

City of Sydney
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12 May 2015

File No : P/2015/885

Ms Freya Macleod
Assistant Development Manager
Hindmarsh Development
Level 22
25 Bligh Street
SYDNEY NSW 2000

Dear Freya

**11 ALBERTA STREET, SYDNEY
STRATA SUBDIVISION OF LOT 1 IN DP 1206707
EXECUTION OF 88B INSTRUMENT**

I refer to your request for Council to execute the 88B Instrument creating Restrictions on the Use of Land in the above matter benefiting Council.

The Instrument has been executed by the Area Planning Manager, Chris Corradi, and is enclosed.

If you require any further information, please contact me on **phone 9288 5819** or **email sfeeney@cityofsydney.nsw.gov.au**.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Stephen Feeney'.

STEPHEN FEENEY
Specialist Surveyor

INSTRUMENT SETTING OUT TERMS OF THE EASEMENTS, POSITIVE COVENANTS & RESTRICTIONS ON THE USE OF LAND TO BE CREATED PURSUANT TO SECTION 7(3) OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT, 1973 & SECTION 88B OF THE CONVEYANCING ACT, 1919

(Sheet 1 of 7)

Plan:

Plan of Subdivision of Lot 1 in DP1206707
covered by Strata Certificate

Noof.....

Full name and address of the owner of the
land:

Alberta Developments Pty Limited
ACN 160 044 066
C/- The Hindmarsh Group
69 Constitution Avenue
Campbell ACT 2612

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	Common Property	City of Sydney Council
2.	Restriction on the Use of Land	All Lots	City of Sydney Council

PART 2 (Terms)

1. Terms of Restriction on use of land numbered 1 in the plan

- (a) The on-site car parking spaces located within the carstacker system (exclusive of visitor car spaces) are not to be used other than by an occupant, tenant or resident of the subject building.
- (b) An owner or tenant of a Lot within the Building must not:
 - (i) grant or permit to be granted any lease, licence or sublease (in the case of a tenant of the lot) or otherwise part with possession of any car space forming the Lot Burdened (or part of it); or



Authorised Officer
City of Sydney Council

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Plan:

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- (ii) transfer any car space forming the Lot Burdened (or part of it), other than to an owner of a lot in the Plan.

**Name of person empowered to release, vary or modify easement, profit
aprendre, restriction or positive covenant numbered 1 in the Plan**

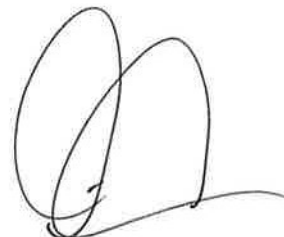
City of Sydney Council.

2. Terms of Restriction on use of land numbered 2 in the plan

The accommodation portion of the Lot Burdened must be used as permanent residential accommodation only and not for the purpose of a hotel, motel, serviced apartments, private hotel, boarding house, tourist accommodation or the like.

**Name of person empowered to release, vary or modify easement, profit
aprendre, restriction or positive covenant numbered 2 in the Plan**

City of Sydney Council.



Authorised Officer
City of Sydney Council

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Plan: Plan of Subdivision of Lot 1 in DP1206707 covered by Strata Certificate

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PART 3 (General rules and definitions)

3. Interpretation

3.1 Definitions

In this Instrument, unless the contrary intention appears, the following terms have the following meanings:

Authorised User means any person authorised by the Grantee or the relevant Authority (as the case may be) and includes:

- (a) if a Strata Plan is registered over any Lot Benefited, each registered proprietor of a lot in that Strata Scheme and any occupier or lessee of that lot as authorised by the Owners Corporation; and
- (b) where the Grantee is an Authority Benefited, the officers, servants agents and workmen of the Authority Benefited and any other person authorised by the Authority Benefited to exercise its rights or comply with its obligations under this Instrument.

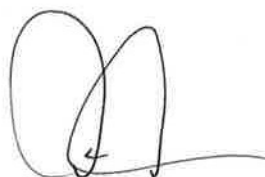
Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes:

- (c) any officers, servants, agents and workmen of the Authority and any other person authorised by the Authority; and
- (d) the City of Sydney Council.

Authority Benefited means the Authority having the benefit of an easement, profit aprendre, restriction or positive covenant under this Instrument.

Building means a structure, with a roof and walls and includes any protection from the external walls constructed on the Land.

Covenant means the restrictions on the use of the land numbered 1 and 2 on the Plan.



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Freehold Development Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Grantee means:

- (e) the registered proprietor of a Lot Benefited; and
- (f) if, from time to time, a Strata Scheme exists in respect of a Lot Benefited, the Owners Corporation in respect of the Strata Scheme; and
- (g) an Authority Benefited.

Grantor means:

- (h) the registered proprietor of a Lot Burdened; and
- (i) if, from time to time, a Strata Scheme exists in respect of a Lot Burdened, the Owners Corporation in respect of that Strata Scheme.

Instrument means this section 88B instrument.

Lot Benefited means the whole or any part of a lot having the benefit of a Covenant.

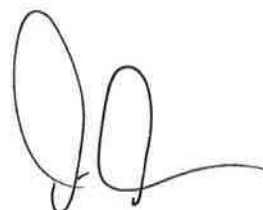
Lot Burdened means the whole or any part of a lot having the burden of a Covenant.

Owners Corporation means and owners corporation constituted under the *Strata Schemes Management Act 1996* (NSW).

Plan means the plan to which this Instrument relates.

Strata Plan means a strata plan registered under the Freehold Development Act.

Strata Scheme means a strata scheme created under the Freehold Development Act.



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Noof.....

3.2 In this Instrument:

- (a) References to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this Instrument.
- (b) Headings in this Instrument are for convenience only and do not affect its interpretation or construction.
- (c) In this Instrument unless the context otherwise requires:
 - (i) the singular includes the plural and vice versa;
 - (ii) each gender includes the other two genders;
 - (iii) the word "person" means a natural person and any association, body or entity whether incorporated or not;
 - (iv) the word "month" means calendar month and the word "year" means 12 calendar months;
 - (v) a reference to writing includes any communication sent by post or facsimile transmission;
 - (vi) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (vii) a reference to any thing is a reference to the whole and each part of it;
- (d) Nothing in this Instrument will be interpreted adversely to any person merely because that.

3.3 Covenants and agreements to run with the land

Each easement, covenant and restriction contained within this Instrument are covenants and agreements between:

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



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- (b) each 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 extent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easements, covenants and restriction.

3.4 Persons bound

Each Grantor and Grantee:

- (c) is bound by, and must comply with, the terms of each relevant easement, covenant and restriction in this Instrument; and
- (d) must use reasonable endeavours to ensure its Authorised User complies with the terms of each relevant easement, covenant and restriction.



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(Sheet 7 of 7)

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Plan of Subdivision of Lot 1 in DP1206707
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No of

Rowan John Hindmarsh and
Gemma John Ryan as
Attorneys for

Signed by **Alberta
Developments Pty
Limited ACN 160**

044 066 UNDER POWER OF
ATTORNEY DATED 24 MARCH 2015
IN THE
PRESENCE OF

sign

sign

office (director or secretary) ATTORNEY

office (director or secretary) ATTORNEY

full name

full name

WITNESS:

FREYA MALLEOD
C/- LEVEL 22, 25
BLIGH STREET, SYDNEY
NSW
2000
12.05.15

Signed by **National
Australia Bank Limited**

sign

sign

office (director or secretary) WITNESS

office (director or secretary) ATTORNEY

full name

full name

Signed by **Gresham
Property Funds
Management**

ACN 092 191270
in accordance with
section 127 of the
Corporations Act 2001 (CH)

sign

sign

office (director or secretary)

office (director or secretary)

MICHAEL BRUCE BURLEY
full name

PHILLIP MANWARRING
full name

SIGNED ON BEHALF OF THE
CITY OF SYDNEY BY ITS
AUTHORISED PERSON

CHRIS CORRADI
AREA PLANNING MANAGER

WITNESS:

STEPHEN FEENEY
C/- 456 KENT STREET
SYDNEY NSW 2000