

CITY OF PARRAMATTA COUNCIL

Standard Terms for Positive Covenant for Flood Zone commonly imposed by instrument under Section 88E(3) of the Conveyancing Act, 1919 (NSW) as amended.

Note 1: Use above terms on separate page when creating Positive Covenant - via Forms 13PC¹

Note 2: These terms are general guide. Some of the following terms may not be applicable to the application and should be deleted.

Annexure ###: Positive Covenant for Flood Zone

Page ### of ###

Property Address:

Lot....., (Section,); DP.....

1. In these terms:

- (a) **“Flood Zone”** means the area affected by an overland flow path or flood storage area; *[delete as appropriate: as shown on the flood map of the 1% AEP flood extent issued by City of Parramatta Council dated and attached to this document at Annexure #. OR as shown on the flood map of the 1% AEP flood extent prepared by xxx consultants on xxx date and attached to this document at Annexure #²] below the level of RL xxx m AHD shown as “Flood Zone” [delete as appropriate: on the Plan of Subdivision to which this 88B Instrument applies OR in Annexure ## of this form].*
- (b) **“Council”** means the City of Parramatta Council 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) Where there is more than one Owner, the terms of this covenant and restriction bind the Owner jointly and severally; and
- (e) The singular includes the plural and vice versa.

2. The Owner must:

- (a) keep the Flood Zone clean and free from obstructions, rubbish and debris;
- (b) maintain and repair the Flood Zone 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 Flood Zone for compliance with the requirements of this covenant;

¹ Similar terms as those listed can be utilised when creating the positive covenant via the 88B process

² The flood zone map attached as an annexure must be a plan that meets the following requirements and those outlined in Schedule 3 of the [Lodgement Rules](#):

- a. The plan shall include the flood extent of the 1% AEP (100 year) flood event consistent with the flood inquiry from Council or the Flood report submitted during the DA. The flood inquiry or page from the flood report cannot be utilised as an annexure.
- b. The plan shall be drawn in a manner and to a scale that allows all details and notations to be clearly read and reproduced
- c. The plan shall have appropriate dimensions that define the extent of the flooding on the site
- d. The plan shall not be in colour

- (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; and
 - (e) maintain appropriate safety fencing and warning signs, if and as required by any development consent.
3. Without limiting its powers under Section 88F (3) of the Conveyancing Act 1919 (NSW) (the “Act”) 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 2(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 3(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; and
 - 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.
4. 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).
5. The name of the body empowered to release, vary or modify the restriction or covenant referred to in these terms is the **City of Parramatta Council**.

CITY OF PARRAMATTA COUNCIL

Standard Terms for Restriction on the use of Land for Flood Zone commonly imposed by instrument under Section 88E(3) of the Conveyancing Act, 1919 (NSW) as amended.

Note 1: Use the following terms on a separate page as an Annexure when creating Restriction on Use of Land - via Forms 13RPA¹

Note 2: These terms are general guide. Some of the following terms may not be applicable to the application and should be deleted.

Annexure ###: Restriction on the Use of Land for Flood zone

Page ### of ###

Property Address:.....

Lot....., (Section,.....); DP.....

1. In these terms:

- (a) **“Flood Zone”** means the area affected by an overland flow path or flood storage area; *[delete as appropriate: as shown on the flood map of the 1% AEP flood extent issued by City of Parramatta Council dated and attached to this document at Annexure #. OR as shown on the flood map of the 1% AEP flood extent prepared by xxx consultants on xxx date and attached to this document at Annexure #²] below the level of RL xxx m AHD shown as “Flood Zone” [delete as appropriate: on the Plan of Subdivision to which this 88B Instrument applies OR in Annexure ## of this form].*
- (b) **“Council”** means the City of Parramatta Council, 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) Where there is more than one Owner the terms of this covenant and restriction bind the Owner jointly and severally; and
- (e) The singular includes the plural, and vice versa.

2. The Owner must not:

¹ Similar terms as those listed can be utilised when creating the Restriction on the Use of Land via the 88B process

² The flood zone map attached as an annexure must be a plan that meets the following requirements and those outlined in Schedule 3 of the [Lodgement Rules](#):

- a. The plan shall include the flood extent of the 1% AEP (100 year) flood event consistent with the flood inquiry from Council or the Flood report submitted during the DA. The flood inquiry or page from the flood report cannot be utilised as an annexure.
- b. The plan shall be drawn in a manner and to a scale that allows all details and notations to be clearly read and reproduced
- c. The plan shall have appropriate dimensions that define the extent of the flooding on the site
- d. The plan shall not be in colour

- (a) erect, construct or place on or within the Flood Zone or permit or suffer to be erected constructed or placed on or within the Flood Zone any building, structure, fence, retaining wall, obstruction of any nature that will impede the free flow of water without the prior consent in writing of the Council;
 - (b) alter or permit or suffer any alteration to the surface level of the Flood Zone, including changing surface levels, removing any associated drainage structures and flood protection devices without the prior written approval of Council;
 - (c) place or allow construction of any dwelling house or other structure with a finished floor level lower than the levels defined in the ##### (*provide reference to the undertaken Flood Risk Management report including author, revision and date*) and held on Council File DA/##### for habitable floors, non-habitable floors and the driveway levels/crest;
 - (d) make or permit or suffer the making of any alterations to the section of the building that is designed with an open subfloor, that is suspended on piers/beams;
 - (e) make or permit or suffer the replacement or modification or enclosing of the open subfloor except with open-style panels; and
 - (f) not place or allow construction of any structure, wall, fill or other items beneath or around the open subfloor
3. The name of the body empowered to release, vary or modify the restriction or covenant referred to in these terms is **City of Parramatta Council**.