



Title Encumbrance Information Sheet



INFORMATION SHEET

Introduction

Development in the City of Ryde often includes engineering measures which require ongoing maintenance of stormwater drainage systems and flood protection measures to ensure they are preserved and function as approved. Examples of these systems are;

- Onsite detention systems
- Alternative drainage systems (e.g. pump drainage systems/ charged drainage systems)
- Alterations to landform, retaining walls and dwelling floor levels which are designed and intended to protect the development and occupants from major overland flows/ flooding, as well as prevent impact neighbouring properties.

To ensure the maintenance of these systems and restrictions, Council requires the owner to register an 88E, an 88B or a Restriction on the title of the property.

If an 88E, 88B or Restriction is required, it will appear as a condition of the consent issued for your Local Development Application.

More than one of any of the above may be required.

Check your consent to determine if these requirements affect you. You can also check with your solicitor, certifier, builder or surveyor or with City of Ryde Customer Service Centre or the Ryde Planning and Business Centre.

Some phrases and words commonly used when preparing these documents:

- **Title Encumbrance** – is a deed of agreement attached to the title of a property
- **NSW Land and Property Information** – LPI
- **Certificate of Title** – CT
- **Production Ticket Receipt** – PTR
- **Positive Covenant** – as also known as an 88E
- **Restriction on the Use of Land** – also known as Restriction
- **Instrument Setting out Terms Under Section 88B of the Conveyancing Act (1919)** – also known as an 88B (for single residences only - this procedure is not for 88Bs that are accompanied by strata subdivisions)
- **Endorsement** – means signature
- **Land Dealings, Land Dealing Instruments** – are the forms that you complete for the LPI
- **Terms** – are the conditions that apply to a particular type of Encumbrance
- **Annexure** – is an addition to the LPI form. E.g. the Terms for Charged Stormwater System will be an annexure to the Positive Covenant form.

This Information Sheet, direct links to forms and terms and other information is available on the City of Ryde website at: www.ryde.nsw.gov.au/titleencumbrances



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What is a positive covenant 88E/88B Instruments/Restriction as to user?

A public Positive Covenant and "Restriction on the Use of Land" are deeds of agreement on the title of the property created under provisions of the Conveyancing Act 1919, which imposes obligations on the owner of the land burdened (the servient tenement), in favour of a prescribed authority (Council of the City of Ryde).

An 88B instrument is another document used for registering positive covenants and restrictions. The 88B instrument more commonly contains a number of covenants and/or restrictions and/or easements or other items.

A Positive Covenant or Restriction as to User can apply to all property types: residential, commercial, strata subdivisions, industrial etc.

Where will I find the documents and forms I need?

See the contacts section at the end of this Information Sheet for direct links to the LPI forms mentioned below.

Standard Terms are available at www.ryde.nsw.gov.au/titleencumbrances

- The 88E instrument is a standard form from Land and Property Information NSW. The 88E always has an annexure relevant to the type of drainage system on the site. The annexure sets out the terms
- The Restriction is a standard form from Land and Property Information Service NSW and also has an annexure relevant to the type of restriction that sets out the terms
- Both the 88E and the Restriction are two part documents – the LPI form is the first page and the second page is the annexure. More than one annexure may be attached
- An 88B instrument is laid out in 2 parts. Part 1 is in the form of a table containing the items (positive covenant, easement etc.) and Part 2 sets out the terms for each item
- The terms referred to are the City of Ryde Standard Terms – generally, no variation of terms is permitted. If variation is required due to special circumstances or the requirements of the Consent, please contact the Ryde Planning and Business Centre before lodgement for advice from a Client Manager.

The LPI have document standards that should be observed when completing forms – print one sided on standard A4 paper, use black ink, if handwriting- print in capitals and number pages as per the following example: "Page 1 of 2". For more complete standards see http://rgdirections.lpi.nsw.gov.au/land_dealings/dealing_preparation



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What is the process for lodging and registering the documents?

The forms must be prepared by the applicant or the applicant's agent (solicitor, surveyor, builder etc.) and be signed by any relevant third parties e.g. mortgage provider. Once lodged, along with all of the required documentation, Council will sign and then lodge the Title Encumbrance. Applicants will be notified of registration once complete.

Step 1. Certificate of Title ("CT") and Title Search

- Applicants must first obtain a title search for the subject property. This can be obtained through the LPI On-Line Shop. See the end of this information sheet for details on how to obtain the search
- Applicants must arrange for the CT to be delivered to the LPI for the purpose of registering title encumbrances. If you have a mortgage, the bank will hold the Certificate of Title, and you must arrange this with them. The bank will be issued with a Production Ticket Receipt (PTR). You must obtain a copy of the PTR for lodgement with your application
- An information slip is available to give to your bank to request that this service be provided. You need to make enquires with your bank about any costs that may be associated with this service
- If you don't have a mortgage you or your agent, need to take the CT to the LPI and apply for a PTR
- The PTR is valid for 3 months from the date of issue
- If you are unsure as to where the Certificate of Title is located, you can search that information through the LPI On-Line Shop
- See the end of this information sheet for details on how to obtain this search.

Notes about Title Searches

- The Title search will contain some information that you will require to fill out the forms
- When you obtain your Title Search, you may find that there are discrepancies with the information on the Property Title. A common example is a misspelt name. If there are discrepancies, contact the LPI
- The owner's details that are entered onto the LPI forms must match exactly with the owner's details that appear on your Title
- If the property is owned by a Company, please attach an ASIC Company search or similar official document that shows the details of the Company Directors.



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Step 2. Completed application form

- An Application form can be obtained from Council's website at www.ryde.nsw.gov.au/titleencumbrances, from the Ryde Planning and Business Centre at Top Ryde Shopping Centre, or from the Customer Service in the Civic Centre. Complete the check list to ensure that you have all of the required documents for lodgement.

Step 3. Completed Title Encumbrance forms

- Standard Positive Covenant and Restriction as to Use forms can be obtained from the LPI website. See the Contacts and links section at the end of this form for direct links to forms
- Standard Terms are available on Council's website: www.ryde.nsw.gov.au/titleencumbrances
- The forms must be signed by all necessary parties prior to lodgement with Council. This will include, as required, property owners (referred as Registered Proprietors on the LPI forms), company representatives, bank representatives etc.

Step 4. Work as executed plan from surveyor

- The requirement for A Work as Executed Plan (WAEP) from a qualified, registered surveyor is usually a condition of consent where a Title Encumbrance is required. The WAEP is a copy of the approved drainage construction plan, with the finished levels marked up in red, and stamped and signed by the surveyor.

Step 5. Hydraulic compliance report

- The requirement for certification from a registered, qualified Engineer that the constructed site drainage system complies with the approved construction plan is usually a condition of consent
- If the built system differs, the certification must show how the system can still comply by way of on-site detention calculations, contour diagrams or other means. If your system does not comply, seek advice from the RPBC as to what is required. Major differences between what was approved and what was built may require a Section 96 Application to Modify Consent.

NOTE:

- A WAEP and a Hydraulic Report are required in the majority of cases. Your Consent may stipulate other requirements in addition to these. Please check your Consent or contact Customer Service to confirm your requirements.



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Step 6. Payment for third party services

- Payment is required for registration of the Title Encumbrance with the LPI. This fee is revised regularly. As at September 2014 the fee is \$107.00. Please arrange a bank cheque in favour of the LPI.

Step 7. Payment of Fees to Council

- As at September 2014 the fee is \$233.00

Council Contacts and NSW Land property information links

Ryde Planning and Business Centre

Top Ryde Shopping Centre (Northern End)

Cnr Pope and Devlin Streets, Ryde

Monday – Friday 9.00am – 5.00pm

(Telephone enquiries 8.00am – 5.30pm)

Phone: 9952 8222

www.ryde.nsw.gov.au/planningandbusiness

City of Ryde Customer Service Centre

Ryde Civic Centre

1 Devlin Street, Ryde

Monday – Friday 8.30am – 4.30pm

(Telephone enquiries 8.00am – 5.30pm)

Phone: 9952 8222

www.ryde.nsw.gov.au

NSW LAND AND PROPERTY (LPI)

1 Prince Albert Road

Queens Square

Sydney NSW 2000

GPO Box 15

Sydney NSW 2001

Phone: 1300 052 637 - Cost of local call Australia wide

Phone: 61 2 9228 6666 - International

Email: GeneralEnquiry@lpi.nsw.gov.au



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LPI Information Links:

- LPI interactive forms – type in the required information and print out
- LPI manual forms – print out and using block capitals hand print the required information
- LPI home page
www.lpi.nsw.gov.au/
- Positive Covenant 88E form 13PC interactive version:
www.lpi.nsw.gov.au/__data/assets/pdf_file/0020/25571/13PC.pdf
- Positive Covenant 88E form 13PC manual version:
www.lpi.nsw.gov.au/__data/assets/pdf_file/0019/25462/13PC-1.pdf
- Restriction as to the Use of Land form 13RU interactive version:
www.lpi.nsw.gov.au/__data/assets/pdf_file/0010/25579/13RU.pdf
- Restriction as to the Use of Land form 13RU manual version:
www.lpi.nsw.gov.au/__data/assets/pdf_file/0006/25476/13RU-1.pdf
- LPI standards for preparing forms:
rgdirections.lpi.nsw.gov.au/land_dealings/dealing_preparation

How to Obtain Certificate of Title Enquires and Title Searches from the LPI

Certificate of Title (CT) enquiry – if you have a mortgage the bank will hold the certificate of title. If you don't have a mortgage, make a CT enquiry to find out who holds the title. This service is free.

On the LPI home page click on On-Line Shop, then click on Title Search and Records, then CT enquiry.

On the enquiry page, the "Title Reference" is the Torrens title of your property. i.e. the lot number, a forward slash and the deposited plan number e.g. 2/564257

In the same section, do a Title Search using your lot and deposited plan number as above.