



Cairns Office

135 Abbott Street, PO Box 1949, Cairns QLD Australia 4870

T +61 7 4031 1336 F +61 7 4031 2942 E cairns@rpsgroup.com.au W rpsgroup.com.au

Our Ref: PR108240/OCK/KK/L76538

Date: 3 May 2017

Attn: Ms Jenny Elphinstone
Chief Executive Officer
Douglas Shire Council
PO Box 723
Mossman QLD 4873

Via: Email and Mail

Dear Madam

RE: APPLICATION FOR DEVELOPMENT PERMIT FOR RECONFIGURATION OF A LOT (3 LOT RURAL SUBDIVISION) OVER LAND LOCATED AT CREES ROAD, FORMALLY DESCRIBED AS LOT 114 ON SP113652 – RESPONSE TO REQUEST FOR FURTHER INFORMATION

On behalf of Byron and Vicki Kurth (the 'Applicant'), we provide the following response to Council's request for further information, dated 14 March 2017.

Information Request Item 1

Item 1 of the request for further information states;

It is understood that access to the existing house on Lot 144 on SP113652 is gained via an easement over the neighbouring land. Currently this easement gives benefit to the whole of Lot 144. Please advise whether there is any intention to limit the continued benefit for access to the proposed Lot 1. Please clarify whether the easement includes the ability to provide services to the existing house. Council recommends that if any new access easement is proposed or the existing access easement varied this change be part of the current application.

Response

The proposed reconfiguration will not change the geographical location of the easement/s or the purpose that the easement/s were originally created for. There is no need to create new easements to replace the existing easements as a result of the reconfiguration development, the easements remain in place and continue to have effect regardless of the reconfiguration development.

However, as identified by Council, if there is no practical benefit to other lots that are created by the reconfiguration development, such as Proposed Lots 2 and 3 in respect of the Access Easement providing access to the house on Proposed Lot 1, it is appropriate for a concurrent but subsequent action be arranged at the time the titles are created that surrenders the easement from the Proposed Lots that do not benefit from the Access Easement. Without this subsequent action to surrender the allocation of the easement, preferably undertaken at the time the new titles are issued, the easement will be allocated to all proposed lots.

As indicated below, EASEMENT B ON SP113652 is for Right of Way and Services.

Information Request Item 2

Item 2 of the request for further information states;

The RPS Drawing PR108240-1 details the proposed lot reconfiguration, an aerial image and Easement D. Please include all easements over the land and those over adjacent land for which benefit is provided. The inclusion is to encompass all easements listed on the current title search provided with the application.

Response

In respect of this request, please find attached a copy of RPS Drawing PR108240-1 Issue A provided for reference in **Attachment A**. For completeness, Easement C on SP113652 which is understood to provide access to Lot 1 on SP243566 is also shown on the Proposal Plan. Easement C on SP113652 is not referenced on the title relating to the subject land.

Information Request Item 3

Item 3 of the request for further information states;

Please include the easement documents for all easements over the land and all easements to which the land has a benefit over. This detail is to include a plan showing the location of the easement as well as any easement documentation that has been lodged with the titles office and explains all terms and conditions.

Response

Please find attached a copy of RPS Drawing PR108240-1 Issue A provided for reference in **Attachment A** which shows the location of existing easements that have not been superseded.

With regard to the Easements shown on the Certificate of Title, please note that;

- 1) EASEMENT No 700361084 burdening the land to LOT 15 ON PLAN N157695 OVER EASEMENT A ON RP 861027 is understood to have been replaced by EASEMENT B ON SP113652. It is expected that EASEMENT A ON RP 861027 should have been surrendered (refer to surrender process mentioned above) when Lots 15 and 144 on SP113652 were created and the easement was replaced by EASEMENT B ON SP113652. As this easement is understood to have been replaced by the other easements that are now in place, we have not included EASEMENT A ON RP 861027 on the amended Proposal Plan or included the Easement Agreement;
- 2) EASEMENT No 703661584 benefiting the land over EASEMENT B ON SP113652 is for Right of Way and Services and the Easement Agreement is provided for reference in **Attachment B**;
- 3) EASEMENT No 703661585 burdening the land to LOT 15 ON SP113652 OVER EASEMENT D ON SP113652 is for Right of Way and Services and the Easement Agreement is provided for reference in **Attachment C**;
- 4) EASEMENT No 703661609 burdening the land to LOT 2 ON RP734513 OVER EASEMENTS J AND K ON RP897739 is for Right of Way (tramway, road and like purposes) and the Easement Agreement is provided for reference in **Attachment D**;
- 5) EASEMENT No 703661620 burdening the land to LOT 2 ON RP734513 OVER EASEMENTS L AND M ON RP897739 is for Right of Way (tramway siding) and the Easement Agreement is provided for reference in **Attachment E**; and
- 6) EASEMENT No 703746617 benefiting the land over EASEMENT A ON SP113651 is shown on RPS Drawing PR108240-1 Issue A and exists over part of Lot 8 on SP243566 near Crees Creek. This easement is proposed to be replaced by a new section of Road that is proposed to be opened as part of the Crees Road and water supply pipeline works.

Information Request Item 4

Item 4 of the request for further information states;

Please advise whether there was any compensation paid for the provision of easements on the land.

Response

It would appear from the Easement Agreements provided for reference in **Attachments B – E** that funds paid to allow the easements to be created amounted to \$1.00 for each easement. No other form of compensation is known to have been paid for the creation of the easements on the land.

Information Request Item 5

Item 5 of the request for further information states;

Please indicate whether there has been any consultation with Mackay Sugar Pty Ltd (that operates the local Mossman Sugar Mill and associated cane tramway and siding) and/or any affected contract cane harvester operator regarding the proposed reconfiguration. If there has been consultation please provide the outcomes of the consultation.

Response

Byron and Vicki Kurth have consulted with the current farmer, Drew Watson, who is growing sugar cane on the land. The response provided by Drew Watson is provided for reference in **Attachment F** and it is noted that Drew indicates that due to the construction of Crees Road, “2018 will quite likely see this farm become unviable and no planting will occur and we will have to forfeit the lease.”

No consultation has been undertaken directly with Mackay Sugar Pty Ltd that operates the Mossman Mill. The Proposed Lot boundaries have been located so that they do not conflict with current infrastructure/operations and/or the associated easements that are currently in place, as is evident on RPS Drawing PR108240-1 Issue A provided for reference in **Attachment A**.

It is anticipated that the further information provided to all of the information requested is adequate for your requirements and it is requested that Council’s proceeds with their assessment of the development application. However, should you seek further details and/or seek to discuss the proposal, please do not hesitate to contact the undersigned.

Yours sincerely

RPS



Owen Caddick-King
Principal - Planning

- cc: Byron and Vicki Kurth
PO Box 681
PORT DOUGLAS, QLD, 4877
- enc: **Attachment A** – RPS Drawing PR108240-1
Attachment B – Easement Agreement - Easement B on SP113652
Attachment C – Easement Agreement - Easement D on SP113652
Attachment D – Easement Agreement - Easement J&K on RP897739
Attachment E – Easement Agreement - Easement L&M on RP897739
Attachment F – Advice from Drew Watson dated 10 April 2017



Attachment A

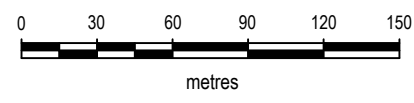
RPS Drawing PRI08240-1



IMPORTANT NOTE

- This plan was prepared for the sole purposes of the client for the specific purpose of accompanying an application to the Douglas Shire Council for a reconfiguration of a lot described on this plan. This plan is strictly limited to the Purpose and does not apply directly or indirectly and will not be used for any other application, purpose, use or matter. The plan is presented without the assumption of a duty of care to any other person (other than the Client) ("Third Party") and may not be relied on by Third Party.
- RPS Australia East Pty Ltd will not be liable (in negligence or otherwise) for any direct or indirect loss, damage, liability or claim arising out of or incidental to:
 - Third Party publishing, using or relying on the plan;
 - RPS Australia East Pty Ltd relying on information provided to it by the Client or a Third Party where the information is incorrect, incomplete, inaccurate, out-of-date or unreasonable;
 - any inaccuracies or other faults with information or data sourced from a Third Party;
 - RPS Australia East Pty Ltd relying on surface indicators that are incorrect or inaccurate;
 - the Client or any Third Party not verifying information in this plan where recommended by RPS Australia East Pty Ltd;
 - Judgement of this plan with any local authority against the recommendation of RPS Australia East Pty Ltd;
 - the accuracy, reliability, suitability or completeness of any approximations or estimates made or referred to by RPS Australia East Pty Ltd in this plan.

- Without limiting paragraph 1 or 2 above, this plan may not be copied, distributed, or reproduced by any process unless this note is clearly displayed on the plan.
- Scale shown is correct for the original plan and any copies of this plan should be verified by checking against the bar shown.
- The dimensions, area, size and location of Improvements, flood information (if shown) and number of lots shown on this plan are approximate only and may vary.
- Cadastral boundaries are obtained by title dimensions. These boundaries have not been verified and are approximate only.
- The contours shown on this plan are by LIDAR scan and are suitable only for the purposes of this application. The accuracy of the contours has not been verified and no reliance should be placed upon such contours for any purpose other than for the purpose of this application for a reconfiguration of a lot.



SCALE 1:3000 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE. (A3)

AMENDMENTS	
A: RMS: Added easements	
CAD REF PR108240-1a.DWG	

PROJECT MANAGER	
O. Caddick-King	
SURVEYED	
COMPILED	
RMS	
SHEET 1	SHEET SIZE
OF	A3
SHEETS 1	

Byron & Vicki Kurth

Reconfiguration of a Lot
Proposed Lots 1-3
Cancelling Lot 144 on SP113652
Crees Road
Craiglie

		RPS Australia East Pty Ltd ACN 140 292 762	
		135 Abbott St PO Box 1949 CAIRNS QLD 4870	
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SCALE 1:3000	DATE 3/05/2017	DRAWING NO. PR108240-1	ISSUE A



Attachment B

Easement Agreement - Easement B on SPI 13652



703661584

\$87.00
28/10/1999 16:27

CS 600

Stamp Duty Imprint

Queensland Stamp Duty Paid	
13A:CCR:01	
28/10/1999	
\$1.50	R

<p>1. Grantor</p> <p>GREER ANN McGRATH</p>	<p>Lodger Name, address & phone number</p> <p>Greer & Timms PO Box 57 Port Douglas Qld 4871 (07) 40995 995</p> <p>Lodger Code</p> <p>738</p>
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2. Description of Easement/Lot	County	Parish	Title Reference
Servient Tenement (burdened land)			
Easement B in Lot 15 on SP113652	Solander	Salisbury	to issue 31464250

*Dominant Tenement (benefited land)			
Lot 144 on SP113652	Solander	Salisbury	to issue 50119069
<small>* not applicable if easement in gross</small>			


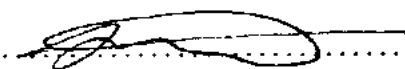
3. Interest being burdened	*4. Interest being benefited
Fee Simple	Fee Simple
<small>* not applicable if easement in gross</small>	


5. Grantee	Given names	Surname/Company name and number	(include tenancy if more than one)
		PROSILIO PTY LTD ACN 010 835 293	

6. Consideration	7. Purpose of easement
\$1.00	Right of Way and Services

8. Grant/Execution

The Grantor for the above consideration grants to the Grantee the easement over the servient tenement for the purpose stated in item 7 and the Grantor and Grantee covenant with each other in terms of the attached schedule.

Witnessing Officer	Execution Date	Grantor's Signature
 signature	3 / 8 / 99	
Martin Patrick Tranter full name		
Solicitor qualification		
<small>as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)</small>		

Witnessing Officer	Execution Date	Grantee's Signature
..... signature	3 / 8 / 99	
..... full name		Director
..... qualification		Director
<small>as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)</small>		



Title Reference to issue

This is the Schedule referred to in Easement dated _____, Title Reference _____.

It is covenanted between the parties to the above Easement as follows:-

1.1 INTERPRETATION AND DEFINITIONS

This Easement shall be construed as provided in this clause and the words and phrases set out below shall unless the context otherwise requires have the meanings respectively attributed to them -

"the Dominant Tenement" means the Dominant Tenement referred to in Item (2) of the Form 9 Easement as the Dominant Tenement.

"this Easement" means this Schedule together with the Form 9 Easement.

"the Grantee" means the Registered Owner from time to time of the Dominant Tenement.

"the Grantor" means the Registered Owner from time to time of the Servient Tenement.

"Servient Tenement" means the Land referred to in Item (2) of the Form 9 Easement as the Servient Tenement, being Easement B in Lot 15 on SP113652.

1.2 Every Covenant Agreement or Obligation expressed or implied in this Easement by which two or more persons covenant agree or are bound, shall bind such persons jointly and each of them severally and every provision expressed or implied in this Easement which applies to two or more persons shall apply to such persons jointly and each of them severally.

1.3 Words denoting the singular number only shall include the plural number and vice versa and words importing the masculine or neuter gender shall include all other genders and words denoting individuals only shall include corporations.

1.4 Headings have been included for ease of reference and guidance and this Easement shall be construed without reference to them.

2. GRANT OF EASEMENT - RIGHT OF WAY AND SERVICES

2.1 Grant of Easement

The Grantor hereby grants to the Grantee:-

(a) The full and free right of way and passage over the Servient Tenement (in common with others having like rights) for the purpose of access (ingress and egress) to and from the Dominant Tenement at all times hereafter by day or night at the will of the Grantee with or without motor vehicles or other vehicles of any description laden or unladen, into, along and over the Servient Tenement for all purposes whatsoever in connection with the use and enjoyment of the Dominant Tenement to have and to hold the same as an Easement appurtenant to the said Dominant Tenement and every part thereof without interference or hindrance of any kind from the Grantor its successors in title and assigns; and

(b) The free right, liberty and licence from time to time and at all times hereafter to use the Servient Tenement or any part or parts thereof for drainage purposes and the provision of normal domestic services to the Dominant Tenement (including but not limited to water supply pipeline, electricity transmission, telephone, gas and other services) and for such purposes to construct and install all such electric cables, ducts, fittings, pipes and other equipment used in connection therewith as shall from to time be required in and through or under the Servient Tenement and to inspect, maintain and/or repair, reconstruct and replace same.

Title Reference to issue

2.2 Acknowledgment

The Grantee acknowledges that the Servient Tenement is intended to be used for like purposes by the Grantor and that part of the Servient Tenement identified as Easement C on SP113652 by the registered owner for the time being of Lot 2 on RP 893100.

2.3 No Obstruction

The Grantor shall ensure that the Servient Tenement remains unobstructed at all times except for such reasonable times whilst any work associated with the construction, maintenance or repair of the Servient Tenement is being carried out.

Maintenance

2.4 The Grantor and the Grantee shall be equally responsible for the maintenance and reparation of the Servient Tenement and shall keep the Servient Tenement except for that part described as Easement C on SP113652, the maintenance and reparation of which shall be borne equally by the Grantor, the Grantee and the registered owner for the time being of Lot 2 on RP893100 and the Grantor and Grantee shall keep the Servient Tenement in good repair and condition and free of noxious weeds on the same basis. The Grantee shall be solely responsible for the maintenance and reparation of all services constructed or installed by the Grantee on the Servient Tenement.

2.5 In the event of any dispute between the parties as to whether maintenance work is required, the nature of the works or the person who is to carry out the work, then the dispute shall on the written reference of either party (a copy of which shall be served on the other party) be referred to a Civil Engineer to be agreed upon between the parties and, if no agreement is reached, to be appointed by the President for the time being of the Institute of Engineers of Australia (Queensland Division). The Civil Engineer shall give his decision in writing as an expert which decision shall bind both parties and shall be deemed to have formed part of this Easement as from the date of execution of this Easement.

3. GENERAL

Costs

3.1 The costs and expenses of and incidental to the preparation, stamping and registration of this Easement shall be borne and paid by the Grantee.

Grantor to Procure Registration

3.2 Each of the parties to this Easement will do all such acts necessary to enable this Easement to be registered.

3.3 The benefit and burden of this Easement and of the Covenants Agreements and Stipulations contained herein, shall pass with and bind the Dominant and Servient Tenements respectively so as to enure for the benefit of and bind all persons deriving title from or through the Grantor and the Grantee respectively including but not limited to the Registered Owners for the time being of all lots in any subdivision or reconfiguration (whether by way of Standard Format Plan, Building Format Plan or otherwise) comprising the Dominant Tenement or the Servient Tenement their servants, agents, workmen, visitors and licensees.

3.4 If requested by the other, the Grantor and Grantee shall from time to time execute all Deeds and other instruments and do all other things for further assuring to the other the rights intended to be conferred by this Easement.



Attachment C

Easement Agreement - Easement D on SPI 13652

EASEMENT



703661585

\$87.00

28/10/1999 16:28

CS 600

Stamp Duty Imprint

Queensland Stamp Duty Paid	
13A-CCR:01	
145/99	
\$1.50	AS

<p>1. Grantor</p> <p>PROSILIO PTY LTD ACN 010 835 293</p>	<p>Lodger Name, address & phone number Lodger Code</p> <p>Greer & Timms PO Box 57 Port Douglas Qld 4871 (07) 40995 995</p> <p style="text-align: right;">738</p>
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2. Description of Easement/Lot	County	Parish	Title Reference
Servient Tenement (burdened land)			
Easement D in Lot 144 on SP113652	Solander	Salisbury	to issue 50119069?

*Dominant Tenement (benefited land)			
Lot 15 on SP113652	Solander	Salisbury	to issue 21464250?
* not applicable if easement in gross			

3. Interest being burdened	*4. Interest being benefited
Fee Simple	Fee Simple
* not applicable if easement in gross	

5. Grantee	Given names	Surname/Company name and number	(include tenancy if more than one)
	GREER ANN	McGRATH	

6. Consideration	7. Purpose of easement
\$1.00	Right of Way and Services

8. Grant/Execution

The Grantor for the above consideration grants to the Grantee the easement over the servient tenement for the purpose stated in item 7 and the Grantor and Grantee covenant with each other in terms of the attached schedule.

Witnessing Officer

..... signature

..... full name

..... qualification

as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

Execution Date

5/8/99

Grantor's Signature

..... Director

..... Director

..... they are the proper officers to affix the seal

Witnessing Officer

..... signature

MARTIN PATRICK TEANTER full name

SOLICITOR qualification

as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

Execution Date

3/8/99

Grantee's Signature

.....

Title Reference to issue

This is the Schedule referred to in Easement dated _____, Title Reference _____.

It is covenanted between the parties to the above Easement as follows:-

1.1 INTERPRETATION AND DEFINITIONS

This Easement shall be construed as provided in this clause and the words and phrases set out below shall unless the context otherwise requires have the meanings respectively attributed to them -

"the Dominant Tenement" means the Dominant Tenement referred to in Item (2) of the Form 9 Easement as the Dominant Tenement.

"this Easement" means this Schedule together with the Form 9 Easement.

"the Grantee" means the Registered Owner from time to time of the Dominant Tenement.

"the Grantor" means the Registered Owner from time to time of the Servient Tenement.

"Servient Tenement" means the Land referred to in Item (2) of the Form 9 Easement as the Servient Tenement, being Easement D in Lot 144 on SP113652.

1.2 Every Covenant Agreement or Obligation expressed or implied in this Easement by which two or more persons covenant agree or are bound, shall bind such persons jointly and each of them severally and every provision expressed or implied in this Easement which applies to two or more persons shall apply to such persons jointly and each of them severally.

1.3 Words denoting the singular number only shall include the plural number and vice versa and words importing the masculine or neuter gender shall include all other genders and words denoting individuals only shall include corporations.

1.4 Headings have been included for ease of reference and guidance and this Easement shall be construed without reference to them.

2. GRANT OF EASEMENT - RIGHT OF WAY AND SERVICES

2.1 Grant of Easement

The Grantor hereby grants to the Grantee:-

(a) The full and free right of way and passage over the Servient Tenement (in common with others having like rights) for the purpose of access (ingress and egress) to and from the Dominant Tenement at all times hereafter by day or night at the will of the Grantee with or without motor vehicles or other vehicles of any description laden or unladen, into, along and over the Servient Tenement for all purposes whatsoever in connection with the use and enjoyment of the Dominant Tenement to have and to hold the same as an Easement appurtenant to the said Dominant Tenement and every part thereof without interference or hindrance of any kind from the Grantor its successors in title and assigns; and

(b) The free right, liberty and licence from time to time and at all times hereafter to use the Servient Tenement or any part or parts thereof for drainage purposes and the provision of normal domestic services to the Dominant Tenement (including but not limited to water supply pipeline, electricity transmission, telephone, gas and other services) and for such purposes to construct and install all such electric cables, ducts, fittings, pipes and other equipment used in connection therewith as shall

Title Reference to issue

from to time be required in and through or under the Servient Tenement and to inspect, maintain and/or repair, reconstruct and replace same.

2.2 Acknowledgment

The Grantee acknowledges that the Servient Tenement is intended to be used for like purposes by the Grantor.

2.3 No Obstruction

The Grantor shall ensure that the Servient Tenement remains unobstructed at all times except for such reasonable times whilst any work associated with the construction, maintenance or repair of the Servient Tenement is being carried out.

Maintenance

2.4 The Grantor and the Grantee shall be equally responsible for the maintenance and reparation of the Servient Tenement and shall keep the Servient Tenement in good repair and condition and free of noxious weeds. The Grantee shall be solely responsible for the maintenance and reparation of all services constructed or installed by the Grantee on the Servient Tenement.

2.5 In the event of any dispute between the parties as to whether maintenance work is required, the nature of the works or the person who is to carry out the work, then the dispute shall on the written reference of either party (a copy of which shall be served on the other party) be referred to a Civil Engineer to be agreed upon between the parties and, if no agreement is reached, to be appointed by the President for the time being of the Institute of Engineers of Australia (Queensland Division). The Civil Engineer shall give his decision in writing as an expert which decision shall bind both parties and shall be deemed to have formed part of this Easement as from the date of execution of this Easement.

3. GENERAL

Costs

3.1 The costs and expenses of and incidental to the preparation, stamping and registration of this Easement shall be borne and paid by the Grantee.

Grantor to Procure Registration

3.2 Each of the parties to this Easement will do all such acts necessary to enable this Easement to be registered.

3.3 The benefit and burden of this Easement and of the Covenants Agreements and Stipulations contained herein, shall pass with and bind the Dominant and Servient Tenements respectively so as to enure for the benefit of and bind all persons deriving title from or through the Grantor and the Grantee respectively including but not limited to the Registered Owners for the time being of all lots in any subdivision or reconfiguration (whether by way of Standard Format Plan, Building Format Plan or otherwise) comprising the Dominant Tenement or the Servient Tenement their servants, agents, workmen, visitors and licensees.

3.4 If requested by the other, the Grantor and Grantee shall from time to time execute all Deeds and other instruments and do all other things for further assuring to the other the rights intended to be conferred by this Easement.



Attachment D

Easement Agreement - Easement J&K on RP897739

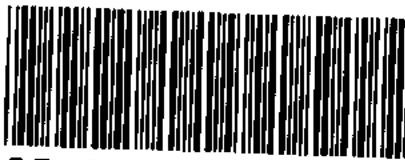
FORM 9 Version 2

Land Title Act 1994 and Land Act 1994

EASEMENT

QUEENSLAND LAND REGISTRY

Page 1 of 5

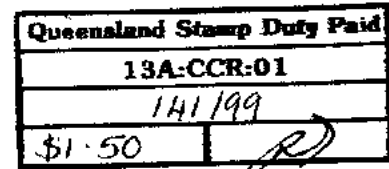


703661609

CS 600

\$87.00
28/10/1999 16:34

Stamp Duty Imprint



1. Grantor

PROSILIO PTY LTD ACN 010 835 293

Lodger Name, address & phone number Lodger Code

Greer & Timms
PO Box 57
Port Douglas Qld 4871
(07) 40995 995
738

2. Description of Easement/Lot

County

Parish

Title Reference

Servient Tenement (burdened land)

Easement J on RP 897739 in Lot 144 on RP Solander 893100

Salisbury

50119069

Easement K on RP897739 in Lot 144 on RP Solander 893100

Salisbury

50119069

*Dominant Tenement (benefited land)

Lot 2 on RP 34513

Solander

Victory

21107106

* not applicable if easement in gross

3. Interest being burdened

Fee Simple

*4. Interest being benefited

Fee Simple

* not applicable if easement in gross

5. Grantee

Given names

Surname/Company name and number

(include tenancy if more than one)

MOSSMAN CENTRAL MILL COMPANY
LIMITED ACN 009 657 103

6. Consideration

\$1.00

7. Purpose of easement

Right of Way (tramway, road and like purposes)

8. Grant/Execution

The Grantor for the above consideration grants to the Grantee the easement over the servient tenement for the purpose stated in item 7 and the Grantor and Grantee covenant with each other in terms of the attached schedule

Witnessing Officer

Execution Date

PLEASE DATE

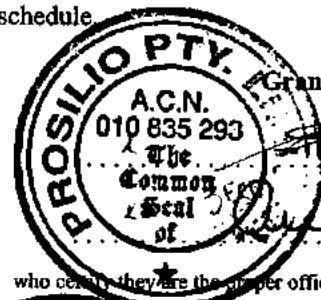
signature

23/7/99

full name

qualification

as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)



Grantor's Signature

Director

Director

who certify they are the proper officers to affix the seal

Witnessing Officer

Execution Date

5/8/99

signature

full name

qualification

as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)



Grantee's Signature

Director

Director/Secretary

who certify they are the proper officers to affix the seal

Title Reference 50119069

This is the Schedule referred to in Easement dated _____, Title Reference 50119069.

It is covenanted between the parties to the above Easement as follows:-

1.1 INTERPRETATION AND DEFINITIONS

This Easement shall be construed as provided in this clause and the words and phrases set out below shall unless the context otherwise requires have the meanings respectively attributed to them -

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"the Grantor" means the Registered Owner from time to time of the Servient Tenement.

"Servient Tenement" means the Land referred to in Item (2) of the Form 9 Easement as the Servient Tenement, being Easement Easement J on RP 897739 in Lot 144 on RP 893100 and Easement K on RP897739 in Lot 144 on RP 893100.

- 1.2 Every Covenant Agreement or Obligation expressed or implied in this Easement by which two or more persons covenant agree or are bound, shall bind such persons jointly and each of them severally and every provision expressed or implied in this Easement which applies to two or more persons shall apply to such persons jointly and each of them severally.
- 1.3 Words denoting the singular number only shall include the plural number and vice versa and words importing the masculine or neuter gender shall include all other genders and words denoting individuals only shall include corporations.
- 1.4 Headings have been included for ease of reference and guidance and this Easement shall be construed without reference to them.

2. GRANT OF EASEMENT - RIGHT OF WAY AND SERVICES

2.1 Grant of Easement

The Grantor hereby grants to the Grantee:-

- (a) The full and free right of way and passage over the Servient Tenement for the purpose of ingress and egress to and from the Dominant Tenement at all times hereafter by day or night at the will of the Grantee with or without motor vehicles, locomotives, carriages, wagons, other rolling stock or other vehicles of any description laden or unladen, tractors, trailers into, along and over the Servient Tenement for all purposes whatsoever in connection with the use and enjoyment of the Dominant Tenement to have and to hold the same as an Easement appurtenant to the said Dominant Tenement and every part thereof without interference or hindrance of any kind from the Grantor its successors in title and assigns;
- (b) The free right, liberty and licence from time to time and at all times hereafter to construct on any part of the Servient Tenement tramlines and railway lines for the purpose of moving locomotives, carriages, wagons and other rolling stock and other vehicles of any kind loaded or unloaded and to inspect maintain, repair, remove or replace or reconstruct any part of those lines and to excavate, drain and make cuttings,

Title Reference 50119069

embankments, bridges, culverts and other works as the Grantee thinks fit or the such purposes on the Servient Tenement; and

- (c) The right at all reasonable times to use internal roads or headlands on the Grantor's land described as Lot 144 on RP 897739 County Solander Parish Salisbury as is reasonably practicable in the circumstances to enter upon the Servient Tenement with servants, contractors or other authorised persons for the purpose of gaining access to the Servient Tenement to construct, maintain, alter or carry out any necessary works on the tramlines, railway lines or other associated structures and use the Servient Tenement for the purposes permitted by this Easement or as is necessary to enable the Grantee to comply with this obligation under this Easement.

3. No Obstruction

- 3.1 The Grantor shall ensure that the Servient Tenement remains unobstructed at all times. The Grantor must not construct any building or other structure upon the Servient Tenement without the prior written consent of the Grantee and the Grantor must not use the Servient Tenement in any manner which may interfere with the enjoyment of the Grantee's rights under this Easement.
- 3.2 The Grantee shall ensure that its rights under this Easement are exercised in a reasonable manner and so as not to unreasonably obstruct access to, or any right of way or easement rights over the balance of the Grantor's land or in favour of any adjoining land (including without limitation Lot 15 on N157695).

4. Maintenance

- 4.1 The Grantee shall be responsible for the maintenance and reparation of the Servient Tenement and shall keep the Servient Tenement in good repair and condition and free of noxious weeds and undergrowth.
- 4.2 The Grantor must take reasonable care to ensure that the tramline, railway line or other associated structures on the Servient Tenement are not damaged by the Grantor or the Grantor's servants, contractors or other persons.
- 4.3 The Grantee must carry out all maintenance and reparation works as expeditiously as is reasonably practical in order to minimise any adverse effects upon the beneficial use and enjoyment by the Grantor of the Servient Tenement and other lands of the Grantor.
- 4.4 The Grantee shall promptly reinstate any damage caused by the Grantee or the Grantee's servants, contractors or other authorised persons in the course of gaining access to or carrying out works on the Servient Tenement.

5.1 Grantor to Pay Rates

The Grantor must pay and discharge all rates, taxes and other outgoings payable in respect of the Servient Tenement.

6.1 Grantee to Indemnify

The Grantee shall indemnify and keep indemnified the Grantor against all claims, actions, suits, demands and costs of any kind arising out of or in connection with this Easement and the use by the Grantee and its authorised users of the Servient Tenement and the land of the Grantor pursuant to this Easement.

7.1 Grantee to Remove Improvements

The Grantee must, within 12 months from the surrender or extinguishment of this Easement, remove from the Servient Tenement all tramway, railway lines, sleepers, ballast and other material placed on the Servient Tenement in connection therewith and reinstate the Servient Tenement to its former state and condition unless the Grantor otherwise consents in writing.

SCHEDULE

Title Reference 50119069

8. Costs

8.1 The costs and expenses of and incidental to the preparation, stamping and registration of this Easement shall be borne and paid by the Grantee.

Parties to Procure Registration

9. Each of the parties to this Easement will do all such acts necessary to enable this Easement to be registered.

10. Easement Binds Successors Etc.

10.1 The benefit and burden of this Easement and of the Covenants Agreements and Stipulations contained herein, shall pass with and bind the Dominant and Servient Tenements respectively so as to enure for the benefit of and bind all persons deriving title from or through the Grantor and the Grantee respectively including but not limited to the Registered Owners for the time being of all lots in any subdivision or reconfiguration (whether by way of Standard Format Plan, Building Format Plan or otherwise) comprising the Dominant Tenement or the Servient Tenement their servants, agents, workmen, visitors and licensees.

10.2 If requested by the other, the Grantor and Grantee shall from time to time execute all Deeds and other instruments and do all other things for further assuring to the other the rights intended to be conferred by this Easement.

1. Description of Lot	County	Parish	Title Reference
Lot 144 on RP 893100	Solander	Salisbury	50119069

2. Instrument being consented to

Instrument type Easement
Dated
Names of parties PROSILIO PTY LTD ACN 010 835 293 as Grantor and MOSSMAN CENTRAL MILL
COMPANY LIMITED ACN 009 657 103 as Grantee

3. Instrument under which consent required

Dealing Type Mortgage
Dealing No. 700870295
Name of consenting party COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124

4. Execution by consenting party

The party identified in item 3 consents to the registration of the instrument in item 2.

Witnessing Officer

Execution Date

Consenting Party's Signature

COMMONWEALTH BANK OF
AUSTRALIA by its Attorney

 signature

14 OCT 1999

KYLIE JANE MALT full name

C.Dec. No. 7146 qualification

as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)


Supervisor Executions/Repaid Loans

Loan Processing Centre Brisbane
Queensland under Power of Attorney
No. L774189T



Attachment E

Easement Agreement - Easement L&M on RP897739

FORM 9 Version 2

Land Title Act 1994 and Land Act 1994

EASEMENT

QUEENSLAND LAND REGISTRY

Page 1 of 5




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\$87.00

28/10/1999 16:36

CS 600

Stamp Duty Imprint

Queensland Stamp Duty Paid	
13A:CCR:01	
142/99	
\$1.50	

<p>1. Grantor</p> <p>PROSILIO PTY LTD ACN 010 835 293</p>	<p>Lodger Name, address & phone number</p> <p>Greer & Timms PO Box 57 Port Douglas Qld 4871 (07) 40995 995</p> <p>Lodger Code</p> <p style="font-size: 1.5em; font-weight: bold;">738</p>
--	---

2. Description of Easement/Lot	County	Parish	Title Reference
Servient Tenement (burdened land)			
Easement L on RP 897739 in Lot 144 on RP Solander 893100		Salisbury	50119069
Easement M on RP897739 in Lot 144 on RP Solander 893100		Salisbury	50119069

***Dominant Tenement (benefited land)**

Lot 2 on RP 34513	Solander	Victory	21107106
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* not applicable if easement in gross

<p>3. Interest being burdened</p> <p>Fee Simple</p>	<p>*4. Interest being benefited</p> <p>Fee Simple</p>
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* not applicable if easement in gross

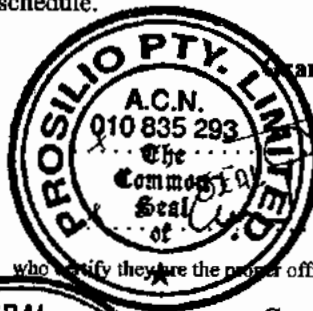
5. Grantee	Given names	Surname/Company name and number	(include tenancy if more than one)
	<p>MOSSMAN CENTRAL MILL COMPANY LIMITED ACN 009 657 103</p>		

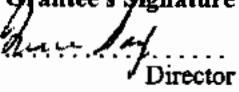
6. Consideration	7. Purpose of easement
\$1.00	Right of Way (tramway siding)

8. Grant/Execution

The Grantor for the above consideration grants to the Grantee the easement over the servient tenement for the purpose stated in item 7 and the Grantor and Grantee covenant with each other in terms of the attached schedule.

<p>Witnessing Officer</p> <p>..... signature</p> <p>..... full name</p> <p>..... qualification</p> <p>as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)</p>	<p>Execution Date</p> <p>PLEASE DATE</p> <p>23/7/99.</p>	<p>Grantor's Signature</p> <p></p> <p>..... Director</p> <p>..... Director</p> <p>who certify they are the proper officers to affix the seal</p>
--	---	--



<p>Witnessing Officer</p> <p>..... signature</p> <p>..... full name</p> <p>..... qualification</p> <p>as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)</p>	<p>Execution Date</p> <p>5/8/99</p>	<p>Grantee's Signature</p> <p></p> <p>..... Director</p> <p>..... Director/Secretary</p> <p>who certify they are the proper officers to affix the seal</p>
--	--	--



Title Reference 50119069

This is the Schedule referred to in Easement dated _____, Title Reference 50119069.

It is covenanted between the parties to the above Easement as follows:-

1.1 INTERPRETATION AND DEFINITIONS

This Easement shall be construed as provided in this clause and the words and phrases set out below shall unless the context otherwise requires have the meanings respectively attributed to them -

"the Dominant Tenement" means the Dominant Tenement referred to in Item (2) of the Form 9 Easement as the Dominant Tenement.

"this Easement" means this Schedule together with the Form 9 Easement.

"the Grantee" means the Registered Owner from time to time of the Dominant Tenement.

"the Grantor" means the Registered Owner from time to time of the Servient Tenement.

"Servient Tenement" means the Land referred to in Item (2) of the Form 9 Easement as the Servient Tenement, being Easement Easement L on RP 897739 in Lot 144 on RP 893100 and Easement M on RP897739 in Lot 144 on RP 893100.

- 1.2 Every Covenant Agreement or Obligation expressed or implied in this Easement by which two or more persons covenant agree or are bound, shall bind such persons jointly and each of them severally and every provision expressed or implied in this Easement which applies to two or more persons shall apply to such persons jointly and each of them severally.
- 1.3 Words denoting the singular number only shall include the plural number and vice versa and words importing the masculine or neuter gender shall include all other genders and words denoting individuals only shall include corporations.
- 1.4 Headings have been included for ease of reference and guidance and this Easement shall be construed without reference to them.

2. GRANT OF EASEMENT - RIGHT OF WAY AND SERVICES

2.1 Grant of Easement

The Grantor hereby grants to the Grantee:-

- (a) The full and free right of way and passage over the Servient Tenement for the purpose of ingress and egress to and from the Dominant Tenement and to park and stand at all times hereafter by day or night at the will of the Grantee with or without motor vehicles, locomotives, carriages, wagons, other rolling stock or other vehicles of any description laden or unladen, tractors, trailers into, along and over the Servient Tenement for all purposes whatsoever in connection with the use and enjoyment of the Dominant Tenement to have and to hold the same as an Easement appurtenant to the said Dominant Tenement and every part thereof without interference or hindrance of any kind from the Grantor its successors in title and assigns;
- (b) The free right, liberty and licence from time to time and at all times hereafter to construct on any part of the Servient Tenement tramlines and railway lines for the purpose of moving locomotives, carriages, wagons and other rolling stock and other vehicles of any kind loaded or unloaded and to inspect maintain, repair,

Title Reference 50119069

remove or replace or reconstruct any part of those lines and to excavate, drain and make cuttings, embankments, bridges, culverts and other works as the Grantee thinks fit or the such purposes on the Servient Tenement; and

- (c) The right at all reasonable times to use internal roads or headlands on the Grantor's land described as Lot 144 on RP 897739 County Solander Parish Salisbury as is reasonably practicable in the circumstances to enter upon the Servient Tenement with servants, contractors or other authorised persons for the purpose of gaining access to the Servient Tenement to construct, maintain, alter or carry out any necessary works on the tramlines, railway lines or other associated structures and use the Servient Tenement for the purposes permitted by this Easement or as is necessary to enable the Grantee to comply with this obligation under this Easement.

2.2 Acknowledgment

The Grantor acknowledges that the Servient Tenement is intended to be used for like purposes by the Grantee's servants, agents, workmen, visitors and licensees and also cane farmers supplying sugar cane to the Grantee from Lot 2 on RP 743352, Lot 8 on RP893100 and Lot 2 on RP 893100 for so long as these properties are used for the growing of sugar cane and that the owners or occupiers for the time being of Lot 2 on RP743352, Lot 8 on RP893100 and Lot 2 on RP 893100 and contractors harvesting cane on these properties are licensees of the Grantee.

3. No Obstruction

- 3.1 The Grantor shall ensure that the Servient Tenement remains unobstructed at all times. The Grantor must not construct any building or other structure upon the Servient Tenement without the prior written consent of the Grantee and the Grantor must not use the Servient Tenement in any manner which may interfere with the enjoyment of the Grantee's rights under this Easement.
- 3.2 The Grantee shall ensure that its rights under this Easement are exercised in a reasonable manner and so as not to unreasonably obstruct access to, or any right of way or easement rights over the balance of the Grantor's land or in favour of any adjoining land (including without limitation Lot 15 on N157695).

4. Maintenance

- 4.1 The Grantee shall be responsible for the maintenance and reparation of the Servient Tenement and shall keep the Servient Tenement in good repair and condition and free of noxious weeds and undergrowth.
- 4.2 The Grantor must take reasonable care to ensure that the tramline, railway line or other associated structures on the Servient Tenement are not damaged by the Grantor or the Grantor's servants, contractors or other persons.
- 4.3 The Grantee must carry out all maintenance and reparation works as expeditiously as is reasonably practical in order to minimise any adverse effects upon the beneficial use and enjoyment by the Grantor of the Servient Tenement and other lands of the Grantor.
- 4.4 The Grantee shall promptly reinstate any damage caused by the Grantee or the Grantee's servants, contractors or other authorised persons in the course of gaining access to or carrying out works on the Servient Tenement.

5.1 Grantor to Pay Rates

The Grantor must pay and discharge all rates, taxes and other outgoings payable in respect of the Servient Tenement.

Title Reference 50119069

6.1 Grantee to Indemnify

The Grantee shall indemnify and keep indemnified the Grantor against all claims, actions, suits, demands and costs of any kind arising out of or in connection with this Easement and the use by the Grantee and its authorised users of the Servient Tenement and the land of the Grantor pursuant to this Easement.

7.1 Grantee to Remove Improvements

The Grantee must, within 12 months from the surrender or extinguishment of this Easement, remove from the Servient Tenement all tramway, railway lines, sleepers, ballast and other material placed on the Servient Tenement in connection therewith and reinstate the Servient Tenement to its former state and condition unless the Grantor otherwise consents in writing.

8. Costs

8.1 The costs and expenses of and incidental to the preparation, stamping and registration of this Easement shall be borne and paid by the Grantee.

Parties to Procure Registration

9. Each of the parties to this Easement will do all such acts necessary to enable this Easement to be registered.

10. Easement Binds Successors Etc.

10.1 The benefit and burden of this Easement and of the Covenants Agreements and Stipulations contained herein, shall pass with and bind the Dominant and Servient Tenements respectively so as to enure for the benefit of and bind all persons deriving title from or through the Grantor and the Grantee respectively including but not limited to the Registered Owners for the time being of all lots in any subdivision or reconfiguration (whether by way of Standard Format Plan, Building Format Plan or otherwise) comprising the Dominant Tenement or the Servient Tenement their servants, agents, workmen, visitors and licensees.

10.2 If requested by the other, the Grantor and Grantee shall from time to time execute all Deeds and other instruments and do all other things for further assuring to the other the rights intended to be conferred by this Easement.

1. Description of Lot	County	Parish	Title Reference
Lot 144 on RP 893100	Solander	Salisbury	50119069

2. Instrument being consented to

Instrument type	Easement
Dated	
Names of parties	PROSLIO PTY LTD ACN 010 835 293 as Grantor and MOSSMAN CENTRAL MILL COMPANY LIMITED ACN 009 657 103 as Grantee

3. Instrument under which consent required

Dealing Type	Mortgage
Dealing No.	700870295
Name of consenting party	COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124

4. Execution by consenting party

The party identified in item 3 consents to the registration of the instrument in item 2.

Witnessing Officer

Execution Date

Consenting Party's Signature

COMMONWEALTH BANK OF AUSTRALIA by its Attorney

 signature

14 OCT 1999



KYLIE JANE MALT full name

Supervisor Executions/Repaid Loans

C.Dec. No. 7146 qualification

Loan Processing Centre Queensland under Power of Attorney No.

as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

L774189T



Attachment F

Advice from Drew Watson dated 10 April 2017

Brie Brie Estate Pty Ltd
ABN 90767733512

PO Box 10
MOSSMAN QLD 4873

Telephone: 07 4098 1522
Email: briebrieestate@conxx.com

10 April 2017

Dear Byron and Vicki

The new reservoir road that will cut Lot 144 Ferrero Road in half will I think make cane farming unviable into the future. It is important for the Mills viability to obtain cane from as much farmland as possible as they are so reliant on the throughput.

The viability of farming is a combination of sugar yield, sugar price, economies of scale and field layout efficiencies. Sugar yields for this farm are on the higher end of average but not special. Sugar prices are reasonable at the moment but the ICE 11 futures are showing falling prices in coming years. To change the row direction we will have to plough out the old stool (2017), fallow the land for 6 months thereby missing one of the higher priced years, replant the cane (2018) on the new run line and wait until 2019 to harvest our first crop.

The farm was always a bit small to get any economies of scale but the farm layout was quite good with rather long rows. The new layout is going to be a challenge with short rows, steep and numerous machinery turns and water runoff and erosion problems. Unless sugar prices defy the current trends with substantial rises, than I think 2018 will quite likely see this farm become unviable and no planting will occur and we will have to forfeit the lease.

Regards



Drew Watson
Managing Director