

Access to Easement

Annexure..... to Public Positive Covenant Imposed 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. **"Easement"** means any easement on the land intended to convey stormwater runoff and accommodates public drainage infrastructure or is maintained by Council;
 - b. **"Structure"** means the structure spanning the easement which Council has issued consent for pursuant to the relevant legislation under consent [INSERT COUNCIL APPROVAL REFERENCE] dated [APPROVAL DATE] and encompasses the components supporting the Encroachment outside of the Easement,
 - c. **"Encroachment"** means that portion of the Structure intruding into the Easement;
 - d. **"Council"** means the Council of the City of Ryde, and includes its servants and authorised agents.
 - e. **"Owner"** means the registered proprietor for the time being of the lot burdened, their successors and assigns and anyone claiming through the registered proprietor;
 - f. **"Land" & "Property"** mean the land or other matter subject to the Easement in favour of Council
 - g. Where there is more than one more Owner the terms of this covenant and restriction bind the Owners jointly and severally; and
 - h. The singular includes the plural, and vice versa.
2. The Owner will indemnify and will keep indemnified the Council from and against all claims for compensation, actions, proceedings, suits, demands, damages, costs, losses and expenses incurred or damage to the Structure or Easement, or the Land, whether caused by Council carrying out any works to the Easement, including the maintenance, clearing, repair, renewal, restoration or other works, whether under or over or in or about the Easement or otherwise arising out of the Encroachment.
3. The Owner must comply with any written notice within reasonable time (but in the event urgent action is warranted, as soon as possible) from Council to modify or remove the Encroachment or carry out any additional work so as to ensure safe operation of the Easement or enable access to the Easement for whatever purpose. All costs associated with this undertaking must be borne by the Owner.
4. Pursuant to 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 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 Clause 4a. 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.
5. Provided Council has not sought removal of the Encroachment, the Owner must-
 - a. Keep and maintain the Structure in good condition, in a proper state of repair and securely founded so as to preserve its structural integrity in the event it is exposed to overland flow attributed to stormwater runoff;
 - b. Not alter any part of the Structure which would impair on access to the Easement or the removal of the Encroachment without the consent of Council;
 - c. Permit the Council from time to time and upon given reasonable notice (but in the case of an emergency, at any time and without notice) to enter the Land and inspect the Easement for compliance with the requirements of this Covenant.
6. The Owner covenants;
 - a. The right of Council to use the Easement and every part of the land affected thereby for drainage purposes and that the Easements shall continue in full force and effect notwithstanding this Positive Covenant.
 - b. That they will submit to Council details of any proposed repairs, maintenance or refurbishment of the Structure as it relates to the access, operation and maintenance of the easement when requested to do so by Council.
 - c. That they will in carrying out the obligations under this Positive Covenant using their best endeavours not to cause any inconvenience to the public and adjoining owners.
 - d. Should it become necessary for Council to remove or repair part or the whole of the Encroachment or surrounds to enable Council to have access to the Easement for the purpose of repairing, renewing, restoring, excavating or maintaining the Easement, then the Owners must pay Council the total cost involved in such work and in the event that the Owners fail to do so, such costs may be recovered by Council from the Owners as a liquidated debt.

7. The Owner must 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.

8. A party to this Positive Covenant is not to be undertaken to have waived any right or entitlement it may have under this Positive Covenant unless and until that waiver is notified in writing to the party seeking the benefit of the alleged waiver. Waiver by a party in respect of any act or thing required to be done under this Positive Covenant does not constitute a waiver of any other act or thing (whether of the same or of a different nature) required to be done under this Positive Covenant.

9. The Owners agree to charge the Property for all money or monies now or hereafter due and payable to Council pursuant to the terms of this Covenant.

10. 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