

## **Annexure "A"**

### **Terms of Positive Covenant**

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**THE LAND BURDENED BY THIS POSITIVE COVENANT IS: LOT .....**

**DP ..... OWNERS: .....**

The Registered Proprietors covenant with Northern Beaches Council (Council) that they will:

- I) Comply with any written notice, at the Registered Proprietors' cost, issued by Council requesting the dismantling, removal and subsequent re-assembling, re-installation and re-instatement of any 'Structures and Works' and/or removal of any Unauthorised Works; and
- II) If the written notice mentioned above is not complied with, or where no notice has been issued by Council in a case of emergency, pay any costs relating to the dismantling, removal and subsequent re-assembling, re-installation and re-instatement of 'Structures and Works' and/or removal of any Unauthorised Works ("Costs"), for the purpose of enabling the Council to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, upgrade, improve or do any other things that are necessary to any of Council's Drainage Infrastructure in accordance with the following terms and conditions (in addition to Council's Easement):
  - (a) The Council may by its contractors, servants or agents at any reasonable time of the day and upon giving to the person against whom the covenant is enforceable not less than two days' notice in writing (but at any time without notice in the case of an emergency) enter the land to access the Council's Drainage Infrastructure.
  - (b) The Registered Proprietors shall indemnify the Council and any adjoining land owners against any claims for damages arising from the failure to comply with the terms of this covenant.
  - (c) The Registered Proprietors release Council from any claims arising from Council undertaking the works, referred to in Item (b) above of this covenant, except to the extent that such claims arise from the negligent act or omission of Council.
  - (d) Council must take reasonable and feasible measures to minimise its costs.
  - (e) By written notice, the Council may require the Registered Proprietors to attend to payment of the Costs within such time as the Council may require to ensure Council has access to the Drainage Infrastructure as it considers necessary. To that extent, section 88F(2)(a) of the Act is hereby agreed to be amended accordingly.
  - (f) Pursuant to section 88F(3) of the Act the authority shall have the following additional powers pursuant to this covenant:-

- (i) 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 may pay the Costs in the notice referred to in (e) hereof; and
- (ii) The Council may recover from the registered proprietor in a Court of competent jurisdiction:-
  - (A) The Costs;
  - (B) Any amounts due to the Council pursuant to the indemnity referred to in (b); and
  - (C) Legal costs on an indemnity basis for issue of the said notices and recovery of the amounts in ii(A) and (B) together with the costs and expenses of registration of a covenant or charge pursuant to section 88F of the Act or providing any certificate requirement pursuant to section 88G of the Act.
- (g) This covenant shall bind all persons who claim under the registered proprietors as stipulated in section 88E(5) of the Act.
- (h) For the purpose of this covenant:-
  - (i) 'Structures and Works' shall include all structures and works within the easement or obstructing access to the Easement and / or Council's Drainage Infrastructure as detailed in **Council DA No. ....** but does not include Unauthorised Works.
  - (ii) 'Council's Drainage Infrastructure' means the drainage infrastructure owned by the Council located within the Council Easement.
  - (iii) 'Easement' means the Council's easement to drain water ..... **meters wide** and variable width (limited in height) burdening the land.
  - (iv) The Act means the *Conveyancing Act* 1919.
  - (v) Registered Proprietor herein shall include their legal personal representatives, successors, transferees, and assigns including future owners of an estate in fee simple either in whole or in part.
  - (vi) 'Unauthorised Works' means any structures or materials which obstruct access to the Easement and/or Council's Drainage Infrastructure which are not approved by Council or not permitted under Council's Water Management for Development Policy. For the avoidance of doubt, any structures approved under development consent as at the date of this covenant are not Unauthorised Works.

NAME OF AUTHORITY EMPOWERED TO RELEASE, VARY OR MODIFY THE COVENANT REFERRED TO:

**NORTHERN BEACHES COUNCIL**

**NORTHERN BEACHES COUNCIL by its delegate pursuant to S.377 Local Government Act 1993.**

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Signature of delegate

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Name of delegate

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

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Signature of Witness

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Name of Witness

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Address of Witness