

Appendix 6
Retaining Wall Easement

Annexure Schedule 1

1.0 Interpretation

- 1.1 In this Retaining Wall Easement, unless the context requires otherwise:-
- (a) "Benefitted Land" means all the estate and interest comprising the Benefitted Land identified in Schedule A of this Instrument
 - (b) "Easement Area" means that part of the Burdened Land shown in Schedule A as being subject to the Retaining Wall Easement.
 - (c) "Retaining Wall" means the retaining walls situated on the Easement Areas at the date of this instrument and includes any substitute retaining walls constructed on the Easement Areas
 - (d) "Retaining Wall Easement" means the rights recorded by this instrument in relation to each Easement Area.
 - (e) "Burdened Land" means all the estate and interest comprising the Burdened Land identified in Schedule A of this instrument.

2.0 Grant of Easement

- 2.1 Subject to the further provisions of this Instrument, the Grantor transfers and grants to the Grantee for all time from the date of this instrument:
- (a) The right at all times to enjoy the use and support of the Retaining Wall on the Easement Area ; and
 - (b) Subject to the provisions of clause 3.0 the right (in common with the Grantor) to access the Easement Area for the purposes of inspecting, repairing, maintaining, replacing and reinstating the Retaining Wall, with or without machinery and equipment of any kind reasonably required by the Grantee to exercise its rights and perform its obligations pursuant to this instrument.

3.0 Entry to Easement Area

- 3.1 Except in an emergency, the Grantee must give the Grantor seven (7) working days' notice of entry.
- 3.2 Notice must be in written form and delivered to the Grantor or current occupier of the Burdened Land.
- 3.3 Entry to and exit from the Easement Area will be by the most practicable route over the Burdened Land as agreed with the Grantor or the occupier of the Burdened Land, and in a way that minimises any disruption of and interference to the Burdened Land and the use and enjoyment thereof.

4.0 Maintenance

- 4.1 In this clause 4.0 "Minimum Acceptable Condition" means, as a minimum, the condition of the Retaining Wall required from time to time to protect and preserve the Benefitted Land and the Burdened Land and to prevent the Retaining Wall from becoming a danger or nuisance.
- 4.2 The parties agree as follows:
- (a) The parties, sharing a common boundary on which the Retaining Wall is built, are equally responsible for the repair, maintenance replacement and/or reinstatement

of the Retaining Wall to ensure that at all times the Retaining Wall meets the Minimum Acceptable Condition.

- (b) If the repair, maintenance, replacement and/or reinstatement of the Retaining Wall is necessary because of any act or omission by any party, then that party will carry out the repair, maintenance, replacement and/or reinstatement promptly and at the sole cost of that party or in such proportion as relates to the act or omission.
- (c) If the Retaining Wall requires demolition for any reason, the parties sharing the common boundary on which the Retaining Wall is built shall proceed to build a substitute Retaining Wall and the parties shall be responsible equally for the costs of and incidental to the construction and ongoing costs of any such substitute Retaining Wall.
- (d) The parties will not do or permit to be done anything by which the Retaining Wall shall be in any way damaged or rendered unstable or unsafe.

5.0 General

- 5.1 For the purpose of performing any duty or in exercise of any rights conferred upon the parties in this instrument:
 - (a) The parties must ensure that as little damage or disturbance as possible is caused to other property and the occupiers and users of the other property.
 - (b) The parties must ensure that all work is completed promptly by a suitably qualified person.
 - (c) The parties must ensure that all work is done in accordance with the requirements of law and local authority having jurisdiction.
 - (d) The parties must not do and must not allow anything to be done that may interfere with or restrict the rights of the other party or interfere with the efficient operation of the Retaining Wall.
 - (e) The provisions of this Retaining Wall Easement shall apply to any substitute Retaining Wall.

6.0 Instrument Prevails

- 6.1 The provisions of this instrument prevail over any implied terms in the Fourth Schedule of the Land Transfer Regulations 2002, to the extent of any inconsistency.