

Instrument setting out terms of Easements or Profits à Prende 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.

(Sheet 1 of 8 sheets)

Plan: DP1216009

Plan of Subdivision of Lot 121 in Deposited Plan 1205071 covered by Subdivision Certificate:

No 3/2016.....dated 17 March 2016

Full name and address of the owner of the land:

Rayshield Pty Limited ACN 090 717 310
5th Level, 9 Beach Road
Surfers Paradise Qld 4217

Full name and address of mortgagee:

Westpac Banking Corporation
Level 2, 3950-3952 Pacific Highway
Loganholme Qld 4129

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.	Restriction on the Use of Land	Each Lot excluding Lots 153, 154 & 155	Every other Lot
2.	Restriction on the Use of Land	Each Lot excluding Lots 153, 154 & 155	Ballina Shire Council
3.	Positive Covenant	Lots 121 - 152 inclusive	Ballina Shire Council
4.	Restriction on the Use of Land	Lots 122, 123, 132, 133, 142, 146, 151 & 152	Every other Lot
5.	Restriction on the Use of Land	Lots 121, 124 - 131 inclusive, Lots 134 - 140 inclusive, Lot 144, & Lots 148 - 150 inclusive	Every other Lot
6.	Restriction on the Use of Land	Lots 141, 143, 145 & 147	Every other Lot
7.	Restriction on the Use of Land	Lots 121 - 152 inclusive	Every other Lot
8.	Restriction on the Use of Land	Lots 121 - 152 inclusive	Every other Lot
9.	Positive Covenant	Lots 121 - 152 inclusive	Ballina Shire Council

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Number of items 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
10.	Easement for Drainage of Sewage 3 wide and variable (E4)	Lots 139 & 144	Ballina Shire Council
11.	Restriction on the Use of Land 3 wide and variable (R1)	Lots 139 & 144	Ballina Shire Council
12.	Easement for Drainage of Water variable width (E5)	Lots 149 & 150	Ballina Shire Council
13.	Easement for Sound Attenuation Wall 0.5 wide (E6)	Lots 148 - 152 inclusive	Ballina Shire Council
14.	Restriction on the Use of Land 4 wide (R2)	Lots 148 - 152 inclusive	Ballina Shire Council
15.	Positive Covenant	Lots 148 - 152 inclusive	Ballina Shire Council

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PART 2 (TERMS)

1. **Terms of Restriction on the Use of Land Firstly referred to in the Plan:**
 - 1.1 No Building or fence shall be erected on a Lot Burdened unless the plans, specifications, position, excavation, driveway and landscaping proposed shall first have been approved in writing by the Developer. Any dispute or difference arising out of this Clause shall be submitted to arbitration under the Commercial Arbitration Act 1984 by a single Arbitrator chosen by the President of The Law Society of New South Wales or his nominee.
 - 1.2 No Building of pole house construction shall be permitted.
 - 1.3 No Building shall be constructed on a Lot Burdened unless:
 - 1.3.1 The materials are predominantly timber, timber sheeting, stone, brick or concrete blocks with bagged or rendered and painted finish;
 - 1.3.2 The materials used for the roof are either Colorbond metal sheeting or tiles.
 - 1.4 No Building shall be erected on a Lot Burdened having a maximum height to ridge line of more than 9m above natural ground level.
 - 1.5 No highset Building shall be erected on a Lot Burdened unless the lower levels are enclosed.
 - 1.6 No Building shall be erected on a Lot Burdened unless:
 - 1.6.1 It contains a lock-up garage which shall be attached to the Habitable Dwelling which is of a similar design and of similar materials, finishes and colours to the Habitable Dwelling;
 - 1.6.2 The garage must accommodate a minimum of two car parking spaces with an area not less than 36m²;
 - 1.6.3 There is a driveway to each Habitable Dwelling which shall not be less than 4.8m width at street boundary and shall:
 - (a) Extend from the street curb to the garage;
 - (b) Be one contiguous surface (strips are not acceptable);
 - (c) Be constructed of pavers or exposed aggregate or stamped or stencilled coloured concrete finish;
 - (d) All driveways must be constructed and completed to the approved design prior to Council issue of an occupation certificate.
 - 1.7 Terms 1 - 12 inclusive shall not prevent the Registered Proprietor from erecting one garden shed which shall:
 - 1.7.1 Be constructed of proprietary Colorbond or equivalent material for garden sheds;
 - 1.7.2 Not be of a size greater than 3m width, 3m breadth and 2.4m in height;
 - 1.7.3 Not be of galvanised iron, unpainted zincalume coated steel, asbestos, cement fibre sheeting or of any reflective material.
 - 1.8 No external antennae, satellite dish or solar panel shall be constructed or erected on a Lot Burdened unless it is located at the rear of the Habitable Dwelling and is unobtrusive, integrated with and below the level of the roof apex of the Habitable Dwelling located on the Lot.

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- 1.9 No clothesline, air-conditioner, hot water system, heat pump, barbecue, trailer, caravan or campervan shall be constructed or erected upon or kept on a Lot Burdened unless it is located below the eaves line of the Habitable Dwelling located on the Lot and concealed from view from the street frontage.
- 1.10 No letterbox shall be constructed unless it is of a material and in a manner that matches the style, colour and material of the Habitable Dwelling.
- 1.11 No rainwater tank shall be allowed on a Lot Burdened unless it has a capacity of at least 3,000 litres and coloured to blend with the Habitable Dwelling and screened from view from the street.
- 1.12 No advertisement, hoarding or sign shall be erected or displayed on a Lot Burdened (except "For Sale" signs or a builder's sign during the course of construction works) unless approved in writing by the developer and provided such sign is less than 1m² in area.
- 1.13 No Building shall be erected on a Lot Burdened unless all fencing, walls or screens are approved by the Developer and constructed prior to occupation of the Habitable Dwelling and comply with the following criteria:
 - 1.13.1 All fencing of the Lot Burdened shall be to a maximum height of 1.8m above the ground level upon registration of this Plan;
 - 1.13.2 No fence shall be erected or permitted to remain along the street frontage of the Lot or any part of the Lot nor along any side boundary extending from the front boundary to the front alignment of any Habitable Dwelling erected upon the Lot, provided that in the case of any Lot having a frontage to two or more streets the street frontage above referred to shall be deemed to be frontage to which the Habitable Dwelling erected upon the Lot Burdened shall front and any other boundary or boundaries shall be deemed to be a side or rear boundary;
 - 1.13.3 No dividing fence shall be erected on any of the Lot Burdened to divide it from any adjoining Lot owned by the Developer without the consent of the Developer. Such consent shall not be withheld if such fence shall be erected without expense to the Developer and be of a type and construction approved by the Developer;
 - 1.13.4 The minimum standard of design and materials used in the balance of the boundary fencing shall be a dividing fence constructed of treated pine timber palings provided to both sides of the fencing rails in a hit or miss pattern with a minimum capping of 70mm x 35mm (commonly known as a "good neighbour" fence);
 - 1.13.5 No Colorbond and or sheet metal cladding type fences are permitted without approval by the developer.
- 1.14 All landscaping, including turf to front yard space between the curb and building line setback, to be carried out on a Lot Burdened shall, unless the Developer consents, be completed prior to Council issue of an occupation certificate.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land:

Developer, so long as it remains a registered proprietor of any Lot in this Plan, then Ballina Shire Council.

2. Terms of Restriction on the Use of Land Secondly referred to in the Plan:

- 2.1 No Building with plumbing shall be constructed on the Lot Burdened unless it has provision for non-potable water service plumbing and facilities in accordance with Ballina Shire Council's "*Ballina Heights Dual Water Supply – Plumbing Guidelines*" and "*Plumbers quick checklist for plumbing in areas with dual water supply*" policies or any superseding policies.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land:

Ballina Shire Council.

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3. Terms of Positive Covenant Thirdly referred to in the Plan:

3.1 The Registered Proprietor of the Lot Burdened must:

3.1.1 Affix effective insect screening to all external doors, windows and other openings in all Habitable Dwellings constructed on the Lot Burdened;

3.1.2 Affix effective and durable insect screening to all openings, including inspection openings and overflows, of any rainwater tank on the Lot Burdened.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land:

Ballina Shire Council.

4. Terms of Restriction on the Use of Land Fourthly referred to in the Plan:

4.1 No more than one Building intended to be used as a Habitable Dwelling shall be erected on the Lot Burdened with a floor area (excluding garages and outbuildings) of less than 135m².

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land:

Developer, as long as it remains a registered proprietor of any Lot in this Plan.

5. Terms of Restriction on the Use of Land Fifthly referred to in the Plan:

5.1 No dual occupancy dwellings shall be erected upon the Lots burdened. A single Habitable dwelling or secondary dwelling (not capable of separate strata or Torrens title), shall be constructed upon each of the Lots burdened. The floor area (excluding garages and outbuildings) cannot be less than 175m².

5.2 No Lot burdened shall be subdivided.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land:

Developer, as long as it remains a registered proprietor of any Lot in this Plan.

6. Terms of Restriction on the Use of Land Sixthly referred to in the Plan:

6.1 No dual occupancy dwelling shall be erected upon the Lot Burdened with a floor area (excluding garages and outbuildings) of less than 110m². If a single Habitable Dwelling only is proposed to be erected on the whole of the Lot Burdened the floor area (excluding garages and outbuildings) cannot be less than 175m².

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land:

Developer, as long as it remains a registered proprietor of any Lot in this Plan.

7. Terms of Restriction on the Use of Land Seventhly referred to in the Plan:

7.1 No Building shall be permitted within 1m of any boundary of the Lot Burdened.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land:

Ballina Shire Council.

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8. Terms of Restriction on the Use of Land Eighthly referred to in the Plan:

8.1 No Building shall be permitted to contain an upper level within 1.5m of any boundary of the Lot Burdened.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land:

Ballina Shire Council.

9. Terms of Positive Covenant Ninthly referred to in the Plan:

9.1 The Registered Proprietor when constructing a slab or footing of a Building on the Lot Burdened must engage an Engineer to incorporate the provisions of Australian Standards, particularly AS2870 – “Residential Slabs and Footings”.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land:

Ballina Shire Council.

10. Terms of Restriction on the Use of Land 3 wide and variable Eleventhly referred to in the Plan:

10.1 The Registered Proprietor of the Lot Burdened may not construct a masonry or similar fence within the site of any easement for drainage of sewage designated as 'E4' on the plan, unless such fence is pierced down to a depth of 300mm below the zone of influence line as determined by Ballina Shire Council.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land:

Ballina Shire Council

11. Terms of Easement for Sound Attenuation Wall 0.5 wide Thirteenthly referred to in the Plan:

11.1 The Registered Proprietor of the Lot burdened must not remove any part of the wall nor do or allow anything to be done within the easement which may damage or remove the support for the sound attenuation wall constructed within this easement.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land:

Ballina Shire Council

12. Terms of Restriction on the Use of Land 4 wide Fourteenthly referred to in the Plan:

12.1 The Registered Proprietor of the Lot Burdened must not remove any part of the wall nor do or allow anything to be done within the land designated as 'R2' on the plan, which may damage or remove the support for the sound attenuation wall as constructed.

12.2 No Building, landscaping or other buildings which in Ballina Shire Council's opinion may have a detrimental impact on the structural integrity of the sound attenuation wall shall be permitted within 4m of the Easement 0.5 wide for Sound Attenuation Wall on the Northern boundary of the Lot adjacent to Tamarind Drive.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land.

Ballina Shire Council

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13. Terms of Positive Covenant Fifteenthly referred to in the Plan:

13.1 The Registered Proprietor, when constructing on ground and upper levels to a Habitable Dwelling on the Lot Burdened, must design such construction in accordance with the edition, current as at time of assessment, of AS3671-1989 "*Road traffic noise intrusion – Building siting and construction*" and incorporate air conditioning or mechanical ventilation to an Acoustic Engineers requirements after taking in to consideration the Sound Attenuation Wall on the Northern boundary of the Lot adjacent to Tamarind Drive.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on the use of land.

Ballina Shire Council

Definitions:

In this Instrument

"**Building**" means any house, home unit, villa, structure, improvement or extension.

"**Developer**" means:

(a) Rayshield Pty Limited ACN 090 717 310; and

(b) Includes Rayshield Pty Limited's nominee where approval is required.

"**Habitable Dwelling**" includes any Building or part of a Building designed for or suitable for separate self contained occupancy.

"**Lot**" means a numbered lot in the Plan.

"**Lot Burdened**" means a lot burdened by a restrictive covenant, positive covenant or easement and includes each and every part of such a Lot.

"**Lot Benefited**" means a lot benefited by a restrictive covenant, positive covenant or easement and includes each and every part of such a Lot.

"**Plan**" shall mean the plan of subdivision to which this instrument relates.

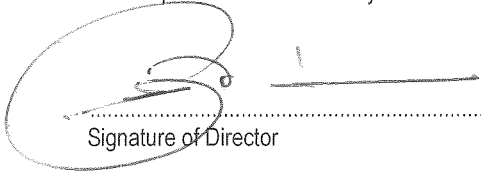
"**Registered Proprietor**" means the registered proprietor from time to time of a Lot.

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Executed by RAYSHIELD PTY LIMITED (ACN 090 717 310) without using a Common Seal by signature of a Director and another person who is Secretary or Director:


.....
Signature of Director


.....
Signature of Director / Secretary

JOHN KILMORE
.....
Name of Director
(Please Print)


STEPHEN O'KEEFE
.....
Name of Director / Secretary
(Please Print)

Execution by Mortgagee:


.....
WESTPAC BANKING CORPORATION

ROBERT JOHN CLARKE
TIER THREE ATTORNEY
BOOK 4299 NO 332

APPROVED BY BALLINA SHIRE COUNCIL:


.....
Authorised Officer

DATE: 17.3.2016