

**STANDARD WORDING FOR EASEMENTS, RESTRICTIONS AND  
POSITIVE COVENANTS**

***Subdivision Certification***



**Wollondilly**  
Shire Council

**WOLLONDILLY SHIRE COUNCIL**

**STANDARD WORDING FOR EASEMENTS, RESTRICTIONS AND POSITIVE COVENANTS**

SCHEDULE OF AMENDMENTS

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## A. INTRODUCTION

1. This document has been prepared to provide standardised terms for use in a Section 88B instrument. Each development is required to be treated on its merits and that these standard terms may not be directly applicable to all scenarios.

Nothing in this document is to be construed as limiting, in any way, Council's rights to impose differing conditions when approving development proposals, nor limiting the discretion of Council to vary any necessary wording requirements in respect of a particular development.

2. A Section 88B instrument is a legal document and should be prepared by a suitably qualified solicitor or conveyancer. A Registered Surveyor may assist in the preparation of the document.
3. The Land Registry Services website contains the Registrar General's Directions concerning all facets of land and property information in NSW.

This website contains advice specifically concerning the preparation of a Section 88B Instrument.

The advice contained within this document is intended to be read in conjunction with the Registrar General's Directions.

## B. STANDARD TERMS

1. There are a number of generic easements contained in Schedule 4A and Schedule 8 of the Conveyancing Act 1919 that do not require a description in Part 2 of the 88B Instrument. Referencing these easements in Part 1 of the 88B Instrument automatically imparts the standard terms, unless otherwise stated, as per Clause 88A and Clause 181A of the Conveyancing Act 1919.
2. It is possible to vary these standard terms pursuant to Clause 88A(2B) and Clause 181A(3) of the Conveyancing Act 1919. The standard terms should not be varied unless specifically agreed to, or requested by, Council.
3. The generic easements contained in Schedule 4A of the Conveyancing Act 1919 are easements in gross, meaning that they are without a dominant tenement. Easements in favour of Council, the Crown, a public authority or a service authority prescribed by the Regulations would fall into this category. Refer to Clause 88A of the Conveyancing Act 1919 for more information. Go to Schedule 4A of the Conveyancing Act 1919 for a list of easements included in this schedule.
4. The generic easements contained in Schedule 8 of the Conveyancing Act 1919 have a dominant tenement. Refer to Clause 181A of the Conveyancing Act 1919 for more information. Go to Schedule 8 of the Conveyancing Act 1919 for a list of easements included in this schedule.
5. Clause 88BA of the Conveyancing Act 1919 provided for the creation of a positive covenant relating to the maintenance or repair of an area that is the subject of an easement. The purpose of this positive covenant is to ensure the maintenance or repair of the easement, along with the proportioning of costs associated with the same. Refer to Clause 88BA of the Conveyancing Act 1919 for more information. The most common example is a shared access benefiting and burdening multiple properties.

**All terms of easements, covenants and restrictions shall have a clause referring to the relevant authority e.g. Wollondilly Shire Council, Sydney Water, Endeavour Energy etc, whose consent is required to "release, vary or modify" those terms.**

## **C. EPSILON DISTRIBUTION MINISTERIAL HOLDING CORPORATION STANDARD TERMS**

1. Epsilon Distribution Ministerial Holding Corporation have their own standard recitals that must be used. Refer to their Guidelines for Execution of Conveyancing Documents for details.
2. Epsilon Distribution Ministerial Holding Corporation, the same as other public or service authorities; require the inclusion of execution clauses on the Section 88B instrument.

## **D. SPECIFIC TERMS**

The following non-standard, commonly used easements, restrictions and positive covenants are provided for use to ensure compliance with the requirements of Wollondilly Shire Council:

### **i. EASEMENTS**

Identified in Part 1 of the 88B Instrument (as shown in italics below):

#### **Temporary Public Access Easement**

##### ***Right of access (Conveyancing Act 1919 Schedule 4A Part 11) (amended)***

Terms of Right of access as per Part 11 Schedule 4A of the Conveyancing Act 1919 as amended together with the following addition:

1. The easement is a temporary extension of the adjoining public road and will function as a public road in accordance with the definition of “public road” included in the Roads Act 1993 for the purposes of providing access across the easement site.
2. The easement site is made accessible to the public.
3. The easement will be extinguished once the extension of the adjoining public road to which it relates is constructed.

#### **Temporary Public Stormwater Outlet**

##### ***Easement for drainage of water (Conveyancing Act 1919 Schedule 4A Part 7) (amended)***

Terms of Easement for drainage of water as per Part 7 Schedule 4A of the Conveyancing Act 1919 as amended together with the following addition:

1. The easement will be extinguished upon the extension of the adjoining public stormwater network to which it relates.

#### **Temporary Stormwater Management**

The registered proprietors covenant as follows with Council benefited in respect to the temporary stormwater management measures constructed on the lot(s) that they will:

1. Keep the temporary stormwater management measures clean and free from silt, rubbish and debris;
2. Maintain and repair the temporary stormwater management measures at the sole expense of the registered proprietor(s), so that they function in a safe and efficient manner, until they are no longer required and can be removed complying with the requirements of Wollondilly Council.

**Council Drainage easement - for drainage that includes overland flow path, swale or catch drain.**

Terms of easement for drainage of water as per Part 7 Schedule 4A of the Conveyancing Act 1919 as amended together with the following addition:

1. The registered proprietor shall not make or permit or suffer the making of any alterations to the finished surface levels of the overland flowpath, swale drain or catch drain constructed within the restricted area without the prior consent in writing of Wollondilly Shire Council.
2. The registered proprietor shall not make or permit or suffer the placement of any fencing within the restricted area with the exception of open style fencing that does not obstruct surface flows to or within the restricted area and swale drain.
3. The registered proprietor shall not make or permit or suffer the placement of any wall, structure, landscaping or vegetation, with the exception of grass or turf, within the restricted area and swale drain.

**Interallotment Drainage easement - for drainage that includes overland flow path, swale or catch drain.**

Terms of easement for drainage of water as per Part 3 Schedule 8 of the Conveyancing Act 1919 as amended together with the following addition:

1. The registered proprietor shall not make or permit or suffer the making of any alterations to the finished surface levels of the overland flowpath, swale drain or catch drain constructed within the restricted area without the prior consent in writing of Wollondilly Shire Council.
2. The registered proprietor shall not make or permit or suffer the placement of any fencing within the restricted area with the exception of open style fencing that does not obstruct surface flows to or within the restricted area and swale.
3. The registered proprietor shall not make or permit or suffer the placement of any wall, structure, landscaping or vegetation, with the exception of grass or turf, within the restricted area and swale drain.



## ii. RESTRICTIONS

Identified in Part 1 of the 88B Instrument as: "Restriction on the use of land"

### Onsite Stormwater Detention Systems

1. The registered proprietor(s) shall not make or permit or suffer the making of any alterations to any On-Site Detention system and structures including tanks, basins, pits, pipes, control orifice plate(s), which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of Wollondilly Shire Council.
2. No dwelling or other structure shall be erected or constructed unless the registered proprietor(s) have constructed or make provision for the construction of an On-site Detention system on the said lot(s) that *<insert design requirements as below>*

Either:

- a. controls the surface runoff from the lot, including all pervious and impervious surfaces and limits the stormwater discharge to the inter allotment drainage system, public road drainage system or natural drainage system in accordance with the Permissible Site Discharge (PSD) values tabled below or to the satisfaction of Wollondilly Shire Council.

PSD for critical storm duration:

2 year ARI: X litre per second

5 year ARI: X litre per second

10 year ARI: X litre per second.

20 year ARI: X litre per second.

50 year ARI: X litre per second.

100 year ARI: X litre per second.

- b. controls the surface runoff from the lot, including all pervious and impervious surfaces and limits the stormwater discharge to the inter allotment drainage system, public road drainage system or natural drainage system to match the pre development site discharge condition for all critical storm events up to and including the 100 year ARI event.
  - c. controls the surface runoff from the lot, including all pervious and impervious surfaces and limits the stormwater discharge to the inter allotment drainage system, public road drainage system or natural drainage system in accordance with the design plans prepared by ( insert name, reference and date>.
3. Roofs and gutters are designed to maximise the capture of rainwater, up to the 100 year ARI storm event, to the On-Site detention system.

4. On-Site detention system shall be connected to a piped drainage system or public road drainage system.

#### **Rainwater reuse tanks**

1. The registered proprietor(s) shall not make or permit or suffer the making of any alterations to any rainwater reuse tank system, including tanks, pits, pipes, pumps etc which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of Wollondilly Shire Council.
2. No dwelling shall be erected or constructed unless the registered proprietor(s) have constructed or make provision for the construction of a rainwater reuse system which:
  - a. Provide for a minimum rainwater storage capacity (in rainwater tanks) of *<capacity>* Litre or such capacity as determined by a relevant Authority (this volume can be included in any BASIX volume required), above that volume required for mains “top-up”.
  - b. Have roofs and gutters designed so as to maximise capture of rainwater into the rainwater tank storage.
  - c. Have the rainwater tank storage plumbed into toilets, laundry, gardens and other areas for non-potable use.

#### **Raingardens and Bio-retention systems**

1. The registered proprietor(s) shall not make or permit or suffer the making of any alterations to any bio-retention system or Raingarden including basins, pits, pipes, filter media beds and planting which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of Wollondilly Shire Council.
2. No dwelling or other structure shall be erected or constructed unless the registered proprietor(s) have constructed or make provision for the construction of a bio-retention system or Raingarden on the said lot(s) in accordance with *<insert design requirements>*

Either:

- a. the design plans prepared by *<name, reference, date>*.
- b. the following design specifications *<insert specifications, size, etc>* .
- c. Wollondilly Shire Council Design and Construction Specification.

#### **Minimum finished floor level – flood planning**

1. No dwelling shall be erected on the burdened lot(s) with a finished floor level below the Flood Planning Level of *<applicant to insert flood planning level as per Conditions of Consent>* metre (Australian Height Datum).

**Restriction for overland flowpath, swale or catch drainage (located within the lot).**

1. The registered proprietor shall not make or permit or suffer the making of any alterations to the finished surface levels of the overland flowpath, swale drain or catch drain constructed within the restricted area without the prior consent in writing of Wollondilly Shire Council.
2. The registered proprietor shall not make or permit or suffer the placement of any fencing within the restricted area with the exception of open style fencing that does not obstruct surface flows to or within the restricted area and swale drain.
3. The registered proprietor shall not make or permit or suffer the placement of any wall, structure, landscaping or vegetation, with the exception of grass or turf, within the restricted area and swale drain.

**Vehicle access prohibited A**

1. No vehicular access or route to or from <Road Name> and the burdened lot(s) is permitted. Vehicular access is to be made from <Road Name>.

**Vehicle access prohibited B**

1. No vehicular access or route to or from the burdened lot(s) is permitted across the boundaries designated <INSERT> on the plan.

**Vehicle Access Restriction**

1. No vehicular access or route to or from <Road Name> and the burdened lot is permitted unless located on the <Northern / Southern / Eastern / Western> boundary of the lot and no closer than 1 metre to the boundary with the adjoining lot.

**Forward Vehicle access movements - Vehicle turning areas and battle axe lots**

The registered proprietor(s) shall not:

1. Make or permit or suffer the making of any alterations to any vehicle turning area(s) that are required to allow vehicles to enter and exit the burdened lot(s) in a forward direction.
2. Erect or suffer the erection of any garage, carport or other vehicle parking space on the lot(s) hereby burdened unless the registered proprietor has first constructed or made provision for the construction of an appropriate hardstand vehicle turning or manoeuvring area adjacent to the garage, carport or other vehicle parking space to enable vehicles to enter and exit the burdened lot(s) in a forward direction.

### **Access Handle Landscape**

1. No Occupation Certificate is permitted to be issued or occupation of any dwelling is permitted unless the registered proprietor(s) have installed landscaping along the access handle as approved by Wollondilly Shire Council.

### **Building envelope (residential corner allotments)**

No structure shall be permitted on the lot(s) hereby burdened except for within the nominated building envelope marked <INSERT> on the linen plan of subdivision.

### **Building envelope (rural lots) (Asset protection zone)**

No dwelling shall be permitted on the lot(s) hereby burdened except for within the nominated building envelope marked <INSERT> on the linen plan of subdivision

### **Building envelope (rural lots) (Geotechnical constraints)**

No structure shall be permitted on the lot(s) hereby burdened except for within the nominated building envelope marked <INSERT> on the linen plan of subdivision.

### **Bushfire requirements / asset protection zone**

No part of a dwelling or other habitable building may be constructed or allowed to remain within the asset protection zone delineated INSERT on the plan complying with the requirements of Wollondilly Shire Council and the NSW Rural Fire Service relevant and applicable at the time.

The asset protection zone referred to has been determined at the subdivision stage based on a Bushfire report prepared by INSERT dated INSERT and this needs to be considered in the design and construction of the dwelling or other habitable building in accordance with Australian Standard AS 3959-2009 Construction of buildings in bushfire-prone areas and Planning for Bushfire Protection 2006 (or equivalent where these documents are superseded).

*This is a general restriction that may need to be built upon in response to any site specific bushfire requirements reflected in the consent issued by Council.*

### **Geotechnical A**

No dwelling or other structure shall be erected or constructed on the lot(s) burdened unless it is subjected to a project specific geotechnical assessment to the satisfaction of Wollondilly Shire Council.

### **Geotechnical B**

No dwelling or other structure shall be erected or constructed on the lot(s) burdened unless designed with consideration of the geotechnical constraints outlined in the geotechnical report prepared by < name, reference, date>.

### iii. POSITIVE COVENANTS

Identified in Part 1 of the 88B Instrument as: "Positive covenant"

#### **On-site detention system and rainwater reuse tanks all lots**

1. The registered proprietor of the lot(s) hereby burdened will in respect of the On-Site Detention system and Rainwater Reuse System shall:
  - a. Keep the system(s) clean and free from silt and debris and ,maintain and repair, at the sole expense of the registered proprietors, the system in accordance with the Stormwater Management Plan prepared by <name, reference, date> so that it functions in a safe and efficient manner;
  - b. permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time without notice in these of an emergency) to enter and inspect the system for compliance with this covenant;
  - c. 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.
2. Pursuant to section 88f(3) of the Conveyancing Act 1919, as amended, the Council shall have the following additional powers:
  - a. In the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above, the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(c) above and;
  - b. The Council may recover from the registered proprietor in a Court of competent jurisdiction:
    - i. Any expense reasonably incurred by it in exercising its powers under sub-paragraph (a) above. Such expense shall include reasonable wages for employees engaged in effecting, supervising and administering the said work, together with costs, reasonably estimated by Council, for the use of materials, machinery, tools and equipment used in conjunction with the said works.
    - ii. Legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs, charges and expenses of registration of a covenant charge pursuant to Section 88F of the Act as amended, or providing certificate required pursuant to Section 88G of the Act or obtaining any injunction to Section 88H of the Act.

This Covenant shall bind all persons who are of claim under the registered proprietor(s) as stipulated in Section 88E(5) of the Act.

### Bio-retention Basin and Raingardens

3. The registered proprietor of the lot(s) hereby burdened will in respect of the Bio-retention System or Raingarden shall:
  - a. Keep the system(s) clean and free from silt and debris and ,maintain and repair, at the sole expense of the registered proprietors, the system in accordance with the Stormwater Management Plan prepared by <name, reference, date> so that it functions in a safe and efficient manner;
  - b. perform the lifecycle renewal and restoration works, at the sole expense of the registered proprietor(s) in accordance with the Stormwater Management Plan prepared by <name, reference, date> so that it functions in a safe and efficient manner;
  - c. permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time without notice in these of an emergency) to entre and inspect and test the system for compliance with 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. Pursuant to section 88f(3) of the Conveyancing Act 1919, as amended, the Council shall have the following additional powers:
  - c. In the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above, the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above and;
  - d. The Council may recover from the registered proprietor in a Court of competent jurisdiction:
    - iii. Any expense reasonably incurred by it in exercising its powers under sub-paragraph (a) above. Such expense shall include reasonable wages for employees engaged in effecting, supervising and administering the said work, together with costs, reasonably estimated by Council, for the use of materials, machinery, tools and equipment used in conjunction with the said works.
    - iv. Legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs, charges and expenses of registration of a covenant charge pursuant to Section 88F of the Act as amended, or providing certificate required pursuant to Section 88G of the Act or obtaining any injunction to Section 88H of the Act.

This Covenant shall bind all persons who are of claim under the registered proprietor(s) as stipulated in Section 88E(5) of the Act.

### **Driveway Maintenance for Reciprocal Right of Carriage Way**

The registered proprietor(s) of the lots hereby burdened will in respect of the constructed driveway within the right of carriageway marked < *delineator* > on the plan and servicing all burdened lots, contribute equally to any financial outlay incurred from the maintenance and repair of any damage due to fair wear and tear on the driveway. Equal contributions from all proprietors will not apply to accidental or deliberate damage caused by one or more of the owners.