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Acquisition of Land Act 1967
State Development and Public Works Organisation Act 1971

TAKING OF LAND NOTICE (No. 4) 2019

Short title

1. This notice may be cited as the *Taking of Land Notice (No. 4) 2019*.

Easements taken

2. The Easements described in Schedule 1 are taken by the Coordinator-General pursuant to the *State Development and Public Works Organisation Act 1971* for works authorised by the Governor in Council to undertake, for the establishment of trunk sewer infrastructure for the Foxwell State Secondary College, and vests in the Council of the City of Gold Coast, on and from 25 October 2019.

Rights and obligations

3. That the rights and obligations conferred and imposed by the Easements in Schedule 1 includes the matters set out in Schedule 2.

SCHEDULE 1

4. An easement area of about 394 square metres over part of Lot 1 on Survey Plan 168282 contained in Title Reference 50936734 and shown on Plan Lot 1 on SP168282 Proposed Trunk Sewer Infrastructure Easement dated 9 August 2019 held in the office of the Coordinator-General.
5. An easement area of about 310 square metres over part of Lot 2 on Survey Plan 196055 contained in Title Reference 50671016 and shown on Plan Lot 2 on SP196055 Proposed Trunk Sewer Infrastructure Easement dated 9 August 2019 held in the office of the Coordinator-General.

SCHEDULE 2*State Development and Public Works Organisation Act 1971
Rights and Obligations Under Easement***1. Parties**

In this Document

- 1.1 “Grantee” means Council of the City of Gold Coast as detailed in Item 5 on the Form 9
- 1.2 “Grantor” means the owner named in Item 1 on the Form 9

2. Relevant Works

In this Document, “Relevant Works” means:

- 2.1 where the purpose of the easement specified at Item 7 of the Form 9 is “Sewerage” – sewer(s) and/or pipeline(s) for the purpose of conveying sewerage and all kinds of waste through, across or under the servient tenement together with manholes, stopcocks and all other usual or necessary fittings and attachments (including pumps and/or pump stations where required) as well as works for the protection and/or support of all such things;
- 2.2 where the purpose of the easement specified in Item 7 of the Form 9 is “Water Supply” – water reticulation mains and/or pipelines for the purpose of conveying water supplied by the Council through, across or under the servient tenement together with manholes, stopcocks, meters, pressure control devices, pumps and/or pump stations, water reservoirs, and all other usual or necessary fittings and attachments as well as works for the protection and/or support of all such things;
- 2.3 where the purpose of the easement specified in Item 7 of the Form 9 is “Drainage” – overland or underground drains, pipes, conduits and channels for the passage or conveyance of rainwater and other lawful discharges to local authority drainage through, across or under the servient tenement together with manholes, field inlet pits and all other usual or necessary fittings and attachments as well as works for the protection and/or support of all such things.

3. Rights of Grantee

The Grantee has full and free right and liberty at all times hereafter to enter upon the easement for the purposes of constructing and thereafter forever using and maintaining such Relevant Works as it considers appropriate. In so doing, the Council may, by its employees, agents and other persons authorised by it:

- 3.1 construct, install, extend, deepen, widen, cleanse, add to, remove inspect, maintain and repair the Relevant Works, and when and where it deems fit, remove and replace the Relevant Works with new Relevant Works (whether of a similar nature to those replaced or not);
- 3.2 dig into, sink shafts in, and erect scaffolding upon the easement, and open and break up the soil of the easement or any part thereof including the sub-surface;

- 3.3 remove and dispose of spoil created as a consequence of exercising its rights hereunder;
- 3.4 clear and keep clear the easement by any means or method including cutting and removal of timber, trees and undergrowth from the easement and burning off such timber, trees and undergrowth;
- 3.5 construct and maintain on the easement such access track, gates and appurtenant works as it considers necessary;
- 3.6 enter upon and remain, pass and repass on and over the easement for all or any of the foregoing purposes with or without vehicles, plant or equipment of any description whatsoever; and
- 3.7 do such other works and things through, across, in or under the easement as are incidental to proper exercise of the rights granted to the Grantee.

4. Property of Relevant Works

All Relevant Works are and remain the property of the Grantee notwithstanding any actual or apparent affixation to the easement, and the Grantee is solely responsible for the operation and maintenance of all Relevant Works.

5. Removal of Fencing

For the purpose of gaining access to the easement the Grantee may demolish or break open any fencing on or adjacent to the easement, but where livestock are contained within the fenced area sufficient notice must be given to the Grantor to enable the livestock to be secured.

6. Reinstatement of Fencing

Subject only to Clause 12 herein, the Grantee must either:

- 6.1 reinstate all fences damaged by it in the exercise of any of its rights granted herein; or
- 6.2 in lieu of reinstating any such fence, install a gate the quality and materials of workmanship of which, except with the Grantor's consent, must be not less than the quality and materials of workmanship of the existing fence. A gate so installed becomes the property of the Grantor and thereafter must be maintained by the Grantor.

7. No Structures etc on Easement

The Grantor must not at any time without the written permission of the Grantee permit the:

- 7.1 erection of any buildings or structures (other than fences) upon the easement or otherwise permit the easement or any part thereof to be used in such a way as to obstruct or interfere with the Relevant Works and/or the proper and effective use thereof by the Grantee;
- 7.2 installation of concrete, bitumen or other pavement or driveways, or gardens or landscaping involving concrete, brick or other permanent materials upon the easement;

- 7.3 removal or stockpiling of any soil, sand, gravel, or other substance or material upon the easement, or construct any roads, dam walls or other earthworks on the easement which would in any way obstruct or interfere with the Relevant Works and/or the proper and effective use thereof by the Grantee.

8. Removal of Unauthorised Structures etc

Subject only to Clause 12 herein, if any thing is erected, placed, found or installed upon the easement in contravention of Clause 7, the Grantee may, in addition to any other remedies, and after having given the Grantor reasonable notice of its intention to invoke this clause, enter the easement and remove or demolish the matter. If it does so:

- 8.1 it may dispose of the matter or any resultant demolition materials in such manner as it sees fit without being liable to account to the Grantor therefore (except as provided in Clause 8.2); and
- 8.2 it may recover, in any Court of competent jurisdiction, costs actually incurred by it in taking that action (including internal wage and salary costs) less any moneys actually received by it as a result of disposing of the thing or any resultant demolition materials.

9. Damage to Structures etc

The Grantee may, in its sole discretion, determine how the rights granted to it under this easement are exercised. The Grantee must not wilfully damage or destroy any matter to any extent greater than is reasonably necessary to exercise its rights hereunder, but the Grantee:-

- 9.1 except as specified in Clause 6 is not otherwise responsible for any damage to or destruction of any matter in the course of exercise of its rights hereunder;
- 9.2 is not under any obligation to reinstate, repair or replace any matter damaged or destroyed in consequence of exercise of its rights hereunder (except a fence which is separately covered in Clause 6) its only obligation where any matter has been do damaged or destroyed being to leave the easement in as clean and tidy a state as is practical having regard to the nature of the matter damaged or destroyed and the work the Grantee has done;
- 9.3 is not responsible in any event for inconvenience or disturbance to the Grantor or occupiers of the easement arising by through or in connection with the exercise of its rights hereunder

In this clause the term “matter” means:

- buildings, structures or other materials or things erected, placed, found or installed upon the easement (whether in contravention of Clause 7 or otherwise); and
- trees and plants within the easement.

10. Protection of Relevant Works

The Grantor must not do anything (whether by act or omission) likely to jeopardise or prejudicially affect the safety or reliable working of any Relevant Works.

11. Further Assurances

The benefit and burden of this easement binds all persons deriving title from and under the Grantor and the Grantee. Each of them must, whenever so required by the other or a successor in title, do all things and give all assurances reasonably required for the proper and effective securing of the rights conferred hereunder. However, this clause must not be construed so as to require the Grantor to accept any liability to contribute towards the maintenance and upkeep of the Relevant Works.

12. SPECIAL COVENANTS FOR STATE RESERVE LAND

The following Clauses are in addition to or replace where noted those detailed above and will form part of the Covenants of this Standard Terms Document when any land is designated as a Reserve as detailed in Item 3 of the Form 9.

12.1 Reinstatement of Fencing

Clause 6 herein is omitted and replaced with the following –

The Grantee must either:

12.1.1 reinstate all fences damaged by it in the exercise of any of its rights granted herein; and

12.1.2 in lieu of reinstating any such fence, install a gate the quality and materials of workmanship of which must not be less than the quality and materials of workmanship of the existing fence.

12.2 Removal of Unauthorised Structures etc

Clause 8 herein is omitted and replaced with the following –

If any thing is erected, placed, found or installed upon the easement in contravention of Clause 7 the Grantee may, in addition to any other remedies, and after having given the Grantor reasonable notice of its intention to invoke this clause, enter the easement and remove or demolish the matter. If it does so it may dispose of the matter or any resultant demolition materials in such manner as it sees fit without being liable.

12.3 Removal of Trees

The Grantee shall not cut or remove timber or trees from the said land without first giving reasonable notice to the Grantor and obtaining all necessary permits. Such notice will not be required under this clause in the event that there is an actual or potential danger to persons or property or there is any interference or jeopardy to the supply of the Relevant Works.

12.4 Removal of Assets upon Termination of Easement

Upon termination of the Easement, the Grantee will, at its own cost and expense, remove all of the Relevant Works from the Easement that may cause contamination or environmental harm to the land as defined by the Environmental Protection Act 1994 or similar legislation.

12.5 Indemnity

The Grantee indemnifies the Grantor against all actions, suits, proceedings, claims demands, costs, losses, damages and expenses arising out of or in respect of any act or omission of the Grantee in the use or attempted use of the Easement by the Grantee, except where such actions, suits, proceedings, claims, demands, costs, losses, damages or expenses arise as a result of any negligent act or omission, an illegal act or a breach of a condition of the Easement by the Grantor. The Grantee hereby releases and discharges the Grantor from any such actions, suits, proceedings, claims, demands, costs, losses, damages and expenses which but for the provisions hereof might be brought against or made upon the Grantor.

12.6 Public Risk

The Grantee will effect and keep current a public risk liability insurance policy for an amount which the Grantee considers appropriate to its public liability risk but in any event, for an amount not less than Ten Million Dollars (\$10 000 000.00). The Grantee will provide the Grantor with a Certificate of Currency for the public liability policy as required by the Grantor.

12.7 Power of Attorney

In so far as it is within the power of the Grantee to do so, the Grantee appoints the Grantor as the Grantee's Attorney enabling the Attorney to do such things as the Attorney may consider necessary or desirable to effect a surrender of this easement upon the default by the entity of any condition, covenant or clause of this easement provided however that the Grantor may only exercise its right to surrender the easement under this clause if:

- the Grantee has breached a condition, covenant or clause of this easement; and
- the Grantor has given written notice of the breach to the Grantee; and
- the Grantor has allowed the Grantee 90 days from the date of receipt of the notice to remedy the breach; and
- the Grantee has not remedied the breach by the expiration of that 90 days.

(SCHEDULE ENDS).

ENDNOTES

1. Made by the Governor in Council on 24 October 2019.
2. Published in the Gazette on 25 October 2019.
3. Not required to be laid before the Legislative Assembly.
4. The administering agency is the Department of State Development, Manufacturing, Infrastructure and Planning.