

RESTRICTION AS TO USE OF LAND – OVERLAND FLOW

Annexure..... to Restriction on the use of land and public positive covenant by a Prescribed Authority being the Council of the City of Ryde under section 88E(3) of the Conveyancing Act 1919

Date:

Land being Lot..... in DP

1. In these terms-
 - a. **“Area”** means the site of the restriction or covenant shown or marked on the plan to which these terms relate, and if no such site is shown or marked, then **“Area”** means the whole, and every part, of the lot burdened;
 - b. **“Council”** means the Council of the City of Ryde, and includes its servants and authorised agents;
 - c. **“Owner”** means the registered proprietor for the time being of the lot burdened, their successors and assigns and anyone claiming through the registered proprietor.
 - d. A reference to Area extends to all pipes, drains, walls, kerbs, pits, grates, fencing and all surfaces graded to direct water in, over, under or through the Area;
 - e. Where there is more than one more Owner the terms of this covenant and restriction bind the Owners jointly and severally; and
 - f. The singular includes the plural, and vice versa.

2. The Owner must not-
 - a. do or permit or suffer to be done anything which would obstruct or impede the free flow of water in, over, under or through the Area in any way;
 - b. (except as clause 3 provides) erect, construct or place on or within the Area or permit or suffer to be erected constructed or placed on or within the Area any building, structure, fence, retaining wall, obstruction of any nature without the prior consent in writing of the Council, or
 - c. otherwise alter or permit or suffer any alteration to the surface level of the Area without the prior consent in writing of the Council.

3. Without limiting the obligations in clause 2, the Owner must-
 - a. keep the Area clean and free from obstructions, rubbish and debris;
 - b. maintain and repair the Area at the sole expense of the Owner so that it functions (as an overland flow path for the free passage of water) in a safe and efficient manner;
 - c. permit the Council from time to time and upon giving reasonable notice (but in the case of an emergency, at any time and without notice) to enter and inspect the Area for compliance with the requirements of this covenant;
 - d. comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.

4. Clause 2(b) does not apply to a fence of a permeable nature, being a fence that does not (in the opinion of the Council) obstruct or impede the free flow of water in any way.

5. Without limiting its powers under Section 88F(3) of the Conveyancing Act 1919 the Council shall have the following additional powers-
 - a. In the event that the Owner fails to comply with any written notice from the Council as set out above the Council may enter the lot burdened with all the necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the notice referred to in clause 3(d) above (“Work”).
 - b. The Council may recover from the Owner in a Court of competent jurisdiction:
 - i. any expense reasonably incurred by it in exercising its powers under sub-paragraph 5(a). Such expense shall include reasonable wages for the Council’s employees engaged in effecting the Work, supervising and administering the Work together with costs, reasonably estimated by the Council, for the use of materials, tools and equipment in conjunction with the Work.
 - ii. legal costs on an indemnity basis for the issue of the notices and recovery of the costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to Section 88F of the Act or providing any certificate required pursuant to Section 88G of the Act or obtaining any injunction pursuant to Section 88H of the Act.

Proprietor/s & Prescribed Authority - initial here

6. Without limiting any other right of the Council, the Owner indemnifies and agrees to keep indemnified the Council from and against any claim, loss or damage (including legal costs on a full indemnity basis) which the Council may suffer due to, and/or which arises from, the non-compliance with or departure from these terms by the Owner (whether by act or omission).
7. The name of the body empowered to release, vary or modify the restriction or covenant referred to in these terms is: **Council of the City of Ryde.**

I certify that I am an eligible witness and that the delegate signed in my presence

Executed by Prescribed Authority by its authorized delegate pursuant to s.377 Local Government Act 1993

Signature of Witness

Signature of Authorised Delegate

Name of Witness

Name of Authorised Delegate

3 Richardson Place, North Ryde 2113

Address of Witness

Position of Authorised Delegate

Execution by the Registered Proprietor (anyone listed on the title is required to sign)

Signature of Witness

Signature of Registered Proprietor/s

Name of Witness

Signature of Registered Proprietor/s

Address of Witness

Consent of the lessee/mortgagee/chargee

Signature of Witness

Signature of Mortgagee

Name of Witness

Name of Mortgagee

Address of Witness

Position of Mortgagee