

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 1 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

Full name and address of the owner of the land: St Marys Land Limited
 ABN 32 088 278 602
 Level 4, 30 The Bond
 30 Hickson Road
 Millers Point NSW 2000

PART 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit a 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	4071 to 4122 inclusive	Every other lot
2.	Restriction on the Use of Land	4071 to 4122 inclusive	Penrith City Council
3.	Easement for Access and Maintenance 0.9 wide (A)	4072 4073 4074 4075 4076 4077 4078 4079 4080 4081 4082 4083 4086 4087 4088 4092	4071 4072 4073 4076 4077 4078 4079 4080 4081 4082 4083 4084 4085 4086 4087 4091

 Authorised Officer
 Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 2 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

Number of item shown in the intention panel on the plan	Identity of easement, profit a 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
		4093	4092
		4094	4093
		4095	4094
		4096	4095
		4097	4096
		4098	4097
		4099	4098
		4100	4099
		4101	4100
		4102	4103
		4103	4104
		4104	4105
		4107	4108
		4108	4109
		4109	4110
		4111	4112
		4112	4113
		4113	4114
		4114	4115
		4115	4116
		4116	4117
		4121	4120
		4122	That part of 4123 marked (E)

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 3 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

Number of item shown in the intention panel on the plan	Identity of easement, profit a 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
4.	Easement to Drain Water 1.5 wide (B)	4085 4086 4087 4088	4058/1179646 4058/1179646 and 4085 4058/1179646, 4085 and 4086 4058/1179646, 4085, 4086 and 4087
5.	Easement to Drain Water 2.0 wide (C)	4122	That part of 4123 marked (F)
6.	Restriction on the Use of Land (Y)	That part of 4123 marked (Y)	Endeavour Energy
7.	Easement for Padmount Substation 3.75 wide (X)	4123	Endeavour Energy
8.	Easement for Overhead Mains 6.0 wide (W)	4000/1179646	Endeavour Energy
9.	Restriction on the Use of Land	4071 to 4078 inclusive and 4080 to 4122 inclusive	Penrith City Council
10.	Positive Covenant (G)	That part of 4119 marked (G)	Penrith City Council

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 4 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

Number of item shown in the intention panel on the plan	Identity of easement, profit a 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
11.	Positive Covenant	4071 to 4122 inclusive	Penrith City Council
12.	Restriction on the Use of Land (H)	4119, 4120, 4121, 4122 and parts of 4123 marked (H)	Penrith City Council
13	Positive Covenant (H)	4119, 4120, 4121, 4122 and parts of 4123 marked (H)	Penrith City Council

PART 2 (Terms)

1. TERMS OF RESTRICTION ON THE USE OF LAND NUMBERED ONE IN THE PLAN

- (a) The Burdened Lot shall not be used for any purpose other than as a site for residential premises.
- (b) No building shall be constructed on the Burdened Lot, and the Owner shall not make application to Council for a development consent to approve a building to be constructed on the Burdened Lot, unless the building and ancillary landscaping and fencing complies with the Building and Siting Guidelines which St Marys Land Limited (**SML**) requires to apply to the Land from time to time.
- (c) The Owner must not do any of the following unless and until the Owner obtains the prior written approval of SML:

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 5 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

- (i) erect any building or structure
- (ii) carry out any siteworks (including fencing, excavation, filling or retaining walls)
- (iii) erect a fence or wall
- (iv) erect any external sign, hoarding, tank, clothes line, letter box, mast, pole, television antenna, satellite dish or radio aerial either freestanding or fixed to any building, or
- (v) erect or place any external floodlights or spotlights or any lights illuminating any pool or tennis court or other similar enclosure.

SML will not unreasonably or capriciously refuse or withhold any such approval. A refusal shall not be or be deemed unreasonable or capricious if an expert in the field as nominated by both parties shall have certified that the proposed works:

- (A) do not comply with the Building and Siting Guidelines
 - (B) do not conform with the general standards of design and planning of the Development, or
 - (C) are undesirable by reason of the effect they would have upon the Development, appearance, health or amenity of the Development or any part of it.
- (d) The Burdened Lot will not be subdivided other than whilst SML shall be the owner.
- (e) (i) The Owner (other than whilst SML shall be the owner) shall not lease or transfer the Burdened Lot before 31 December 2020 unless a dwelling approved by SML in accordance with paragraph (b) has been completed upon the Burdened Lot, and
- (ii) Sub-paragraph 1(e)(i) shall not apply in the case of a transfer of the Burdened Lot from the executor of the will or the administrator of the

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 6 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

estate of the Owner to a person entitled to the Burdened Lot under the will or upon the intestacy of the Owner,

PROVIDED ALWAYS THAT SML may from time to time in its absolute discretion by written instrument modify waive or release any of these restrictions on the use of land in respect of the Burdened Lot.

- (f) These restrictions on the use of the land shall expire and have no further force or effect upon the Sunset Date.

2. TERMS OF RESTRICTION ON THE USE OF LAND NUMBERED TWO IN THE PLAN

(a) The Owner must not:

- (i) erect any retaining wall which will be publicly visible or which has a proposed height in excess of 900 mm on the Burdened Lot unless it is a masonry retaining wall
- (ii) construct a building on the Burdened Lot which has a two storey zero lot line wall. The second or upper storey dwelling component on the Burdened Lot above the single storey zero lot line wall must be set back a minimum distance of 900 mm from the lot boundary other than any upper storey eaves and gutter components which must be set back a minimum of 450 mm from the boundary of the Burdened Lot
- (iii) erect or allow to remain on the Burdened Lot any eaves, guttering or services to overhang the boundary of the Burdened Lot, or
- (iv) erect a building platform on the Burdened Lot unless it is minimised above natural ground level and the use of drop edge beams is over the use of retaining walls.

3. TERMS OF EASEMENT FOR ACCESS AND MAINTENANCE 0.9 WIDE (A) NUMBERED THREE IN THE PLAN

(a) The proprietor of the Benefited Lot and persons authorised by him may:

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 7 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

- (i) enter upon the Burdened Lot but only within the site of this easement
 - (ii) do anything reasonably necessary for the purpose of renewing, replacing, painting, repairing and maintaining the dwelling adjacent to this easement
 - (iii) remain on the site of this easement for any reasonable time for the said purposes, and
 - (iv) provide a 650 mm drop edge beam to all zero boundary construction walls, and if required to retaining walls also.
- (b) In exercising those powers the proprietor of the Benefited Lot must:
- (i) cause as little inconvenience to the Owner or occupier of the Burdened Lot
 - (ii) cause as little damage as possible to the Burdened Lot, and
 - (iii) restore as nearly as is practicable the Burdened Lot to its former condition.
- (c) The Owner shall not do the following over the site of the easement:
- (i) carry out any excavation or filling greater than 500 mm. Any excavation or filling shall be located and retained so as not to impact on any adjoining building, structure or property
 - (ii) erect any building or other structure of any kind other than the eaves and gutter on the first floor storey of any building or structure on the Burdened Lot, or
 - (iii) place any obstructions, for example, services such as electrical meter boxes, stormwater or sewer pipes or eaves but excepting any fascia and gutter on the ground floor.

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 8 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

4. TERMS OF EASEMENT TO DRAIN WATER 1.5 WIDE (B) NUMBERED FOUR IN THE PLAN

An easement to drain water within the meaning of Part 3 of Schedule 8 of the Act as amended.

5. TERMS OF EASEMENT TO DRAIN WATER 2.0 WIDE (C) NUMBERED FIVE IN THE PLAN

An easement to drain water within the meaning of Part 3 of Schedule 8 of the Act as amended.

6. TERMS OF RESTRICTION ON THE USE OF LAND (Y) NUMBERED SIX IN THE PLAN

(a) No building shall be erected or permitted to remain within the restriction site unless:

(i) the external surface of the building erected within 1.5 metres from the substation footing has a 120/120/120 fire rating, and

(ii) the external surface of the building erected more than 1.5 metres from the substation footing has a 60/60/60 fire rating

and the Owner provides the authority benefited with an engineer’s certificate to this effect.

(b) The fire ratings mentioned in paragraph 6(a) above must be achieved without the use of fire fighting systems such as automatic sprinklers.

(c) In this restriction, the following words shall have the meanings given:

“120/120/120 fire rating” and **“60/60/60 fire rating”** means the fire resistance level of a building expressed as a grading period in minutes for structural adequacy / integrity failure / insulation failure calculated in accordance with Australian Standard 1530.

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 9 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

"building" means a substantial structure with a roof and walls and includes any projections from the external walls.

"erect" includes construct, install, build and maintain.

"restriction site" means that part of the Burdened Lot affected by the restriction on the use of land numbered six as shown on the Plan.

7. TERMS OF EASEMENT FOR PADMOUNT SUBSTATION 3.75 WIDE (X) NUMBERED SEVEN IN THE PLAN

An easement for padmount substation in the terms set out in Memorandum 9262886 filed at the office of Land and Property Information subject to changing Integral Energy Australia to Endeavour Energy in clause 5.1.

8. TERMS OF EASEMENT FOR OVERHEAD MAINS 6.0 WIDE (W) NUMBERED EIGHT IN THE PLAN

An easement for overhead power lines in the terms set out in Memorandum 9262884 filed at the office of Land and Property Information subject to changing Integral Energy Australia to Endeavour Energy in clause 5.1.

9. TERMS OF RESTRICTION ON THE USE OF LAND NUMBERED NINE IN THE PLAN

The Owner must not carry out any development on the Burdened Lot unless the design, approval and construction of a dwelling and any associated ancillary structure on the Burdened Lot complies with the bushfire protection construction provisions within the current version of *AS 3959 Construction of buildings in bushfire-prone areas* including any related variation to the standard such as the bushfire attack assessment methodology or construction provisions as mandated by all relevant authorities.

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 10 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

10. TERMS OF POSITIVE COVENANT (G) NUMBERED TEN IN THE PLAN

All parts of a dwelling, including but not limited to eaves and stairs, must be constructed outside of the Asset Protection Zone (APZ). Detached structures may be permitted within the APZ provided they satisfy the relevant bushfire construction standard under AS 3959 as specified by a certified bushfire consultant and approved by Council

11. TERMS OF POSITIVE COVENANT NUMBERED ELEVEN IN THE PLAN

All Burdened Lots must have landscaping and vegetative fuels managed in accordance with an Inner Protection Area (IPA) standard as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.

12. TERMS OF RESTRICTION ON THE USE OF LAND (H) NUMBERED TWELVE IN THE PLAN

The Owner must not do any of the following on the Burdened Lot, without the prior written consent of Council:

- (a) erect, construct or place any building or other structure, or
- (b) make alterations to the ground surface level, grates, pipes, pits, kerbs, tanks, gutters or any other structure associated with stormwater pre-treatment system.

13. TERMS OF POSITIVE COVENANT (H) NUMBERED THIRTEEN IN THE PLAN

- (a) The Owner shall do all things necessary to maintain, repair and replace the grates, pipes, pits, kerbs, tanks, gutters or any other structures of an incidental to the stormwater pre-treatment system within the Burdened Lot to the satisfaction of Council and in this regard must also comply with any reasonable written request of the Council within such time period nominated.
- (b) Where the Owner fails to comply with any written request of the Council referred to in paragraph 13(a) above the Owner must meet any reasonable cost incurred by the Council in completing the work requested.

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 11 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

- (c) Full and free right for the Council and every person authorized by it to enter upon the Burdened Lot in order to inspect, maintain, cleanse, replace, repair any grates, pipes, pits, kerbs, tanks, gutters or any other structures of and incidental to stormwater pre-treatment system or alter surface levels to ensure the stormwater pre-treatment system within the Burdened Lot functions in accordance with the approved Construction Certificate (Council reference: DA 12/0897)

NAME OF AUTHORITY EMPOWERED TO RELEASE VARY OR MODIFY THE RESTRICTION NUMBERED ONE IN THE PLAN

St Marys Land Limited

NAME OF AUTHORITY EMPOWERED TO RELEASE VARY OR MODIFY EASEMENTS NUMBERED THREE, FOUR AND FIVE AND THE RESTRICTIONS NUMBERED TWO, NINE AND TWELVE AND POSITIVE COVENANTS NUMBERED TEN, ELEVEN AND THIRTEEN IN THE PLAN

Penrith City Council

NAME OF AUTHORITY EMPOWERED TO RELEASE VARY OR MODIFY THE EASEMENTS NUMBERED SEVEN AND EIGHT AND THE RESTRICTION NUMBERED SIX IN THE PLAN

Endeavour Energy

DEFINITIONS & INTERPRETATION

- 1. In this instrument:
 - (a) unless repugnant to the context words importing any particular gender shall include all other genders and words importing the singular number shall include the plural and vice versa, and
 - (b) if there shall be more than one person responsible hereunder as the Owner the liability of all such persons shall be both joint and several.

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 12 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

2. In this instrument, the following words shall have the meanings given:

"Act" means the *Conveyancing Act* 1919 (NSW).

"Benefited Lot" means any lot which has the benefit of an easement or restriction on the use of land created by the Plan.

"Building and Siting Guidelines" means the design guidelines which regulate all building and ancillary landscaping work within the Land as may be varied from time to time.

"Burdened Lot" means any lot burdened by a restriction on the use of land, positive covenant or an easement created by the Plan and includes:

- (i) each and every part of a Burdened Lot, and
- (ii) each and every lot created hereafter pursuant to each and every subdivision of the Burdened Lot or any part thereof.

"Council" means Penrith City Council.

"Development" means the proposed residential development of the Western Precinct.

"Land" means the parcel of land described in the Plan.

"Owner" means the registered proprietor from time to time of the Burdened Lot (including those claiming under or through the registered proprietor).

"Plan" means the plan of subdivision to which this instrument relates.

"SML" means St Marys Land Limited ABN 32 088 278 602 the registered proprietor of the land and includes its successor, permitted assigns, any attorney, delegate or appointees of St Marys Land Limited.

"Sunset Date" means the first to occur of:

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 13 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

- (i) 31 December 2020, and
- (ii) two years after the date an occupancy certificate is issued to the Owner of a dwelling approved by SML to be erected within the Development upon the last remaining lot in the Development such that there are then no further vacant lots in the Development (excluding any lot upon which no dwelling is permitted to be erected).

"Western Precinct" means the land comprised in Lot 2 in Deposited Plan 1132380.

Signed by **St Marys Land Limited** ABN 32 088 278 602

sign

sign

office (director or secretary)

office (director or secretary)

full name

full name

Authorised Officer
Penrith City Council

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A 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 OF THE CONVEYANCING ACT 1919

(Sheet 14 of 14 sheets)

Plan: Plan of Subdivision of Lot 3999 in DP1179646 and Easement over Lot 4000 in DP1179646 covered by Subdivision Certificate

Noof.....

Signed on behalf of
Endeavour Energy ABN 59 253 130 878 by its Attorney pursuant to Power of Attorney Book 4640 No 572 in the presence of:

sign (attorney)the attorney states that he or she has no notice of termination or suspension of the power

sign (witness)
the witness states that he or she is not a party and was present when the attorney signed

full name (attorney)

full name (witness)

Position:

c/ - Endeavour Energy

Date of execution:

51 Huntingwood Drive,

Reference:

Huntingwood NSW 2148

address (witness)

Authorised Officer
Penrith City Council