



## APPLICATION FOR ENDORSEMENT OF SECTION 88E INSTRUMENTS

- Positive Covenants (88E)
- Restrictions as to the Use of Land (88E)
- 88B Instruments relating to stormwater systems

### PART 1 : PROPERTY & APPLICANT DETAILS

Property Address: \_\_\_\_\_

Related DA Number: \_\_\_\_\_

Applicant's Name: \_\_\_\_\_

Contact No: \_\_\_\_\_ Email: \_\_\_\_\_

PEXA Agent: \_\_\_\_\_ Email: \_\_\_\_\_

### PART 2: CHECKLIST OF REQUIRED DOCUMENTS

- Land Dealing (88E) Instrument :
  - Positive Covenant (form 13PC) and/or
  - Restriction as to User (form 13RPA)

- Annexure for 88E Instrument in approved Council terms, as per relevant development consent conditions.

**All required details must be completed (ie Lot/DP number, description of stormwater drainage system as per development consent, DA number, works-as-executed drawing number/s and date of final survey, and name of certifying engineers).**

- Colour** Works-as-Executed plan/s of the stormwater drainage system, stamped and certified by a registered surveyor, annotating in red any variations from the approved OSD system and/or rainwater reuse system, based on the approved design drawing.
- 1 x copy of an A4 simple plan of the property, showing the property boundary, building outline and location of the OSD system and/or rainwater tanks and associated structures. One copy each to be submitted with the 13PC and 13RPA Land Titles Forms.
- Certification of the System
  - For an OSD system, Record of Installation and Engineer's Compliance Certificate for Stormwater Drainage System, confirming that stormwater drainage works have been completed as approved.
  - For a rainwater reuse system, a Plumbers Certificate, which includes details of the size of the tank and the fixtures connected to the tank.
- Payment of Council's fee of \$880 (covers administration processing, endorsement and legal costs pertaining to PEXA registration).
- Details including the name, company, contact telephone and e-mail of the applicants Solicitor/conveyancer for the PEXA registration of the positive covenant

**PART 3 : DECLARATION**

I \_\_\_\_\_, of \_\_\_\_\_  
(Print Name)

Hereby certify that the above sheet has been filled out correctly and understand that Council will not execute the S88B or the 13PC/13RPA forms unless the stormwater management system has been fully completed and all of the above documents are submitted to Council.

Signed by Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

**PART 4 : IMPORTANT INFORMATION**

**Notes on instrument and annexure preparation**

- Council is the Prescribed Authority, the property owner is the Proprietor and the bank (if property is mortgaged) is the Mortgagee.
- Original PDFs are preferred, with or without other signatures. Please ensure the PDF is not password protected.
- If the PDF is not an original, please ensure that it is clearly scanned in a high resolution.
- If the instrument is filled / signed incorrectly or the correct annexure / terms are not the ones lodged, Council may re-prepare a correct Instrument and / or Annexure on your behalf.

**PEXA and registration related Notes**

- NSW Land Registry Services no longer accept hard copies of Title Encumbrances since they moved to electronic registrations through PEXA.
- Council therefore no longer provides hard copies of endorsed Instruments. Once the Council executes the document, it is sent in PDF format to Council’s lawyer for LRS registration via PEXA.
- The applicant / subject site owner is to engage their own PEXA agent (e.g. Surveyor / Conveyancer / Solicitor). Council’s lawyer will create and invite your PEXA agent to an online PEXA workspace to process the Instrument for electronic LRS registration.
- Banks may now provide their consent as a letter that is uploaded to PEXA instead of signing the instrument itself. If your bank has not provided this yet or if you want to forgo their participation altogether, pick the option Not Applicable (N.A.) for the mortgagee section of the 13PC or 13RPA form. They are an optional third party as per NSW LRS advice as the Instrument is primarily an agreement between Council and the Proprietor.

OFFICE USE ONLY	
Receipt number: _____	Amount paid \$ _____
Name of Customer Service Officer: _____	
Handling Officer: _____	Date received: _____

# POSITIVE COVENANT

New South Wales

Section 88E(3) Conveyancing Act 1919

Leave this space clear. Affix additional pages to the top left-hand corner.

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

**(A) TORRENS TITLE**

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**(B) LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any  Email:..... Reference (optional):.....	<b>PC</b>
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**(C) REGISTERED PROPRIETOR**

Of the above land
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**(D) LESSEE MORTGAGEE or CHARGE**

Of the above land agreeing to be bound by this positive covenant		
Nature of Interest	Number of Instrument	Name

**(E) PRESCRIBED AUTHORITY**

Within the meaning of section 88E(1) of the Conveyancing Act 1919
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**(F)** The prescribed authority having imposed on the above land a positive covenant in the terms set out in annexure ..... hereto applies to have it recorded in the Register and certifies this application correct for the purposes of the Real Property Act 1900.

**DATE** ..... / ..... / .....  
          dd        mm        yyyy

**(G) Execution by the prescribed authority**

I certify that I am an eligible witness and that an authorised officer of the prescribed authority signed this dealing in my presence. [See note\* below].

Signature of witness: .....	Signature of authorised officer: .....
Name of witness: .....	Name of authorised officer: .....
Address of witness: .....	Position of authorised officer: .....

**(G) Execution by the registered proprietor**

I certify that I am an eligible witness and that the registered proprietor of the land signed this dealing in my presence. [See note\* below].

Signature of witness:	Signature of registered proprietor:
Name of witness:	
Address of witness:	

**(H) Consent of the lessee/mortgagee/chargee**

The lessee / mortgagee / chargee under lease / mortgage / charge No. ...., agrees to be bound by this positive covenant. I certify that I am an eligible witness and the above lessee/mortgagee/chargee signed this dealing in my presence. [See note\* below].

Signature of witness: .....	Signature of lessee / mortgagee / chargee:
Name of witness: .....	
Address of witness: .....	

**ANNEXURE ‘A’**

The Owners of Lot *[insert Lot no.]*, Section *[insert letter/no.]* in Deposited Plan *[insert DP no.]* (“the Owners”) covenant and agree with Woollahra Municipal Council (“the Council”) in respect of the structure erected on the land described as *[refer to condition H. of development consent for description eg on-site stormwater detention system and pump sump system / retention system / rainwater tank / raingarden etc]* (which expression includes all ancillary gutters, pipes, drains, walls, kerbs, pits, pumps, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater) shown on the plan or plans approved by the Council being Development Application DA *[insert DA no.]* and the WORKS-AS-EXECUTED PLAN, Revised Drawings numbered *[insert WAE stormwater/drainage drawing number/s]*, dated *[insert date of inspection]* and certified by *[insert name of Civil Engineer]* (hereinafter called “the system”) as follows:-

The Owners will

- a. permit stormwater to be temporarily detained by the system;
- b. keep the system clean and free of silt rubbish and debris;
- c. maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner and in doing so complete the same within the time and in the manner reasonably specified in written notice issued by the Council;
- d. carry out the matters referred to in paragraphs (b) and (c) at the Owners expense;
- e. not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- f. permit the Council or its authorised agents from time to time upon giving reasonable notice (but at anytime and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- g. comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice;
- h. where the Owner fails to comply with the Owner’s obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner’s cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations;
- i. indemnify the Council against all claims or actions and costs arising from those claims or actions which Council may suffer or incur in respect of the system and caused by an act or omission by the Owners in respect of the Owner’s obligations under this covenant.

Name of authority having the right to release, vary or modify the said covenant:

Woollahra Municipal Council

.....  
**Authorised officer  
Woollahra Council**

**Execution by the Registered Proprietor**

**Signed** by the registered proprietor

.....  
[*full name of proprietor*]

in the presence of:

.....  
Signature of Witness

Name of witness:

Address of witness:

**Execution by the Prescribed Authority**

**Signed** for and on behalf of the General Manager  
of Woollahra Council by its authorised delegate  
pursuant to section 378 Local Government Act 1993,

.....  
Signature of authorised officer

Name of authorised officer:

Position of authorised officer:

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

.....  
Signature of witness

Name of witness:

Address of witness: c/- 536 New South Head Road Double Bay