



Government Gazette

of the State of

New South Wales

Number 219–Compulsory Acquisitions

Friday, 28 May 2021

The New South Wales Government Gazette is the permanent public record of official NSW Government notices. It also contains local council, non-government and other notices.

Each notice in the Government Gazette has a unique reference number that appears in parentheses at the end of the notice and can be used as a reference for that notice (for example, (n2019-14)).

The Gazette is compiled by the Parliamentary Counsel's Office and published on the NSW legislation website (www.legislation.nsw.gov.au) under the authority of the NSW Government. The website contains a permanent archive of past Gazettes.

To submit a notice for gazettal, see the Gazette page.

TRANSPORT ADMINISTRATION ACT 1988

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

Notice of Compulsory Acquisition of Land for the Purposes of the Transport Administration Act 1988

Sydney Metro by its delegate declares, with the approval of Her Excellency the Governor, that the easement described in the Schedules below is acquired by compulsory process under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* as authorised by section 38C and clause 11 of Schedule 1 of the *Transport Administration Act 1988* for the purposes of the *Transport Administration Act 1988*.

PETER REGAN
Chief Executive
Sydney Metro

SCHEDULE 1

An easement for scaffolding on the terms set out in Schedule 2, and over that part of that piece or parcel of land situated at Sydney, in the Local Government Area of Sydney, Parish of St Lawrence and County of Cumberland, being that part of Lot 1 in Deposited Plan 516988, shown marked "(B)" in Drawing No. SMCSWSPS-RPS-PSS-SR-DWG-000003-C – 294-294B Pitt St, a copy of which is set out in Schedule 3.

SCHEDULE 2

1. EASEMENT FOR SCAFFOLDING

1.1 Easement summary

This Easement provides the Authority Benefited with a right to install and use scaffolding in the Easement Site at all times until the expiry of the Easement pursuant to clause 1.3.

1.2 Terms of the Easement

- (a) The Owner of the Lot Burdened grants to the Authority Benefited full, free and unimpeded right for the Authority Benefited to:
 - (i) enter on, pass and repass over and to encroach on the Easement Site at all times with or without Equipment for the Permitted Purpose until expiry of this Easement under clause 1.3; and
 - (ii) do anything reasonably necessary for that purpose including:
 - (A) entering the Easement Site; and
 - (B) taking anything on to the Easement Site.
- (b) In exercising its rights under this Easement, the Authority Benefited must:
 - (i) prior to installing Scaffolding in the Easement Site, provide the Owner of the Lot Burdened with details of the extent of the Scaffolding, including access paths through and around the Scaffolding where there may be an impact on access to the Lot Burdened;
 - (ii) ensure that the Scaffolding installed in the Easement Site is maintained in good repair and in a safe condition;
 - (iii) maintain adequate safety arrangements in respect of the Easement Site to:
 - (A) mitigate risk of harm to members of the public caused by the activities of the Authority Benefited; and
 - (B) maintain adequate safety arrangements in respect of the Scaffolding to secure any relevant building from being accessed from any part of the Scaffolding;
 - (iv) make good any damage to the Easement Site, Lot Burdened and Building to the extent caused by the Authority Benefited;
 - (v) carry out all activities so as to cause as little inconvenience as is reasonably practicable to the Owner of the Lot Burdened or any Occupier;
 - (vi) take all necessary steps to minimise any adverse interference caused by the Authority Benefited to the Owner of the Lot Burdened or any Occupier; and
 - (vii) comply with all relevant laws relating to the exercise of those rights.
- (c) Any Existing Building Structures and services on or in the Easement Site must not be removed or damaged by the Authority Benefited or its Authorised Users and must be

protected by the Authority Benefited and its Authorised Users from damage caused by the exercise of any rights pursuant to the Easement.

1.3 Expiry of the Easement

- (a) As soon as practicable after the date on which the Authority Benefited no longer requires the rights under this Easement, the Authority Benefited must:
 - (i) remove the Scaffolding from the Easement Site; and
 - (ii) notify the Owner of the Lot Burdened in writing.
- (b) This Easement will expire on the earlier to occur of:
 - (i) 1 January 2023; and
 - (ii) the date on which the Authority Benefited gives the Owner of the Lot Burdened notice under clause 1.3(a)(ii).
- (c) If this Easement has expired under paragraph (b), the Owner of the Lot Burdened and the Authority Benefited must take all reasonable steps to remove this Easement from the title of the Lot Burdened as soon as practicable, including preparing and executing all necessary documents and producing the relevant certificates of title at Land Registry Services NSW.

1.4 Incorporation of definitions and interpretation clauses

The provisions of clause 2 apply to this Easement to the extent relevant.

The name of the persons empowered to release, vary or modify this Easement:

The Authority Benefited.

2. GENERAL

2.1 Exercise of the benefit of the Easement

The Authority Benefited may, in its discretion, permit any of its Authorised Users to exercise its rights and perform its obligations under any Easement from time to time.

2.2 Conditions

Each of the Conditions constitute and are covenants and agreements by and between the Authority Benefited and the Owner of the Lot Burdened for themselves and their respective successors, assigns and transferees with the intention and agreement that the benefit and burden of such covenants and agreements must pass with the benefit and burden of the Easement.

2.3 Definitions

Acquisition Notice means the acquisition notice effecting the acquisition of this Easement published in the Government Gazette.

Authorised Users means the agents, employees, contractors (and each of their subcontractors at any level) and consultants of the Authority Benefited and any other person authorised by the Authority Benefited to exercise the rights and perform the obligations of an Authorised User under this Easement.

Authority Benefited means Sydney Metro (ABN 12 354 063 515), a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW).

Building means the building and other structures (or any part of the building or other structures) on the Lot Burdened from time to time.

Conditions means the conditions contained in each Easement, excluding the section titled "Easement summary" and including the general provisions set out in this clause 2.

Easement means each easement in this instrument and includes the Conditions in relation to that easement.

Easement Site means the easement site described in Schedule 1 of the Acquisition Notice.

Equipment means all necessary tools, implements, materials, machinery and vehicles.

Existing Building Structures means any improvements located within the Easement Site at the commencement of the Easement.

Government Gazette means the official journal published by the NSW Government containing proclamations and notifications, including land acquisition notices.

Lot Burdened means the Lot described in Schedule 1 of the Acquisition Notice.

Occupier means any person who is legally entitled and authorised to occupy any part of Lot Burdened from time to time.

Owner of the Lot Burdened means every person who is at any time entitled to an estate or interest in the Lot Burdened, including without limitation any freehold or leasehold estate or interest in possession in the Lot Burdened and each part of the Lot Burdened and any Owners Corporation in relation to the Lot Burdened.

Owners Corporation means an owners corporation constituted under the *Strata Schemes Management Act 2015* (NSW) or community association constituted under the *Community Land Development Act 1989* (NSW) and any similar body corporate serving the same functions and purposes as an owners corporation or a community association.

Permitted Purpose means installing, maintaining, replacing, dismantling and removing Scaffolding.

Scaffolding means a temporary structure (including access platforms, working platforms, catch platforms, landing platforms, chainmesh, shade cloth mesh and plywood or similar materials) incorporating elements of scaffolding systems as detailed using the principles of engineering design supported on:

- (a) the ground;
- (b) a class B hoarding structure;
- (c) a cantilevered support structure;
- (d) adjacent property roof structure(s); or
- (e) any combination of the above,

as may be applicable, and braced as required using scaffold ties, anchorages and components as determined by relevant principles of engineering design.

LOCAL GOVERNMENT ACT 1993

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

NOTICE OF COMPULSORY ACQUISITION OF LAND

Port Stephens Council declares with the approval of Her Excellency the Governor that the interest described in Schedule 1 below is acquired by compulsory process in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for access purposes on the easement terms outlined in Schedule 2 below.

Dated at Raymond Terrace this 27th day of May, 2021

WAYNE WALLIS
General Manager

Schedule 1

Easement for access variable width over Lot 1 DP862816 and over Lot 2 DP867862 being the part of the land marked (A) on DP1263479

Schedule 2

1.1 Grant of right

Subject to the conditions in this instrument, the Grantor grants the Grantee and its Authorised Users full, free and unimpeded right to pass and repass at all times and for all lawful purposes across the Easement Site:

- (a) on foot and by bicycle; and
- (b) otherwise, without vehicles, except where:
 - (i) such vehicles are permitted by law; or
 - (ii) vehicles are necessary or desirable, as determined by the Grantee, for inspecting, constructing, repairing, maintaining or replacing any part of the Easement Site or anything upon it,

and also the right to do anything reasonably necessary for passing across the Lot Burdened but only within the Easement Site including taking anything onto the Easement Site and carrying out work within the Easement Site.

1.2 Access must be 24 hour access

Subject to clause 1.6 ("Temporary suspension of access"), the Grantor

must, in respect of the Easement Site:

- (a). provide and permit the exercise of the rights granted to the Grantee 24 hours each day; and
- (b). allow the Grantee and Authorised Users to enjoy free and unfettered access to and upon the Easement Site without the imposition of any fee or charge and without any requirement to obtain or carry keys, security card-keys or other access authorities.

However, if the Grantor has done all things reasonably necessary to provide and permit access in the manner required by this clause 1.2, but is restricted in providing and/or permitting such access by the requirements of any law, then the obligations of the Grantor are reduced to the extent necessary to comply with the law.

1.3 Grantee's obligations when exercising rights

When exercising its rights or carrying out its obligations under this easement the Grantee:

- (a) must comply with all relevant Approvals; and
- (b) must cause as little inconvenience as practicable, and must take reasonable steps to ensure that its Authorised Users cause as little inconvenience as practicable to:
 - (i) the Grantor or an Occupier of the Lot Burdened; and
 - (ii) the owners or Occupiers of any other land adjoining the Easement Site; and
- (c). must, at its cost, promptly make good any damage caused by exercising rights or complying with obligations under this easement (without limiting the rights of the Grantor at law, but excluding damage caused by the construction of the Pathway and by the reasonable exercise of it's and its Authorised Users' rights and carrying out it's obligations pursuant to this Instrument); and
- (d). must take reasonable steps to ensure that its Authorised Users remain within the Easement Site unless authorised or permitted by the Grantor to enter the Lot Burdened (other than the Easement Site); and
- (e). act in accordance with, and take reasonable steps to ensure that its Authorised Users act in accordance with, the Signage.

1.4 Repairs and maintenance

The Grantee must, at its cost in respect of the Easement Site:

- (a) maintain and repair the Pathway and ancillary works and structures upon it; and
- (b) keep that Pathway and those works and structures in a safe condition; and

- (c) where and when necessary, replace damaged parts of the Pathway and those structures,

except where the maintenance, repair or replacement is made necessary as a result of the act, omission or negligence of the Grantor or the Grantor's Authorised Users, in which case the maintenance, repair or replacement will be the sole responsibility of the Grantor at the Grantor's cost.

1.5 Some prohibitions

In respect of the Easement Site, the Grantee must not and must use reasonable endeavours to ensure they and its Authorised Users do not:

- (a) park or stand a motor vehicle or other vehicles including trailers on the Lot Burdened, except where vehicles are necessary or desirable, as determined by the Grantee, for inspecting, constructing, repairing, maintaining or replacing anything upon the Easement Site; or
- (b) obstruct the use of the Lot Burdened or the use of any other land adjoining the Easement Site unless permitted by law to do so or in an emergency; or
- (c) create a nuisance to the Grantor or an Occupier of the Lot Burdened or the owners or Occupiers of any other land adjoining the Easement Site; or
- (d) enter the Lot Burdened (other than the Easement Site) unless authorised or permitted by the Grantor; or
- (e) interfere with the Signage.

1.6 Temporary suspension of access

Subject to clause 1.7 ("Pre-requisites for suspending access"), the Grantor may temporarily suspend access to, and use of, parts of the Easement Site for the following reasons:

- (a) the Grantee is in breach of a term or terms of this easement; or
- (b) there is an emergency.

1.7 Pre-requisites for suspending access

When exercising the right in clause 1.6 ("Temporary suspension of access"), the Grantor must:

- (a) except in an emergency, give reasonable notice of its intention to suspend access to or use of parts of the Easement Site by notice in writing to the Grantee together with notice posted on or near the relevant area; and
- (b) suspend access to and use of parts of the Easement Site only for the period required to remedy the breach or emergency;
- (c) ensure that all access and the temporary suspension of access under this easement is conducted in a proper and safe manner

and in accordance with the requirements of any Authority and the law; and

1.8 Costs

Each party is responsible for its own costs (including legal costs) associated with exercising their rights or carrying out their obligations under this easement, except for work required to be carried out to repair or rectify any damage caused to the Pathway, the Easement Site or the Lot Burdened by the negligence of the Grantor or the Grantor's Authorised Users which costs are payable by the Grantor.

1.9 Insurances

In respect of the Easement Site the Grantee must effect, at its cost, proper and adequate insurances with a reputable insurer for the following risks:

- (a) loss or damage from any cause to the Pathway or the Easement Site; and
- (b) workers compensation insurance in accordance with the requirements of the *Workers Compensation Act 1987* (NSW); and
- (c) death of or injury to or loss or damage to property of any person within the Easement Site, including death, injury, loss or damage arising out of, or in the course of or caused by, the Grantee or its Authorised Users exercising (or failing to exercise) its rights or complying with (or failing to comply with) its obligations in this easement.

A Grantee will be deemed to have complied with this clause 1.9 where the Grantee relies upon existing contracts of insurance as long as that coverage is not less favourable than the coverage specified in this clause 1.9.

If a Grantee fails to effect or maintain insurances under this clause 1.9 the Grantor may (at its absolute discretion) effect and maintain the insurance policies (or any of them). If the Grantor effects and/or maintains insurance policies in accordance with this clause 1.9, any costs and expenses incurred by the Grantor will constitute a debt due to the Grantor, and the Grantee will not be relieved of any liability under this easement due to, or as a result of, the Grantor effecting or maintaining those policies.

1.10 Dispute Resolution

If a dispute arises between the parties in connection with clauses 1.6 or 1.7 of this instrument, the parties agree that they must use their best endeavours to resolve the dispute as follows:

- (a) any party seeking resolution of a dispute must give a notice to the other party in dispute and the Parties' Representatives must meet within 2 Business Days after that notice is given and use their best endeavours to resolve the dispute within a further 3 Business Days after which period, if the dispute is not resolved

or Parties Representatives have not met, a party may refer the dispute for determination under clause 1.11; and

- (b) the parties must act reasonably and in good faith to attempt to resolve the dispute.
- (c) the dispute must be submitted for final determination to an Expert to be agreed upon between the parties or failing agreement by such Expert as may be nominated for that purpose by the President for the time being of the New South Wales Law Society at the request of either party.

1.11 Experts Decision

- (a) The dispute must be submitted for determination by an Expert to be agreed upon between the parties or, failing agreement, by such Expert as may be nominated for that purpose by the President for the time being of the New South Wales Law Society at the request of either party.
- (b) The Expert must make his determination as an expert and not as an arbitrator.
- (c) All parties may make written submissions to the Expert on matters the subject of the dispute.
- (d) The Expert must give notice in writing of his or her decision as soon as reasonably practicable in the circumstances.
- (e) The Expert's decision will be final and binding on the parties.
- (f) The costs associated with the Expert's decision will be borne by the parties in such shares as the Expert may determine.

1.12 Release, vary or modify easement

The Grantee is empowered to release, vary or modify the easement for access variable width marked (A) in the Plan.

2 Interpretation

2.1 Definitions

These meanings apply unless the contrary intention appears:

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

Approvals means any approvals, consents, certificates (including certificates referred to in the *Environmental Planning and Assessment Act 1979* (NSW)), permits, endorsements, licences, conditions or requirements (or any variations to them) which maybe required by law for using the Easement Site, including any development consent or modification thereof issued in connection with the Pathway.

Authorised User means every person authorised by the Grantee for the purposes of an easement, positive covenant and restriction on use

created by this instrument. Subject to the terms of the easement an Authorised User includes, without limitation:

- (a) the employees, agents, contractors, licensees and invitees of the Grantee; and
- (b) members of the public from time to time as determined by the Grantee.

Authority means any government or governmental, semi-governmental, quasi governmental, administrative, fiscal or judicial body, department, commission, authority tribunal, agency or entity and includes the Grantee.

Easement Site means the proposed easement shown (A) in DP 1263479.

Expert means a person nominated or agreed under clause 1.10.

Grantee means Port Stephens Council.

Grantor means the owner of the Lot Burdened.

Lot Burdened means the lot burdened by an easement in this instrument.

Parties Representatives means the Grantor and the General Manager or equivalent of the Grantee.

Pathway means the footpath for pedestrian and bicycle access constructed within the Easement Site and includes the Signage.

Signage means signage approved by the Grantor (acting reasonably) which must be installed by the Grantee (at its cost) within the Easement Site for the purpose of warning Authorised Users to remain within the boundaries of the Easement Site.

2.2 References to certain terms

Unless a contrary intention appears, a reference in this instrument to:

- (a) (reference to anything) a reference to anything is a reference to the whole or each part of it; and
- (b) (references to statute) a law, ordinance or code includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of them; and
- (c) (law) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them); and
- (d) (person) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency; and

- (e) (executors, administrators, successors) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns; and
- (f) (two or more persons) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually; and
- (g) (singular includes plural) the singular includes the plural and vice versa; and
- (h) (meaning not limited) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (i) (jointly and severally) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually.

2.3 Headings

Headings do not affect the interpretation of this instrument.

2.4 Positive covenants and maintenance requirements

A requirement in this instrument which requires the Grantee or the Grantor to maintain or repair the Easement Site or anything in the Easement Site is a positive covenant according to section 88BA of the Act.

2.5 Notice

If a notice to the Grantor or a Grantee is required to be given under this instrument, that notice must also be given to the Occupier of the Lot Burdened. Notice required in the case of an emergency may be given verbally.

3 Easements are covenants and agreements between Grantees and Grantors

The conditions, covenants and restrictions on use, including in this clause, in this instrument are covenants and agreements between:

- (a) the Grantee for itself, its successors and Authorised Users; and
- (b) the Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment,

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easements.

4 Complying with this instrument

4.1 Obligations of Grantee and Grantor

The Grantee and the Grantor must, as appropriate, comply with the terms of the easements in this instrument.

4.2 Obligations for Authorised Users

For the easement in this instrument, the Grantee must use reasonable endeavours to ensure that its Authorised Users comply with the terms of the instrument when they exercise their rights or comply with their obligations under the instrument.