

# **STANDARD TERMS FOR EASEMENTS, POSITIVE COVENANTS, RESTRICTIONS ON THE USE OF LAND RELATING TO DEVELOPMENTS AND SUBDIVISIONS**

**NOTE:** It should be noted that Hornsby Shire Council Authorised delegate signs and executes the Section 88B and 88E Instruments pursuant to Section 378 of the Local Government Act 1993.

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## **A. ON-SITE DETENTION SYSTEMS**

### **A1 Future On-Site Detention Systems for newly subdivided lots**

#### Positive Covenant

The proprietor or persons authorised by the proprietor shall make provision for as well as construction of an on-site stormwater detention system in conjunction with building work to service the entire lot so burdened in accordance with the requirement as set out in sub-clauses a) to d) below:

- a) That the on-site detention system (hereinafter called the system) is to have a storage capacity of not less than 5 cubic metres and a maximum discharge of 8 litres per second and such discharge to be connected to the Council's stormwater drainage system.
- b) That the construction drawings of the proposed system be prepared by a suitably qualified Chartered Professional Engineer or Registered Surveyor for approval by an Accredited Certifier (registered with NSW Fair Trading) or Hornsby Shire Council's Engineer prior to commencement of any building works on the lots so burdened.
- c) That on completion of the system works-as-executed details prepared by a Chartered Professional Engineer or Registered Surveyor are to be submitted to Council to verify construction of the facility in accordance with the design requirements. Any variations must be shown in red and supported by the hydraulic calculations.
- d) That on completion of the system the proprietor or persons authorised by the proprietor place a Positive Covenant and Restriction on the title of the lots so burdened by the system describing the facility which expression shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, basins and other surfaces designed to temporarily detained and control stormwater as well as responsibilities for maintenance.

Name of Authority empowered to vary, modify or release the above terms of reference in the abovementioned plan:

Hornsby Shire Council

## A2 Newly Constructed On-Site Detention System as Part of a Development

### Positive Covenant

1. The proprietors of the land abovementioned, hereinafter known as the “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.
2. The registered proprietor of the land so burdened shall, in respect of the “on-site detention system” which expression shall include all ancillary gutters, downpipes, pipes, drains, walls, kerbs, pits, grates, tanks, basins and other surfaces designed to temporarily detain and control stormwater, hereinafter call “the system”:
  - a) permit stormwater to be temporarily detained by the system.
  - b) keep the system clean and free from silt, rubbish, debris and the like.
  - c) maintain the volume of the system to have a storage capacity of not less than **(X)** cubic metres and a maximum discharge rate, when full, of **(Y)** litres per second’.
  - d) maintain, repair and replace the system or any part thereof due to decay or damage without delay so that it functions in a safe and efficient manner.
  - e) permit the Hornsby Shire Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect and undertake emergency works on the land so burdened for the compliance with the requirements of this clause.
  - f) comply with the terms of any written notice issued by the Hornsby Shire Council in respect to the requirements of this clause within the time stated in the notice.
  - g) meet any reasonable cost incurred by the Hornsby Shire Council in completing the work requested in writing pursuant to the above, where the registered proprietor fails to comply with any written request of the Hornsby Shire Council.
  - h) indemnify and keep indemnified the Hornsby Shire Council from and against all claims, demands, actions, suits, causes of actions, sum or sums of money, compensation, damages, costs and expenses which the Hornsby Shire Council or any other person may suffer as a result of any malfunction or non-operation of the system or any failure of the registered proprietor to comply with the terms of this covenant.

Name of authority empowered to vary, modify or release the above terms of reference in the above-mentioned plan:

Hornsby Shire Council

**(X)** - Minimum Storage Volume of the on-site detention system required as part of the development consent conditions or positive covenant on the title of the property prior to construction

**(Y)** - Maximum discharge rate from the on-site detention system required as part of the development consent conditions or positive covenant on the title of the property prior to construction

### Restriction on the Use of Land

1. The proprietors of the land abovementioned, hereinafter known as the “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.
2. The registered proprietor of the land so burdened shall, in respect of the “on-site detention system” which expression shall include all ancillary gutters, downpipes, pipes, drains, walls, kerbs, pits, grates, tanks, basins and other surfaces designed to temporarily detain and control stormwater, hereinafter call “the system”:
  - a) not allow any obstruction or interference of any kind to be erected, placed, created or performed so as to inhibit the flow of water to and from the system.
  - b) except in accordance with the Hornsby Shire Council approved plan, not allow any building erection or structure to be constructed, or allow to remain constructed or placed on that part of the burdened lot denoted **(OSD)**.
  - c) not carry out, or allow to be carried out any change of land profile or earthworks on that part of the burdened lot denoted **(OSD)**.
  - d) not carry out, or allow to be carried out any alterations to the system including surface levels, grates, pipes or any other material or elements thereof outside those normally required for formation, maintenance and proper function of the system.

Name of authority empowered to vary, modify or release the above terms of reference in the above-mentioned plan:

Hornsby Shire Council

**(OSD)** - correlates to an area denoted on a Sketch prepared by a Registered Surveyor which is required to show bearings and dimensions to identify the part of the lot that the on-site detention system is located and affected by the Restriction on the Use of Land. For dealings created under Section 88E of the Conveyancing Act, the sketch shall be in accordance with the Surveyor Generals Directions.

### **A3 Newly Constructed On-Site Detention and Water Quality Treatment Systems as Part of a Development**

#### Positive Covenant

1. The proprietors of the land abovementioned, hereinafter known as the “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.
2. The registered proprietor of the land so burdened shall, in respect of the “on-site detention and water quality treatment system” which expression shall include all ancillary gutters, downpipes, pipes, drains, walls, kerbs, pits, grates, tanks, basins, biofiltration media, species, devices, cartridges, filters and other systems and surfaces designed to temporarily detain, cleanse, and control stormwater, hereinafter call “the system”:
  - a) permit stormwater to be temporarily detained by the system.
  - b) keep the system clean and free from silt, rubbish, debris and the like.
  - c) maintain the volume of the system to have a storage capacity of not less than **(X)** cubic metres and a maximum discharge rate, when full, of **(Y)** litres per second.
  - d) maintain, repair and replace the system or any part thereof due to decay or damage without delay so that it functions in a safe and efficient manner.
  - e) permit the Hornsby Shire Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect and undertake emergency works on the land so burdened for the compliance with the requirements of this clause.
  - f) comply with the terms of any written notice issued by the Hornsby Shire Council in respect to the requirements of this clause within the time stated in the notice.
  - g) meet any reasonable cost incurred by the Hornsby Shire Council in completing the work requested in writing pursuant to the above, where the registered proprietor fails to comply with any written request of the Hornsby Shire Council.
  - h) indemnify and keep indemnified the Hornsby Shire Council from and against all claims, demands, actions, suits, causes of actions, sum or sums of money, compensation, damages, costs and expenses which the Hornsby Shire Council or any other person may suffer as a result of any malfunction or non-operation of the system or any failure of the registered proprietor to comply with the terms of this covenant.

Name of authority empowered to vary, modify or release the above terms of reference in the above-mentioned plan:

Hornsby Shire Council

**(X)** - Minimum Storage Volume of the on-site detention system required as part of the development consent conditions or positive covenant on the title of the property prior to construction

**(Y) - Maximum discharge rate from the on-site detention system required as part of the development consent conditions or positive covenant on the title of the property prior to construction**

Restriction on the Use of Land

1. The proprietors of the land abovementioned, hereinafter known as the “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.
2. The registered proprietor of the land so burdened shall, in respect of the “on-site detention system” which expression shall include all ancillary gutters, downpipes, pipes, drains, walls, kerbs, pits, grates, tanks, basins and other surfaces designed to temporarily detain and control stormwater, hereinafter call “the system”:
  - a) not allow any obstruction or interference of any kind to be erected, placed, created or performed so as to inhibit the flow of water to and from the system.
  - b) except in accordance with the Hornsby Shire Council approved plan, not allow any building erection or structure to be constructed, or allow to remain constructed or placed on that part of the burdened lot denoted **(OSD) and (WSUD)**.
  - c) not carry out, or allow to be carried out any change of land profile or earthworks on that part of the burdened lot denoted **(OSD) and (WSUD)**.
  - d) not carry out, or allow to be carried out any alterations to the system including surface levels, grates, pipes or any other material or elements thereof outside those normally required for formation, maintenance and proper function of the system.

Name of authority empowered to vary, modify or release the above terms of reference in the above-mentioned plan:

Hornsby Shire Council

**(OSD) - correlates to an area denoted on a Sketch prepared by a Registered Surveyor which is required to show bearings and dimensions to identify the part of the lot that the on-site detention system is located and affected by the Restriction on the Use of Land. For dealings created under Section 88E of the Conveyancing Act, the sketch shall be in accordance with the Surveyor Generals Directions.**

**(WSUD) - correlates to an area denoted on a Sketch prepared by a Registered Surveyor which is required to show bearings and dimensions to identify the part of the lot that the on-site detention system is located and affected by the Restriction on the Use of Land. For dealings created under Section 88E of the Conveyancing Act, the sketch shall be in accordance with the Surveyor Generals Directions.**

## **B. DRAINAGE EASEMENTS VESTED IN COUNCIL**

### **B1 Drainage Easements in favour of Council as set out in Memorandum 5341305**

Council has set out in Memorandum 5341305 registered at the NSW Land Registry Service, the terms which Council requires to be incorporated in most drainage easements to be vested in it.

Where a Drainage Easement is to be vested in Council by Transfer Granting Easement or by a Section 88B Instrument registered with a Deposited Plan, attention shall be given to the following points:

- a) On the Plan and in the Transfer or the Instrument the easement shall be referred to as **“Drainage Easement (X) wide”**. Please note the expression Easement to Drain Water shall not be used.
- b) In the Transfer or in Part 1 of the instrument the Authority benefited shall be described as **“The Council of the Shire of Hornsby”**.
- c) In the transfer or in Part 2 of the instrument the terms of the easement may be set out in the following words:  
  
**“Drainage Easement in the terms set out in Memorandum 5341305 filed in the NSW Land Registry Services office”**.
- d) The terms set out in the above Memorandum will not be appropriate if, in addition to the Council, specified lots are indicated in Part 1 of the Schedule to a Section 88B instrument or in Transfer as being benefited by the easement.

## C. OVERLAND FLOW PATH

### C1. **Creation of a Restriction on the Use of Land for developments affected by the 1% AEP Flood Overland Flow Path**

1. The proprietors of the land abovementioned, hereinafter known as the "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 restriction shall bind all those registered proprietors jointly and severally.
2. The registered proprietor of the land so burdened shall, in respect of the lot and the "overland flow path" referred to on the abovementioned plan as **(A)**:
  - a) not carry out, or allow to be carried out any change of land profile or earthworks or variation of overland flow path shape on that part of the burdened lot denoted **(A)**.
  - b) except in accordance with a Hornsby Shire Council approved plan, not allow any building, erection or structure to be constructed, or allow to remain constructed or placed on that part of the burdened lot denoted **(A)**:
  - c) not carry out construction of any fencing on either that part of the burdened lot denoted **(A)** or on lot boundaries adjacent that part of the burdened lot denoted **(A)** without the written permission of Hornsby Shire Council.
  - d) not propose construction of any habitable or lockable building or structure on a part of the burdened lot with a finished floor level lower than any level line perpendicular to and coincident with the Flood Planning Level line represented by joining points **(B)** and **(C)** and ....**(additional points)** referred to on the above mentioned plan being at levels (###.#) metres Australian Height Datum (AHD) and (###.#) metres AHD and ....*(additional levels)* AHD respectively.

Name of authority empowered to vary, modify or release the above terms of reference in the above-mentioned plan:

Hornsby Shire Council

**(A)** - refers to the area denoted on the plan of subdivision that is affected by the terms of the Restriction on the Use of Land for an overland flow path

**(B), (C) and so on** - refers to the Flood Planning Level (FPL) being the minimum habitable floor level required for any structure adjacent to that point in the overland flow path. The FPL is derived from the flood levels determined by the approved overland flow assessment report and adding a 0.5 metre freeboard above the 1% AEP flood levels.



**D. EASEMENT FOR LETTERBOX**

**D1. Creation of an Easement for Letterbox for Newly created lots in a new Subdivision**

The proprietor of the lot benefited and/or persons authorised by the proprietor may:

- a) enter upon the lot burdened with any tools, implements, or machinery necessary and remain there for any reasonable time for the purposes of constructing, erecting, installing, repairing or renewing within the site of the burdened lot denoted 'n' a structure containing letterboxes.
- b) Enter upon the lot burdened and remain there for any reasonable time for the purposes of delivering and retrieving of postal articles from the letterboxes.

Name of Authority empowered to vary, modify or release the above terms of reference in the abovementioned plan:

Hornsby Shire Council

**E. BUSHFIRE**

**E1. Creation of an Easement for Bushfire Purposes as required by NSW Rural Fire Services**

1. The proprietors of the land abovementioned, hereinafter known as the "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 positive covenant shall bind all those registered proprietors jointly and severally.
2. In order to permit increased safety during bushfire, the registered proprietor and persons authorised by the registered proprietor shall ensure that the entire property maintained as an inner protection area that shall include any proposal, application, construction, provision for access, landscaping, maintenance, compulsory management or other action undertaken on the subject lot shall conform with requirements of Appendix 4 of the NSW Rural Fire Service document "Planning for Bushfire Protection 2019" as amended from time to time.

Name of Authority empowered to release, vary or modify the terms of positive covenant:

Hornsby Shire Council

## **F. GARBAGE COLLECTION**

### **F1. Creation of an Easement for Garbage Collection**

Full and free right for the Transferee its servants and agents and all persons authorised by the Transferee to go, pass and re-pass over the whole of the land herein before described as the servient tenement at all times with or without vehicles for the purpose of collecting and removing garbage, recycling and refuse from the servient tenement and for purposes incidental thereto PROVIDED ALWAYS that nothing herein contained shall entitle any person exercising the aforesaid rights to enter any building private open space/courtyard except to the extent necessary to gain access to garbage/recycling receptacles located therein in positions approved by the Transferee or to drive any motor vehicle on to any part of the servient tenement which has not apparently been constructed or provided for the purpose of a carriageway or parking area for vehicles and PROVIDED FURTHER that if the servient tenement is hereafter subdivided pursuant to the Strata Titles Act 1973 (as amended) the rights hereby granted shall be further restricted to the common property comprised in such strata plan and any lot comprised therein shall be released from the easement hereby transferred.

The rights hereby granted may be exercised by the Transferee, its servants, agents and all persons authorised by the Transferee to enter the servient tenement without being liable for damage which may be occasioned to the servient tenement or any improvements thereon including any paving, driveways, footpaths, lawns, gardens, fences, walls buildings or to the property of any person therein or thereon otherwise than by reason of the negligence of the Transferees, its servants and agents and/or of persons authorised by the Transferee.

Without limiting the generality of and notwithstanding anything herein before contained, if any carriageway or parking area and/or the adjacent land supporting the same is damaged by reason of the movement thereon of any vehicle being used in connection with the collection of garbage/recycling from the servient tenement, neither the Transferee its servants and agents nor any person authorised by the Transferee shall be liable in respect thereof. The Transferee its servants and agents and all persons authorised by it to exercise the rights hereby granted shall be indemnified and be kept indemnified by the Transferor its successors and assigns against all actions, suits causes or action or suits, claims, demands, proceedings, costs, charges, damages or expenses whatsoever which may be brought or made, instituted or claimed against and from them or any of them by the Owner or any occupier of the servient tenement or any part thereof or by any other person in respect of any loss or injury sustained or threatened or damages suffered or feared by any such person whether in property or person as a consequence of any act or thing done or omitted by any person whilst upon the servient tenement for the purpose of collecting garbage/recycling from the same or for a purpose incidental thereto except where such loss, injury or damages result from the negligence of the Transferee its servants, agents or of any person authorised by the Transferee as aforesaid.

Nothing herein contained shall oblige the transferee to have garbage/recycling collected from points within the servient tenement or shall prevent the Transferee from discontinuing collection from within the servient tenement PROVIDED ALWAYS that if Transferee discontinues collection of garbage/recycling from within the servient tenement the Transferee and the registered proprietor for the time being of the servient tenement shall respectively have the same rights and obligations with regard to the removal of garbage/recycling from the servient tenement as they would have had if this transfer had not been executed.

*NOTE: Council will accept a modified form of the easement in which the site of the easement is specifically defined by a plan which will be annexed to the Transfer.*

## **G. SENIORS LIVING**

### **G1. Creation of a Restriction on the Use of Land for a Seniors Living Development**

#### ***Wording for development approved under SEPP (Housing for Seniors or People with a Disability) 2004***

The use of the lot(s) hereby burdened is restricted in accordance with Clause 18 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and Section 88E of the *Conveyancing Act 1919* to the effect that the development may be used for the accommodation of the following only:

1. Seniors (55+ age) or people who have a disability,
2. People who live within the same household with seniors or people who have a disability,
3. Staff employed to assist in the administration of and provision of services to housing provided under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

#### ***Wording for development approved under SEPP (Housing) 2021***

The use of the lot(s) hereby burdened is restricted in accordance with Section 88 of State Environmental Planning Policy (Housing) 2021 and Section 88E of the *Conveyancing Act 1919* to the effect that the development may be used for the accommodation of the following only:

1. Seniors or people who have a disability,
2. People who live within the same household with seniors or people who have a disability,
3. Staff employed to assist in the administration of and provision of services to accommodation provided under Part 5 of State Environmental Planning Policy (Housing) 2021.

**Note:** *seniors* means the following people:

- a) *People who are at least 60 years of age,*
- b) *People who are resident at a facility at which residential care, within the meant of the Aged Care Act 1997 of the Commonwealth, is provided,*
- c) *People who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.*