne Clarke & Jodie Alison Whitney of 102
 Molesworth Street Lismore NSW 2480

**Full name and address
 of mortgagee of the land:**

Commonwealth Bank of Australia ABN 48
 123 123 124

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 Services and Right of Access Variable Width (B)	Lot 9 Lot 10	Lot 10 Lot 9
2	Easement for Drainage of Sewage Variable Width (C)	Lots 7- 18 inclusive	Ballina Shire Council
3	Restrictions on Use	Lots 7-17 inclusive	Each other lot
4	Positive Covenant	Lots 7, 8, 9, 10 & 13	Ballina Shire Council

PART 2 (Terms)

- Terms of Easement for Services and Right of Access Variable Width firstly referred to in the abovementioned plan.

The owner of the lot benefitted with respect to the Easement for Services may:



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- (a) use each lot burdened, but only within the site of this easement, to provide domestic services to or from each lot benefited, and
- (b) do anything reasonably necessary for that purpose, including:
 - entering the lot burdened, and
 - taking anything on to the lot burdened, and
 - carrying out work, such as constructing, placing, repairing or maintaining pipes, poles, wires, cables, conduits, structures and equipment.

In exercising those powers, the owner of the lot benefited must:

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

For the purposes of this easement "domestic services" includes supply of water, gas, electricity, telephone and television and discharge of sewage, sullage and other fluid wastes.

The owner of the lot benefited and every person authorised by that person with respect to the Easement for Right of Access may:

- (a) by any reasonable means pass across and repass at all times and for all purposes with or without animals or vehicles or both each lot burdened, but only within the site of this easement, to get to or from the lot benefited, and
- (b) do anything reasonably necessary for that purpose, including:
 - entering the lot burdened, and
 - taking anything on to the lot burdened, and
 - carrying out work within the site of this easement, such as constructing, placing, repairing or maintaining trafficable surfaces, driveways or structures.

In exercising those powers, the owner of the lot benefited must:



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- (a) ensure all work is done properly, and
 - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
 - (c) cause as little damage or destruction as is practicable to the lot burdened and any improvement on it, and
 - (d) restore the lot burdened as nearly as is practicable to its former condition, and
 - (e) make good any collateral damage or destruction.
2. Terms of Easement for Drainage of Sewage Variable Width secondly referred to in the abovementioned plan.
- i. The body having the benefit of this easement may:
 - (a) drain sewage, sullage and other fluid wastes in pipes through each lot burdened, but only within the site of this easement, and
 - (b) do anything reasonably necessary for that purpose, including:
 - entering the lot burdened, and
 - taking anything on to the lot burdened, and
 - using any existing line of pipes, and
 - carrying out works, such as constructing, placing, repairing or maintaining pipes and equipment.
 - ii. In exercising those powers, the body having the benefit of this easement must:
 - (a) ensure all work is done properly, and
 - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and



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- (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
 - (d) restore the lot burdened as nearly as is practicable to its former condition, and
 - (e) make good any collateral damage.
- iii The owner of the lot benefitted shall not carry out, or permit to be carried out, any erection of building or structures within the site of this easement.
3. Terms of Restriction thirdly referred to in the abovementioned plan.
- (a) No single dwelling house erected upon the subject land shall have a floor area (excluding carports and outbuildings) of less than 180 square metres.
 - (b) No part of the subject land shall be used for any industrial manufacturing or retailing purposes and no offensive or noisy trade or activity shall be carried out on any part thereof.
 - (c) No fence shall be erected on the subject land having a height exceeding 1.8 metres.
 - (d) Not more than one main building intended to be used for a residence shall be permitted to be erected on each lot in the subdivision other than Lot 1 in accordance with the consent of Ballina Shire Council.
 - (e) No separate garage, outbuildings or similar structure shall be erected upon the subject land unless the same is of a similar and compatible design and of similar materials and colour as the principal building erected thereon provided however that one garden shed may be erected within each Lot.
 - (f) No house of any age in excess of one year may be partly or wholly moved to, placed upon, re-erected upon, reconstructed on or permitted to remain on the Lot burdened.
 - (g) No building erected on the subject land shall have a roof of a material other than a material of non-reflective nature and no roof shall be of corrugated iron, white colourbond steel, fibrous cement or similar materials.



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- (h) All grass and other vegetation growing upon the subject land shall be regularly mown and maintained and the subject land shall be kept free of all rubbish, refuse or garbage. No waste shall be kept thereon except in sanitary containers.
- (i) No person shall erect or cause or permit to be erected upon the subject land or any part thereof any advertisement, hoarding, or similar structure and shall not permit the subject land or any part thereof or any building or structure erected thereon to be used for the display of any advertisement or notice except those that relate solely to the selling or letting of the subject land or any part thereof or any building erected thereon.
- (j) No shed, basement, tent, shack, garage, trailer, camper, caravan or any outbuilding erected or placed on any lot shall be used at any time as a permanent or seasonal dwelling unless authorised in writing by the Ballina Shire Council.
- (k) The registered proprietor of the lot burdened shall not, nor shall they permit any other person, to allow any heavy transport vehicle or commercial vehicle of more than two (2) tonnes in weight (unloaded) or caravan to be parked on the land burdened or upon the public streets located in the near vicinity of the lot burdened other than during daylight hours and only in connection with the construction, renovation, repair or maintenance of any structures or improvements on the lot burdened.
- (l) The construction or erection of any building being erected on any lot shall be prosecuted diligently and continuously from the commencement of that construction or erection until the exterior of such building is completed and painted or otherwise suitably finished. Such construction or erection is to be completed within a period of twelve (12) months from the date of commencement unless otherwise authorised in writing by the Ballina Shire Council.
- (m) No dividing fence shall be erected on any of the subject land to divide it from any adjoining lot owned by Ellis Lindsay Smith, Margaret Grace Smith, Sally-Anne Clark and Jodie Alison Whitney or any of them without the consent of Ellis Lindsay Smith, Margaret Grace Smith, Sally-Anne Clark and Jodie Alison Whitney. Such consent shall not be withheld if such fence shall be erected without expense to Ellis Lindsay Smith, Margaret Grace Smith, Sally-Anne Clark and Jodie Alison Whitney and be of a type and construction approved by them.



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4. Terms of Positive Covenant fourthly referred to in the abovementioned plan.

- (a) The owner of the lot burdened will provide a site specific geotechnical assessment for the lot burdened before construction on the lot burdened to Ballina Shire Council and building types will be restricted to lightweight structures in accordance with the recommendations contained in the Slope Stability and Landslip Hazard Assessment (prepared by Shaw Urquhart Pty Ltd, Reference No. 06262/2-B, dated 21 May 2007) as submitted with the Development Application 2010/453 dated 20 December 2011.
- (b) No burdened lot shall be transferred unless such Contract for Sale shall include the report by Shaw Urquhart Pty Ltd dated 21 May 2007.
- (c) Benching, that is the process of removing material around a trench or excavation such that the walls are stepped or benched back rather than vertical, for house excavation or landform modification on the lot burdened is not to be greater than 1.2m in depth when measured from the existing surface level.

Name of person or body empowered to release, vary or modify the terms of the Easements or Restrictions or Positive Covenant in this Instrument.

Ballina Shire Council

EXECUTED Ballina Shire Council by its authorised delegate pursuant to s377 of the Local Government Act 1993 Andrew Smith (name of delegate)


.....
Signature of delegate

Andrew Smith
.....

Name of delegate

I certify that I am an eligible witness and that the delegate signed in my presence

R Gutter
.....
Signature of Witness

Robyn Gutter
.....
Name of Witness

of 40 Cherry Street, Ballina



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(An eligible witness is a person who has known the authorised delegate for more than 12 months or who has sighted identifying documentation).

EXECUTED by Ellis Lindsay Smith



Ellis Lindsay Smith

Signature of witness

ANDREW MCINNES

Name of Witness (please print)

SOLICITOR
SUITE 5 - FIRST FLOOR
CNR RIVER & MARTIN STREETS
BALLINA NSW 2478

EXECUTED by Margaret Grace Smith



Margaret Grace Smith

Signed by her Attorney

Pursuant to Power of Attorney

Book 4606 No. 257

Signature of witness

ANDREW MCINNES

Name of Witness (please print)

SOLICITOR
ADDRESS AS ABOVE

EXECUTED by Sally-Anne Clark



Sally-Anne Clark

Signed by her Attorney

Pursuant to Power of Attorney

Book 4652 No. 766

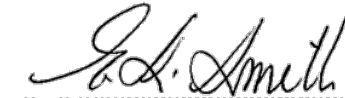
Signature of witness

ANDREW MCINNES

Name of Witness (please print)

SOLICITOR
ADDRESS AS ABOVE

EXECUTED by Jodie Alison Whitney



Jodie Alison Whitney

Signed by her Attorney

Pursuant to Power of Attorney

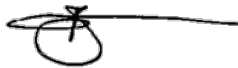
Book 4652 No. 767

Signature of witness

ANDREW MCINNES

Name of Witness (please print)

SOLICITOR
ADDRESS AS ABOVE



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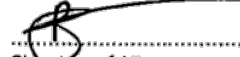
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EXECUTED by COMMONWEALTH BANK OF AUSTRALIA COMMONWEALTH BANK OF AUSTRALIA
ABN 48 123 123 124 by its duly constituted Attorney
Under Power of Attorney Book 4548 No. 494 dated
20th ~~MARCH~~ MARCH 2017 who has no notice of revocation of such
Power of Attorney in the presence of:


.....
Signature of Attorney
RMD HUGHES
.....
Name of Attorney (please print)
Relationship Manager


.....
Signature of witness
PAUL STANFORD CBA ANALYST
Name of Witness (please print)

LEVEL 1
17 CONWAY STREET
LISMORE NSW 2480
FULL ADDRESS OF WITNESS

REGISTERED  27.4.2017