

# City of Ryde Development Control Plan 2014

## Part: 8.4 Title Encumbrances

SCHEDULE 1 TITLE ENCUMBRANCES TECHNICAL MATERIAL – is currently under review by Council. A webpage providing information on matters relating Schedule 1 i.e. information sheets and examples will soon be available.

Please contact Council's Building and Development Advisory Service on 9952 8222 with respect to all matters contained within the Schedule.

## Translation

### ENGLISH

If you do not understand this document please come to Ryde Civic Centre, 1 Devlin Street, Ryde Monday to Friday 8.30am to 4.30pm or telephone the Telephone and Interpreting Service on 131 450 and ask an interpreter to contact the City of Ryde for you on 9952 8222.

### ARABIC

إننا نعتذر عليك فهم محتويات هذه الوثيقة، نرجو للحضور إلى مركز بلدية رايد Ryde Civic Centre على العنوان: 1 Devlin Street, Ryde 1 من الاثنين إلى الجمعة بين الساعة 8.30 صباحاً والساعة 4.30 بعد الظهر أو الاتصال بمكتب خدمات للترجمة على الرقم 131 450 لكي تطلب من أحد المترجمين الاتصال بمجلس مدينة رايد، على الرقم 9952 8222، نيابة عنك.

### ARMENIAN

Եթե այս գրույթինը չէք հասկնար, խնդրեմ եկե՛ք՝ Րայդ Սիվիկ Սենթըր, 1 Տելվին փողոց, Րայդ, (Ryde Civic Centre, 1 Devlin Street, Ryde) Երկուշաբթիէն Ուրբաթ կ.ա. ժամը 8.30 – կ.ե. ժամը 4.30, կամ հեռաձայնեցե՛ք Հեռաձայնի եւ Թարգմանություն Սպասարկության՝ 131 450, եւ խնդրեցե՛ք որ թարգմանիչ մը Րայդ Քաղաքապետարանին հետ կապ հաստատուէ՝ ձեզի համար, հեռաձայնելով՝ 9952 8222 թիվին:

### CHINESE

如果您看不懂本文，請在周一至周五上午 8 時 30 分至下午 4 時 30 分前往 Ryde 市政中心詢問 (Ryde Civic Centre, 地址: 1 Devlin Street, Ryde)。你也可以打電話至電話傳譯服務中心，電話號碼是: 131 450。接通後你可以要求一位傳譯員為你打如下電話和 Ryde 市政廳聯繫，電話是: 9952 8222。

### FARSI

اگر این مدرک را نمی فهمید لطفاً از 8.30 صبح تا 4.30 بعد از ظهر دوشنبه تا جمعه به مرکز شهرداری رايد، Ryde Civic Centre, 1 Devlin Street, Ryde مراجعه کنید یا به سرویس مترجم تلفنی، شماره 131 450 تلفن بزنید و از یک مترجم بخواید که از طرف شما با شهرداری رايد شماره 9952 8222 تلفن بزند.

### ITALIAN

Se non capite il presente documento, siete pregati di rivolgervi al Ryde Civic Centre al n. 1 di Devlin Street, Ryde, dalle 8.30 alle 16.30, dal lunedì al venerdì; oppure potete chiamare il Telephone Translating and Interpreting Service al 131 450 e chiedere all'interprete di contattare a vostro nome il Municipio di Ryde presso il 9952 8222.

### KOREAN

이 문서가 무슨 의미인지 모르실 경우에는 1 Devlin Street, Ryde 에 있는 Ryde Civic Centre 로 오시거나 (월 – 금, 오전 8:30 – 오후 4:30), 전화 131 450 번으로 전화 통역 서비스에 연락하셔서 통역사에게 여러분 대신 Ryde 시청에 전화 9952 8222 번으로 연락을 부탁드립니다.

Amend. No.	Date approved	Effective date	Subject of amendment

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## 1.0 GENERAL INFORMATION

This part shall be read in conjunction with the Title Encumbrance Technical Material (refer Schedule attached to this Part) which provides detailed text of the encumbrances to be applied.

### 1.1 Objectives

#### Objectives

1. To provide guidelines for the preparation of legal documentation to be attached to property titles.
2. To ensure consistency in the application of the title encumbrances.

### 1.2 Application

This Part applies to:

- a. New buildings and subdivisions; and
- b. Alterations and additions to any existing building, whether or not such additions or alterations involve any change in the purpose for which such buildings are used.

## 2.0 STORMWATER DRAINAGE

### 2.1 Easements in Gross

#### 2.1.1 Easements to Drain Private Property

Common law obligations require that nothing be done on one property that would cause nuisance on another. Changing the natural pattern of stormwater runoff by increasing the amount or rate of runoff, or redirecting the runoff, has the potential to create this nuisance. Practically all property improvements will affect stormwater runoff to some extent and therefore provision must be made to ensure these site modifications do not adversely affect surrounding properties.

Minimum standards regarding the treatment of stormwater runoff from properties improvements are outlined in Part 8.2 Stormwater Management under this DCP.

Where it is necessary to convey collected stormwater runoff from one lot through another, an easement must exist on the downstream lot that confers rights to the upstream lot to drain water through it.

The standard easement used for this purpose is an Easement for drainage of water. The rights and obligations associated with an easement of this type are provided in the technical manual.

Interallotment drainage easements should be described as an Easement for drainage of water. Describing an easement in this way on the instrument has the same affect as inserting the words given above.

This form of easement replaces the earlier Easement to drain water.

Interallotment drainage easements shall benefit individual lots only and not list Council as a beneficiary.

#### **Creation of Private Drainage Easements**

Where an interallotment drainage easement must be created to facilitate a development, it is the responsibility of the applicant to negotiate with affected property owners to secure an easement.

Property owners are under no legal obligation to burden their lots with an easement for interallotment drainage unless they have been required to do so by the Supreme Court exercising the powers available to it under Section 88K of the *Conveyancing Act 1919* as amended, or required to do so by way of a condition of development consent.

Where an easement is required to allow suitable disposal of collected stormwater runoff from the property, a letter of agreement from the affected property owner(s) shall support the Local Development Application to demonstrate to Council that a suitable easement can be obtained. The Construction Certificate cannot be issued until the easement has been prepared by a registered surveyor and has been lodged with the Land Titles Office for registration.

#### **Using an Existing Private Drainage Easement**

Where it is proposed to discharge collected runoff to an existing pipeline that passes through an adjoining lot or to lay a new pipe within an existing easement interallotment drainage easement, the applicant shall submit to Council information from the Land Titles Office to indicate the subject property enjoys rights to use the interallotment drainage system. This information must be received before Council will issue a Local Development Consent on the lot.

## Width of Private Drainage Easements

The width of an easement for an interallotment drainage line shall be in accordance with Part 8.2 Section 4 of this DCP.

### 2.1.2 Council Drainage Easements

Council has rights under Section 186 of the *Local Government Act 1993* to require the creation of an easement in its favour for the purpose of undertaking any of its functions as defined in the *Local Government Act*.

Council drainage easements will be required over all pipes or channels that convey runoff from a public park, road reserve or other public owned land.

Where a drainage easement is to be created as a condition of development consent, all costs associated with the creation of that easement shall be borne by the applicant.

Standard words for use in describing a Council drainage easement in the relevant instrument are provided in the technical manual.

#### Widths and location of a Council Drainage Easement

The required width of an easement shall be in accordance with details in Council's Title Encumbrances Technical Material (refer Schedule attached to this Part).

Existing easements that do not comply with this minimum standard will be required to modify the existing easement so as to comply with these minima.

The easement is to be positioned to ensure the pipe is centrally located within the easement. This standard may be modified at Council's discretion if the edge of the easement is in the same alignment as a property boundary and the pipeline is wholly contained within the easement.

#### Locating pipes

The exact location of a Council pipeline upon the lot should be confirmed by a registered surveyor. It should not be assumed that the pipe will be wholly located with the easement.

If buildings or footings are to be constructed within 2.0 metres of the edge of a Council drainage easement, the location and depth of the pipe must be ascertained by a registered surveyor and the information submitted to the Principle Certifying Authority along with the building plans for the work.

#### Relocating Pipes and Drainage Easements

Council may consent to the relocation of an existing Council pipeline through a property. Issues that will be considered will include, but not be limited to:

- the hydraulic efficiency of the re-routed system;
- the potential for blockages within the system;
- the management of overland flow; and
- costs associated with ongoing maintenance of the stormwater asset.

Should Council consent to a relocation of the pipeline, all associated design, relocation and legal costs shall be borne by the applicant.

A Council drainage easement shall be created over the new line of the pipe and any redundant easements shall be extinguished.

### Release of Easements

Council will consent to releasing or extinguishing a drainage easement if it can be demonstrated that it is redundant to existing or future stormwater management needs. Any requests of this nature must be in writing and all costs associated with the extinguishment shall be borne by the applicant.

#### 2.1.3 Building near or over a Drainage Easement

Council will not consent to permit any construction over a council drainage easement that will prevent or hamper constructing, reconstructing, maintaining, repairing, cleansing or gaining access to the pipes or easement. In this regard, no encroachments will be permitted within an 8.0m zone measured from the finished ground level over the pipeline. This shall include eaves and balconies.

The clear height restriction of 8.0 metres may need to be increased to account for issues such as very large pipes or restricted working spaces.

On-ground vehicular driveways and landscaped areas will typically be permitted over an easement however the structural stability of any existing pipelines may be considered before consent is given to an application that proposes to introduce additional live loads to the Council pipeline. Similar considerations will be made when it is proposed to reduce cover over the pipe.

Demountable carports and other easily removal structures that do not involve usable floor space, have been approved over Council drainage easements. If approval for such a structure is granted, the owner would need place a "Public Positive Covenant" on the title of the lot indicating that the property owner will remove the structure at their own expense if Council deems it necessary for the purposes of accessing the easement. Any such approvals will not extinguish or limit Council's rights under the easement. Pedestrian and vehicular bridges may be permitted to encroach an easement provided they can be easily removed to facilitate access to the easement and suitable alternate vehicular and pedestrian access to the property exists if they were removed.

Masonry walls constructed across an easement must cross the easement at an angle of not less than 60°. The section of wall spanning the easement shall be constructed to enable its easy removal without resulting in failure of the remainder of the structure.

All footings for buildings and other structures shall be taken a minimum of 1.0 times the pipe diameter below the load bearing zone of the existing pipe. This condition shall apply even when the pipe is location upon an adjoining property.

#### 2.1.4 Existing Encroachments onto an Easement

Any time there is an existing, unsuitable encroachment onto a drainage easement, Council will take the opportunity to have that encroachment removed if and when it is presented.

Where an existing building encroaches onto an easement or Council drainage line, Council will not issue a Local Development Approval on the property where it involves significant capital expenditure to that building or any other application on that property that may reduce or delay the opportunity being presented for Council to have the encroachment removed.

## 3.0 RESTRICTIONS ON USE OF LAND

### 3.1 Provision for Overland Flow

#### 3.1.1 When such a restriction will be imposed

If the property is subjected to overland flow associated with Council's 'major drainage system' (ie the path taken by stormwater when the capacity of Council's piped drainage system is exceeded), this flow path will generally need to be protected against blockage by the creation of a "restriction as to use". Such a restriction will be required as a condition of Local Development Consent when the proposed development is considered to be of such a nature that the potential for blockage is increased, or there is a need to highlight the site constraints to future property owners.

#### 3.1.2 Land Affected by the Restriction

Council officers to determine extent of property affected by Restriction.

The path and characteristics of the overland flow through the property shall be determined by the applicant's consulting hydraulic engineer. The area of land affected by the restriction will be determined by Council having regard to existing flow paths, flow depths and velocities.

### 3.2 Limitation of Site Cover

#### 3.2.1 When such a restriction will be imposed

Where a property is unable to drain stormwater to a Council drainage system and an on-site stormwater dispersal system is approved by Council. The built upon area of the site shall be limited to an amount determined by the circumstances of the site and the development and will be specified by Council officers.

### 3.3 Creating the Restriction on use of Land

The restriction shall be created under Section 88B of the *Conveyancing Act 1919* and all associated cost shall be borne by the applicant. Wording for the restriction is provided in the Technical Material (refer Schedule attached to this Part).

### 3.4 Releasing or Modifying the Restriction

Application to release or modify the restriction shall be made in writing. If such leave is granted all associated cost shall be borne by the applicant.

## 4.0 POSITIVE COVENANTS

### 4.1 Maintenance of On-Site Stormwater Detention Systems

A positive covenant shall be created on the title of all lots affected by an on-site stormwater detention system to protect the integrity of and ensure the ongoing maintenance of the system.

### 4.2 Maintenance of Charged Stormwater Drainage Systems

A positive covenant shall be created on the title of all lots affected by a charged drainage system to protect the integrity of and ensure the ongoing maintenance and effective operation of the system.

This restriction will only apply where a charged system is directed to a street gutter and not where the system feeds into a rainwater tank.

### 4.3 Maintenance of Pump out Systems

In the event that a pump out system has been approved by Council for disposal of stormwater and/or seepage from the property, a public positive covenant will need to be executed and registered against the title of the lot requiring ongoing maintenance and repair of the pump.

### 4.4 Maintenance of On-site Dispersal Systems

A positive covenant shall be created on the title of all lots affected by an on-site stormwater disposal system to protect the integrity of and ensure the ongoing maintenance of the system. This is essential to protect the amenity of any down slope properties that may be impacted by overland and subsoil flows.

### 4.5 Creating a Positive Covenant

The positive covenant shall be created under Section 88E of the *Conveyancing Act 1919*, using the wording provided in the technical manual for the relevant situation. Proof of registration of positive covenants will be required prior to issue of certificates of classification and/or Building Certificates under Section 172 of the *Local Government Act 1993*, and the release of any linen plan.

### 4.6 Rights and Obligations

Section 88F of the *Conveyancing Act 1919* confers the following powers to Council in respect of ensuring observance of the public positive covenant:

- a. for the purpose of ensuring observance of the covenant, the authority may, by its servants or agents, twice in every year at a reasonable time of the day and upon giving to the person against whom the covenant is enforceable not less than 2 days' notice, enter the land and view the condition of the land and the state of construction or repair of any structure or work on the land, except to the extent that the authority and that person may otherwise agree;
- b. where the covenant requires the carrying out of development of any nature by that person, the authority may carry out development of that nature on the failure of that person to comply with the covenant; and

- c. the authority may recover from that person, in a court of competent jurisdiction, any expense reasonably incurred by it in exercising its powers under paragraph (b) or (c).

## 4.7 Certificate of Amount Due

### Section 88G Certificates

A certificate may be obtained from Council:

- a. stating the amount (if any) payable to the authority because of a failure to comply with a public positive covenant imposed on the land and particulars of how the amount is comprised or that no such amount is payable; or
- b. stating particulars of the work (if any) carried out by the authority the cost or part of the cost of which may be recovered by the authority under the covenant.

Plans submitted to the Principle Certifying Authority should show:

- the location of all driveways and car parking spaces;
- existing gutter levels at either side of the footway crossing;
- the level of all proposed car parking spaces;
- A longitudinal section of the driveway access from the centreline of the public road to the parking area; and
- Construction details of the crossover.

The certifier will check:

- The location to ensure compliance with the development standards;
- Levels of the garage against the property alignment levels to ensure access can be achieved without exceeding maximum permissible grades or grade changes; and
- Safe pedestrian and traffic sight distance have been achieved.

If the development standard is not met, the unsatisfactory components of the driveway will need to be removed and reconstructed. Unsatisfactory sections of regarded footway will need to be repaired. If turf is dead, it will need to be replaced and maintained by the applicant for a further two month period after which, a further compliance certificate is required.

## 5.0 SERVICES

Council does not specifically require easements over property services such as sewer, water and other utility lines where the service for one property crosses another. Where this does occur however the matter should be clarified with the particular authority providing the service.

## 6.0 ACCESS

### 6.1 Right of Carriageway

Where access either by vehicle or on foot to one property is required across an adjoining property a right of carriageway shall be created under Section 181A of the *Conveyancing Act 1919* and registered on the title of both properties involved. Details of the text to be included on the 88b documentation is provided in the Technical Material (refer Schedule attached to this Part).

## 7.0 LAND DEDICATIONS

### 7.1 General

Details of dedication procedures are provided in the Title Encumbrances Technical Material (refer Schedule attached to this Part).

### 7.2 Splay Corners

A corner cut-off or splay shall be provided at the intersection of a new road and an existing street. The dimensions of the splay shall comply with the requirements of AS 2890 for sight distance.

Council may also require the creation of a splay corner on an existing lot where a new boundary fence in excess of 1 metre in height is proposed.

### 7.3 Road Widening

Council may from time to time require a local road to be widened to provide improved vehicular movement. All procedures required for this are detailed in the *Roads Act 1993* and will be subject to full public consultation.

### 7.4 Footway Widening

Council may from time to time require a local road to be widened to provide improved pedestrian movement. All procedures required for this are detailed in the *Roads Act 1993* and will be subject to full public consultation.

### 7.5 New Public Road Dedications

New public roads will generally only be required where the subdivision of an existing parcel of land is undertaken that will create new lots that require access to a public road.

### 7.6 Public Open Space Dedications

Public open space may be required as part of the redevelopment of specific areas within the city to provide public amenity and in other location as opportunities may arise to add space to exiting open space areas.

## SCHEDULE 1 TITLE ENCUMBRANCES TECHNICAL MATERIAL

### S1.0 General Information

This manual shall be read in conjunction with the Part 8.4 Title Encumbrances and provides detailed text of the encumbrances to be applied.

### S1.1 Objectives

- To provide guidelines for the preparation of legal documentation to be attached to property titles.
- To ensure consistency in the application of the title encumbrances.

### S2.0 Stormwater Drainage

#### S2.1 Easements in Gross

##### Easements to Drain Private Property

Common law obligations require that nothing be done on one property that would cause nuisance on another. Changing the natural pattern of stormwater runoff by increasing the amount or rate of runoff, or redirecting the runoff, has the potential to create this nuisance. Practically all property improvements will affect stormwater runoff to some extent and therefore provision must be made to ensure these site modifications do not adversely affect surrounding properties.

Interallotment drainage easements should be described as an Easement for drainage of water. The rights and obligations associated with an easement of this type are outlined below.

The body having the benefit of this easement may:

1. drain water from any natural source through each lot burdened, but only within the site of this easement; and
2. do anything reasonably necessary for that purpose, including:
  - a. entering the lot burdened;
  - b. taking anything on to the lot burdened;
  - c. using any existing line of pipes; and
  - d. carrying out work, such as constructing, placing, repairing or maintaining pipes, channels, ditches and equipment.

Interallotment drainage easements shall benefit individual lots only and not list Council as a beneficiary.

##### Creation of Private Drainage Easements

Where an interallotment drainage easement must be created to facilitate a development, it is the responsibility of the applicant to negotiate with affected property owners to secure an easement.

Property owners are under no legal obligation to burden their lots with an easement for interallotment drainage unless they have been required to do so by the Supreme Court exercising the powers available to it under Section 88K of the *Conveyancing Act 1919* as amended, or required to do so by way of a condition of development consent.

Where an easement is required to allow suitable disposal of collected stormwater runoff from the property, a letter of agreement from the affected property owner(s) shall support the Local Development Application to demonstrate to Council that a suitable easement can be obtained. The Construction Certificate cannot be issued until the easement has been prepared by a registered surveyor and has been lodged with the Land Titles Office for registration.

Example of text used for the annexure to the TRANSFER GRANTING EASEMENT document (form 01TG) from Department of Lands.

### **Council Drainage Easements**

Council has rights under Section 186 of the *Local Government Act 1993* to require the creation of an easement in its favour for the purpose of undertaking any of its functions as defined in the *Local Government Act*.

Council drainage easements will be required over all pipes or channels that convey runoff from a public park, road reserve or other public owned land.

Where a drainage easement is to be created as a condition of development consent, all costs associated with the creation of that easement shall be borne by the applicant.

Standard words for use in describing a Council drainage easement in the relevant instrument shall be as follows:

An easement to drain water within the meaning given to that expression by Part II Schedule IVA to the Conveyancing Act 1919 TOGETHER WITH the following addition thereto:-

“TOGETHER WITH the right for the body in whose favour this easement is to be created (herein referred to as “ the Body”) any every person authorised by it to make all necessary excavations and sink and make shafts and cuttings and lay down pipes in or on or under the servient tenement AND the owner of the servient tenement for the time being for them and their successors in title covenant with the Body that they will not do or allow to be done any act deed matter or thing which may injure damage or interfere with or impede the free and passage of water so and air through the same AND will not erect or permit to be erected over the servient tenement any building or structure except with the written permission of the Body and then only in accordance with all the conditions imposed by the Body in granting such permission AND will not do permit or suffer to be done any act deed matter or thing whereby the Body shall be prevented or hampered in constructing reconstructing maintaining repairing cleansing or gaining access to the pipes or easement or any part thereof AND if any such damage or injury be done or interference be made they will forthwith at their own expense properly and substantially repair and make good all such injury and damage and restore the free flow and passage of water and soil through the same and do all things necessary for the purpose aforesaid AND will and do hereby indemnify and keep indemnified the Body from and against all demands actions suits causes of and expenses or other claims which they or any other person may have against the Body arising out of any injury damage or interference by the owner of the servient tenement with or to such pipes or easement. THE NAME of the person empowered to release vary or modify the easement referred to herein is The Council of the City of Ryde”.

### Widths and location of a Council Drainage Easement

The required width of an easement shall be the pipe diameter plus 1.5 m rounded up to the next highest 0.5 m with 2.5 metres as a minimum.

Existing easements that do not comply with this minimum standard will be required to modify the existing easement so as to comply with these minima.

The easement is to be positioned to ensure the pipe is centrally located within the easement. This standard may be modified at Council's discretion if the edge of the easement is in the same alignment as a property boundary and the pipeline is wholly contained within the easement.

### Locating pipes

The exact location of a Council pipeline upon the lot should be confirmed by a registered surveyor. It should not be assumed that the pipe will be wholly located with the easement.

If buildings or footings are to be constructed within 2.0 metres of the edge of a Council drainage easement, the location and depth of the pipe must be ascertained by a registered surveyor and the information submitted to the Principle Certifying Authority along with the building plans for the work.

### Relocating Pipes and Drainage Easements

Council may consent to the relocation of an existing Council pipeline through a property. Issues that will be considered will include, but not be limited to;

- the hydraulic efficiency of the re-routed system;
- the potential for blockages within the system;
- the management of overland flow; and
- costs associated with ongoing maintenance of the stormwater asset.

Should Council consent to a relocation, all associated design, relocation and legal costs shall be borne by the applicant.

A Council drainage easement shall be created over the new line of the pipe and any redundant easements shall be extinguished.

### Release of Easements

Council will consent to releasing or extinguishing a drainage easement if it can be demonstrated that it is redundant to existing or future stormwater management needs. Any requests of this nature must be in writing and all costs associated with the extinguishment shall be borne by the applicant.

### Building near or over a Drainage Easement

Council will not consent to permit any construction over a council drainage easement that will prevent or hamper constructing, reconstructing, maintaining, repairing, cleansing or gaining access to the pipes or easement. In this regard, no encroachments will be permitted within an 8.0m zone measured from the finished ground level over the pipeline. This shall include eaves and balconies.

The clear height restriction of 8.0 metres may need to be increased to account for issues such as very large pipes or restricted working spaces.

On-ground vehicular driveways and landscaped areas will typically be permitted over an easement however the structural stability of any existing pipelines may be considered before consent is given to an application that proposes to introduce additional live loads to the Council pipeline. Similar considerations will be made when it is proposed to reduce cover over the pipe.

Demountable carports and other easily removal structures that do not involve usable floor space, have been approved over Council drainage easements. If approval for such a structure is granted, the owner would need place a "Public Positive Covenant" on the title of the lot indicating that the property owner will remove the structure at their own expense if Council deems it necessary for the purposes of accessing the easement. Any such approvals will not extinguish or limit Council's rights under the easement. Pedestrian and vehicular bridges may be permitted to encroach an easement provided they can be easily removed to facilitate access to the easement and suitable alternate vehicular and pedestrian access to the property exists if they were removed.

Masonry walls constructed across an easement must cross the easement at an angle of not less than 60°. The section of wall spanning the easement shall be constructed to enable its easy removal without resulting in failure of the remainder of the structure.

All footings for buildings and other structures shall be taken a minimum of 1.0 times the pipe diameter below the load bearing zone of the existing pipe. This condition shall apply even when the pipe is location upon an adjoining property.

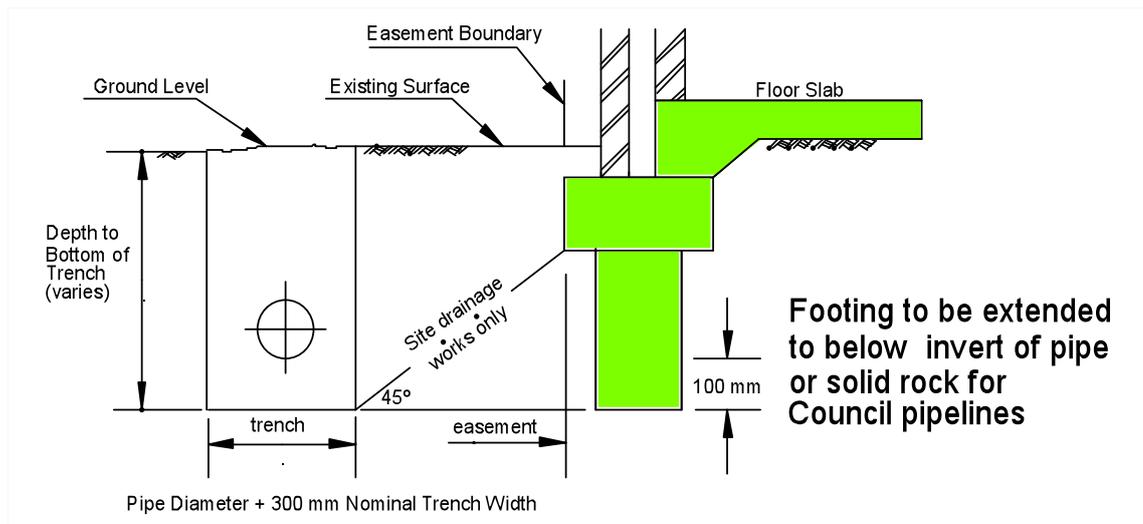


Figure 1

### Existing Encroachments onto an Easement

Any time there is an existing, unsuitable encroachment onto a drainage easement, Council will take the opportunity to have that encroachment removed if and when it is presented.

Where an existing building encroaches onto an easement or Council drainage line, Council will not issue a Local Development Approval on the property where it involves significant capital expenditure to that building or any other application on that property that may reduce or delay the opportunity being presented for Council to have the encroachment removed.

### S3.0 Restrictions on Use of Land

#### S3.1 Provision for Overland Flow

##### Terms of the Restriction on the Use of Land

Full and free right for the Council of the City of Ryde to convey stormwater in any quantity across the surface of the land being the site of the restriction hereby created (hereinafter called "the said land") and the registered proprietor from time to time of the lot herein burdened (hereinafter referred to as "the proprietor" which expression where herein used shall be deemed to include the successors and assigns of the proprietor) WILL NOT:

- a. erect, construct or place upon the said land any fence except a fence of a permeable nature without the prior consent in writing of the Council of the City of Ryde;
- b. erect, construct or place upon the said land or permit or suffer to be erected constructed or placed upon the said land any building, structure, retaining wall or rockery nature without the prior consent in writing of the Council of the City of Ryde; nor
- c. otherwise alter or permit or suffer any alteration to the surface level of the said land nature without the prior consent in writing of the Council of the City of Ryde.

Name of the body empowered to release, vary or modify the restriction referred to City of Ryde.

#### S3.2 Limitation of Site Cover

##### Terms of the Restriction on the Use of Land

The Registered Proprietor of the burdened lot shall not erect or suffer to permit any additional impervious surfaces on the whole of the land identified except in accordance with written approval from Council.

Name of the body empowered to release, vary or modify the restriction referred to; City of Ryde.

#### S3.3 Creating the Restriction on use of Land

The restriction shall be created under Section 88B of the *Conveyancing Act 1919* and all associated cost shall be borne by the applicant.

#### S3.4 Releasing or Modifying the Restriction

Application to release or modify the restriction shall be made in writing. If such leave is granted all associated cost shall be borne by the applicant.

### S4.0 Positive Covenants

#### S4.1 Maintenance of On-Site Stormwater Detention Systems

##### Terms of Positive Covenant

The Registered Proprietor will at his own expense well and sufficiently maintain and keep in good and substantial repair and working order in accordance with dimensions approved by City of Ryde any on-site detention system (which expression shall include all ancillary gutters, pipes, drains,

walls, kerbs, pits, grates, fittings, tanks, chambers, basins and surfaces designed to temporarily detain water) (herein after called “the system”) which exists from time to time on the land.

Where the Registered Proprietor of the burdened lot fails to maintain the system in accordance with the above and fails to comply with any written request of the City of Ryde within such reasonable time as nominated in said request, the Registered Proprietor shall meet any reasonable costs incurred by the City of Ryde in carrying out works necessary to reinstate satisfactory performance of the system.

The term “Registered Proprietor” shall include the Registered Proprietor of the land from time to time, and all his heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of this covenant shall bind all those registered proprietors jointly and severally.

Name of the body empowered to release, vary or modify the terms of positive covenant referred to; City of Ryde.

## S4.2 Maintenance of Charged Stormwater Drainage Systems

### Terms of Positive Covenant

The Registered Proprietor will at his own expense well and sufficiently maintain and keep in good and substantial repair and working order in accordance with dimensions approved by City of Ryde any charged drainage system (which expression shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, fittings, tanks, chambers, basins and surfaces designed to detain water under pressure) (herein after called “the system”) which exists from time to time on the land.

Where the Registered Proprietor of the burdened lot fails to maintain the system in accordance with the above and fails to comply with any written request of the City of Ryde within such reasonable time as nominated in said request, the Registered Proprietor shall meet any reasonable costs incurred by the City of Ryde in carrying out works necessary to reinstate satisfactory performance of the system.

The term “Registered Proprietor” shall include the Registered Proprietor of the land from time to time, and all his heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of this covenant shall bind all those registered proprietors jointly and severally.

Name of the body empowered to release, vary or modify the terms of positive covenant referred to, City of Ryde.

*Note: This restriction will only apply where a charged system is directed to a street gutter and not where the system feeds into a rainwater tank.*

## S4.3 Maintenance of Pump out Systems

### Terms of Positive Covenant

The Registered Proprietor will at his own expense well and sufficiently maintain and keep in good and substantial repair and working order in accordance with dimensions approved by the City of Ryde any pump out drainage system (which expression shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, fittings, tanks, chambers and pumps designed to control water) (herein after called “the system”) which exists from time to time on the land.

The maintenance shall include the checking of the condition of the pumps by pumping water for at least 5 minutes every 6 months and maintaining a log book of these periodic checks. Permit officers of the City of Ryde to enter the land to view the log book and the condition of the pumps twice a year following two days notice. Where the Registered Proprietor of the burdened lot fails to maintain the system in accordance with the above and fails to comply with any written request of the City of Ryde within such reasonable time as nominated in said request, the Registered Proprietor shall meet any reasonable costs incurred by the City of Ryde in carrying out works necessary to reinstate satisfactory performance of the system. The term "Registered Proprietor" shall include the Registered Proprietor of the land from time to time, and all his heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of this covenant shall bind all those registered proprietors jointly and severally.

Name of the body empowered to release, vary or modify the terms of positive covenant referred to, City of Ryde.

#### S4.4 Maintenance of On-site Dispersal Systems

##### Terms of Positive Covenant

The Registered Proprietor will at his own expense well and sufficiently maintain and keep in good and substantial repair and working order in accordance with dimensions approved by the City of Ryde any on-site storm water disposal system (which expression shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, fittings, tanks, chambers and pumps designed to drain and spread water) (herein after called "the system") which exists from time to time on the land.

Where the Registered Proprietor of the burdened lot fails to maintain the system in accordance with the above and fails to comply with any written request of the City of Ryde within such reasonable time as nominated in said request, the Registered Proprietor shall meet any reasonable costs incurred by the City of Ryde in carrying out works necessary to reinstate satisfactory performance of the system.

The term "Registered Proprietor" shall include the Registered Proprietor of the land from time to time, and all his heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of this covenant shall bind all those registered proprietors jointly and severally.

Name of the body empowered to release, vary or modify the terms of positive covenant referred to, City of Ryde.

#### S4.5 Creating a Positive Covenant

The positive covenant shall be created under Section 88E of the *Conveyancing Act 1919*, using the wording provided in the technical manual for the relevant situation. Proof of registration of positive covenants will be required prior to issue of certificates of classification and/or Building Certificates under Section 172 of the *Local Government Act 1993* and the release of any linen plan.

**Note:** Council can prepare this documentation subject to the payment of the fees set out in the plan of management. See application form at the end of this document.

## S4.6 Rights and Obligations

Section 88F of the *Conveyancing Act 1919* confers the following powers to Council in respect of ensuring observance of the public positive covenant:

- a. for the purpose of ensuring observance of the covenant, the authority may, by its servants or agents, twice in every year at a reasonable time of the day and upon giving to the person against whom the covenant is enforceable not less than 2 days' notice, enter the land and view the condition of the land and the state of construction or repair of any structure or work on the land, except to the extent that the authority and that person may otherwise agree;
- b. where the covenant requires the carrying out of development of any nature by that person, the authority may carry out development of that nature on the failure of that person to comply with the covenant; and
- c. the authority may recover from that person, in a court of competent jurisdiction, any expense reasonably incurred by it in exercising its powers under paragraph (b) or (c).

## S4.7 Certificate of Amount Due

### Section 88G Certificates

- Under the terms of the *Conveyancing Act 1919* No 6 any person may apply to a prescribed authority for a certificate ( Council) under this section as to the amount (if any) payable to it because of a failure to comply with a public positive covenant imposed on the land under Section 88D or 88E.
- The application for the certificate shall be made in writing and shall state the name and address of the applicant and particulars of the land in respect of which the information is required. A copy of the application form is attached at the end of this document.
- On receipt of the application and after payment of the prescribed fee, Council will immediately give or post to the applicant a certificate in writing:
  - stating the amount (if any) payable to the authority because of a failure to comply with a public positive covenant imposed on the land and particulars of how the amount is comprised or that no such amount is payable; or
  - stating particulars of the work (if any) carried out by the authority the cost or part of the cost of which may be recovered by the authority under the covenant or that no such work has been carried out.
- Production of the certificate shall for all purposes be conclusive proof in favour of a purchaser in good faith and for valuation of the land that, at the time at which the certificate is issued:
  - no amount other than that stated in the certificate was due or payable to the prescribed authority in respect of the land because of any such failure; and
  - no work the cost or part of the cost of which may be recovered by the authority under the covenant other than that the particulars of which are stated in the certificate has been carried out by the authority.

## S5.0 Services

Council does not specifically require easements over property services such as sewer, water and other utility lines where the service for one property crosses another. Where this does occur however the matter should be clarified with the particular authority providing the service.

## S6.0 Access

### S6.1 Right of Carriageway or Footway

Where access either by vehicle or on foot to one property is required across an adjoining property a right of carriageway shall be created under Section 181A of the *Conveyancing Act 1919* and registered on the title of both properties involved.

The general terms for the right of carriageway are:

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person, to go, pass and repass at all times and for all purposes with or without animals or vehicles or both to and from the said dominant tenement or any such part thereof.

The general terms of a right of footway are:

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person, to go, pass and repass on foot at all times and for all purposes without animals or vehicles to and from the said dominant tenement or any such part thereof.

## S7.0 Land Dedications

### S7.1 General

Land dedications to Council may be undertaken by several means:

- By negotiation with the owner of the land to determine appropriate compensation for the land to be dedicated;
- By compulsory acquisition under the *Just Terms Compensation Act*; and
- Wait until the land can be acquired at the time of Development Approval.

In all cases a survey plan of the site shall be prepared for lodgment with the Department of Lands.

Where appropriate an independent valuation of the site will be prepared as part of the process.

The transfer of the land must be approved by Council and the Common Seal of Council affixed to the transfer documents.

All dedications will be advertised in local papers and notified in the government Gazette.

### S7.2 Splay Corners

A corner cut-off or splay shall be provided at the intersection of a new road and an existing street. The dimensions of the splay shall comply with the requirements of AS 2890 for sight distance.

Council may also require the creation of a splay corner on an existing lot where a new boundary fence in excess of 1 metre in height is proposed.

### **S7.3 Road Widening**

Council may from time to time require a local road to be widened to provide improved vehicular movement. All procedures required for this are detailed in the *Roads Act 1993* and will be subject to full public consultation.

### **S7.4 Footway Widening**

Council may from time to time require a local road to be widened to provide improved pedestrian movement. All procedures required for this are detailed in the *Roads Act 1993* and will be subject to full public consultation.

### **S7.5 New Public Road Dedications**

New public roads will generally only be required where the subdivision of an existing parcel of land is undertaken that will create new lots that require access to a public road.

### **S7.6 Public Open Space Dedications**

Public open space may be required as part of the redevelopment of specific areas within the city to provide public amenity and in other location as opportunities may arise to add space to exiting open space areas.

## APPENDICES

### DRAFT EXAMPLE OF ANNEXURE FOR RESTRICTION FOR OVERLAND FLOW

This is Annexure A to the Restriction on the use of land by a Proscribed Authority under section 88E(3) of the *Conveyancing Act 1919*

Dated the \_\_\_\_\_ of \_\_\_\_\_, 200\_

Land being Lot \_ in DP \_\_\_\_\_

#### TERMS OF THE RESTRICTION ON THE USE OF LAND

Full and free right for the Council of the City of Ryde to convey stormwater in any quantity across the surface of the land being the site of the restriction hereby created (hereinafter called "the said land") and the registered proprietor from time to time of the lot herein burdened (hereinafter referred to as "the proprietor" which expression where herein used shall be deemed to include the successors and assigns of the proprietor) WILL NOT:

- (d) erect, construct or place upon the said land any fence except a fence of a permeable nature without the prior consent in writing of the Council of the City of Ryde; nor
- (e) erect, construct or place upon the said land or permit or suffer to be erected constructed or placed upon the said land any building, structure, retaining wall or rockery nature without the prior consent in writing of the Council of the City of Ryde; nor
- (f) otherwise alter or permit or suffer any alteration to the surface level of the said land nature without the prior consent in writing of the Council of the City of Ryde.

Name of the body empowered to release, vary or modify the restriction referred to; City of Ryde.

#### Execution by the prescribed authority

.....  
Signature of Witness

.....  
Signature of Authorised officer

.....  
Name of Witness

.....  
Name of Authorised Officer  
General Manager

#### Execution by the registered proprietor

.....  
Signature of Witness

.....  
Signature of Registered Proprietor

.....  
Name of Witness

#### Consent of the lessee/mortgagee/chargee

.....  
Signature of Witness

.....  
Signature of Mortgagee

.....  
Name of Witness

**DRAFT EXAMPLE OF ANNEXURE FOR RESTRICTION FOR SITE COVER**

This is Annexure A to the Restriction on the use of land by a Proscribed Authority under section 88E(3) of the *Conveyancing Act 1919*

Dated the \_\_\_\_\_ of \_\_\_\_\_, 200\_

Land being Lot \_ in DP \_\_\_\_\_

**TERMS OF THE RESTRICTION ON THE USE OF LAND**

The Registered Proprietor of the burdened lot shall not erect or suffer to permit any additional impervious surfaces on the whole of the land identified except in accordance with written approval from Council.

Name of the body empowered to release, vary or modify the restriction referred to; City of Ryde.

**Execution by the prescribed authority**

.....  
Signature of Witness

.....  
Signature of Authorised officer

.....  
Name of Witness

.....  
Name of Authorised Officer

**Execution by the registered proprietor**

.....  
Signature of Witness

.....  
Signature of Registered Proprietor

.....  
Name of Witness

**Consent of the lessee/mortgagee/chargee**

.....  
Signature of Witness

.....  
Signature of Mortgagee

.....  
Name of Witness

**DRAFT EXAMPLE OF ANNEXURE FOR POSITIVE COVENANT FOR ON-SITE  
STORMWATER DETENTION**

This is Annexure A to the Positive Covenant PC13 under section 88E(3) of  
the *Conveyancing Act 1919*

Dated the \_\_\_\_\_ of \_\_\_\_\_, 200\_

Land being Lot \_ in DP \_\_\_\_\_

**TERMS OF POSITIVE COVENANT**

The Registered Proprietor will at his own expense well and sufficiently maintain and keep in good and substantial repair and working order in accordance with dimensions approved by City of Ryde any on-site detention system (which expression shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, fittings, tanks, chambers, basins and surfaces designed to temporarily detain water) (herein after called "the system") which exists from time to time on the land

Where the Registered Proprietor of the burdened lot fails to maintain the system in accordance with the above and fails to comply with any written request of the City of Ryde within such reasonable time as nominated in said request, the Registered Proprietor shall meet any reasonable costs incurred by the City of Ryde in carrying out works necessary to reinstate satisfactory performance of the system.

The term "Registered Proprietor" shall include the Registered Proprietor of the land from time to time, and all his heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of this covenant shall bind all those registered proprietors jointly and severally.

Name of the body empowered to release, vary or modify the terms of positive covenant referred to, City of Ryde.

**Execution by the prescribed authority**

.....  
Signature of Witness

.....  
Signature of Authorised officer

.....  
Name of Witness

.....  
Name of Authorised Officer  
General Manager

**Execution by the registered proprietor**

.....  
Signature of Witness

.....  
Signature of Registered Proprietor

.....  
Name of Witness

**Consent of the lessee/mortgagee/chargee**

.....  
Signature of Witness

.....  
Signature of Mortgagee

.....  
Name of Witness

**DRAFT EXAMPLE OF ANNEXURE FOR POSITIVE COVENANT FOR CHARGED STORMWATER SYSTEM**

This is Annexure A to the Positive Covenant under section 88E(3) of the Conveyancing Act 1919

Dated the \_\_\_\_\_ of \_\_\_\_\_, 200\_

Land being Lot \_ in DP \_\_\_\_\_

**TERMS OF POSITIVE COVENANT**

The Registered Proprietor will at his own expense well and sufficiently maintain and keep in good and substantial repair and working order in accordance with dimensions approved by City of Ryde any charged drainage system (which expression shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, fittings, tanks, chambers, basins and surfaces designed to detain water under pressure) (herein after called "the system") which exists from time to time on the land

Where the Registered Proprietor of the burdened lot fails to maintain the system in accordance with the above and fails to comply with any written request of the City of Ryde within such reasonable time as nominated in said request, the Registered Proprietor shall meet any reasonable costs incurred by the City of Ryde in carrying out works necessary to reinstate satisfactory performance of the system.

The term "Registered Proprietor" shall include the Registered Proprietor of the land from time to time, and all his heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of this covenant shall bind all those registered proprietors jointly and severally.

Name of the body empowered to release, vary or modify the terms of positive covenant referred to, City of Ryde.

**Execution by the prescribed authority**

.....  
Signature of Witness

.....  
Signature of Authorised officer

.....  
Name of Witness

.....  
Name of Authorised Officer  
General Manager

**Execution by the registered proprietor**

.....  
Signature of Witness

.....  
Signature of Registered Proprietor

.....  
Name of Witness

**Consent of the lessee/mortgagee/chargee**

.....  
Signature of Witness

.....  
Signature of Mortgagee

.....  
Name of Witness

**DRAFT EXAMPLE OF ANNEXURE FOR POSITIVE COVENANT FOR PUMPED DRAINAGE SYSTEM**

This is Annexure A to the Positive Covenant PC13 under Section 88E(3) of the Conveyancing Act 1919

Dated the \_\_\_\_\_ of \_\_\_\_\_, 200\_

Land being Lot \_ in DP \_\_\_\_\_

**TERMS OF POSITIVE COVENANT**

The Registered Proprietor will at his own expense well and sufficiently maintain and keep in good and substantial repair and working order in accordance with dimensions approved by the City of Ryde any pump out drainage system (which expression shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, fittings, tanks, chambers and pumps designed to control water) (herein after called "the system") which exists from time to time on the land.

The maintenance shall include the checking of the condition of the pumps by pumping water for at least 5 minutes every 6 months and maintaining a log book of these periodic checks.

Permit officers of the City of Ryde to enter the land to view the log book and the condition of the pumps twice a year following two days notice.

Where the Registered Proprietor of the burdened lot fails to maintain the system in accordance with the above and fails to comply with any written request of the City of Ryde within such reasonable time as nominated in said request, the Registered Proprietor shall meet any reasonable costs incurred by the City of Ryde in carrying out works necessary to reinstate satisfactory performance of the system.

The term "Registered Proprietor" shall include the Registered Proprietor of the land from time to time, and all his heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of this covenant shall bind all those registered proprietors jointly and severally.

Name of the body empowered to release, vary or modify the terms of positive covenant referred to, City of Ryde.

**Execution by the prescribed authority**

.....  
Signature of Witness

.....  
Signature of Authorised officer

.....  
Name of Witness

Name of Authorised Officer  
General Manager

**Execution by the registered proprietor**

.....  
Signature of Witness

.....  
Signature of Registered Proprietor

.....  
Name of Witness

**Consent of the lessee/mortgagee/chargee**

.....  
Signature of Witness

.....  
Signature of Mortgagee

.....  
Name of Witness

# City of Ryde

## Section 88G Certificate Application

APPLICANT'S NAME: .....

POSTAL ADDRESS: .....

SUBURB: ..... POST CODE:.....

PHONE NO: (W) ..... (H)..... M) .....

(Please tick)

- Section 88G Certificate \$35.00 (2009)
- Expedite fee \$130.00 (includes GST)  
(certificate required within 24 hours) (2009)

PROPERTY ADDRESS: .....

ALLOTMENT DESCRIPTION: LOT ..... DP / .....

OWNER'S NAME: .....

POSITIVE COVENANT NO. ....

Application is hereby made for a certificate under Section 88G of the Conveyancing Act 1919.

Signature.....

**Privacy Notification**

In completing this form you will be prompted to supply information that is personal information for the purposes of the Privacy and Personal Information Act 1998. The supply of this information is voluntary. If you cannot provide, or do not wish to provide the information sought, the Council may be unable to process your request. Council is required under the Act to inform you about how your personal information is being collected and used. If you require further information please contact Council's Customer Service Centre on 9952-8222 and ask for an information sheet to be forwarded to you.

# City of Ryde

## Application for the Preparation and Endorsement of Positive Covenant (88E) or Restriction as to User

### Applicant Details

Name \_\_\_\_\_

Postal Address \_\_\_\_\_

Suburb \_\_\_\_\_ Postcode \_\_\_\_\_

Contact No. (H) \_\_\_\_\_ (W) \_\_\_\_\_

(M) \_\_\_\_\_ (Fax) \_\_\_\_\_

### Property Details

Address \_\_\_\_\_

Lot No. \_\_\_\_\_ DP / SP No. \_\_\_\_\_

### Consent Details

LDA No: \_\_\_\_\_ CC No: \_\_\_\_\_ CDA No: \_\_\_\_\_

### Required Information

Registered Proprietor's full name(s) \_\_\_\_\_

*(correct spelling as per registered title)*

\_\_\_\_\_  
Name of Mortgagee (if applicable) \_\_\_\_\_

Mortgage Number: \_\_\_\_\_

### How do you wish to receive the prepared and signed documentation?

1. Collect documentation  (please indicate choice)

2. Post documentation

Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_

#### **Privacy Notification**

In completing this form you will be prompted to supply information that is personal information for the purposes of the Privacy and Personal Information Act 1998. The supply of this information is voluntary. If you cannot provide, or do not wish to provide the information sought, the Council may be unable to process your request. Council is required under the Act to inform you about how your personal information is being collected and used. If you require further information please contact Council's Customer Service Centre on 9952-8222 and ask for an information sheet to be forwarded to you.



City of Ryde  
Civic Centre  
1 Devlin Street  
Ryde NSW 2112

[www.ryde.nsw.gov.au](http://www.ryde.nsw.gov.au)