

Development across the Northern Beaches often requires the creation of stormwater drainage and flood protection systems. These systems must be maintained so they work in the way your development application (DA) intended.

### Examples of these systems include:

- Onsite stormwater detention systems
- Alternative drainage systems (e.g. pump drainage systems/ charged drainage systems),
- Alterations to landform, retaining walls and dwelling floor levels which are designed and intended to protect the development and occupants from major overland flows/ flooding, as well as prevent impact neighbouring properties.

### Why you need to submit legal documentation to Council

To ensure the maintenance of these systems, Council requires the owner to register a positive covenant and/or a restriction as to use of the system on the title of the property. If a covenant and/or restriction is required, it will appear as a condition of the DA consent. Check your DA consent conditions to determine if these requirements affect you. A solicitor, certifier, builder or surveyor is able to help you check your consent conditions and provide professional assistance with preparing documents for your application.

### What is a positive covenant and restriction on the use of land?

A positive covenant and restriction on the use of land are deeds of agreement on the title of the property created under provisions of the Conveyancing Act 1919. The agreement imposes obligations on the owner of the land burdened, in favour of a prescribed authority (Northern Beaches Council). In the case of a stormwater system, the agreement will require the owner of the land to maintain their system, so it can perform as designed, and not allow future development to interfere with the operation of the system. A positive covenant or restriction as to user can apply to all property types: residential, commercial, industrial etc.

### What if I require a different type of covenant?

Your DA conditions may require you to register a covenant not related to stormwater systems. Examples of these include geotechnical requirements, domestic animal control, and affordable housing. If you require one of these covenants, please contact Council for more information.

### Documents required for submission

Examples of documents can be found in the appendices:

- **13 RPA Form** - [nswlrs.com.au/getattachment/83ca9905-ab64-4ae8-ba3f-53396952e7e3/attachment.aspx](https://nswlrs.com.au/getattachment/83ca9905-ab64-4ae8-ba3f-53396952e7e3/attachment.aspx)
- **13 PC Form** - [nswlrs.com.au/getattachment/787fd880-6201-42cb-ac77-04d7d4f8cf77/attachment.aspx](https://nswlrs.com.au/getattachment/787fd880-6201-42cb-ac77-04d7d4f8cf77/attachment.aspx)
- **Councils standard wording** - Appendix 1
- **Hydraulic engineer's certificate** - Example appendix 2
- **Work as executed (WAE)** - Example appendix 3
- **Photographic evidence of and orifice plate and OSD tank/basin** - Example appendix 4

### What is the process for lodging and registering legal documents?

The forms must be prepared by you or your agent (solicitor, surveyor, builder etc.) and be signed by any relevant third parties e.g. mortgage provider. Once lodged, along with all of the required documentation, Council staff will assess your application, sign the documents and then contact you for collection.

- 1 Complete application form**

↓ A hard copy application form can be obtained at any of Council's customer service centres or online.
- 2 Complete legal documents forms**

↓ Positive Covenant (13PC) and Restriction of Use (13RPA) forms are located at the NSW Land and Property Information website [nswlrs.com.au](http://nswlrs.com.au). You must also obtain Council's standard wording (see appendix) and input your DA information.
- 3 Obtain supporting documentation for your application**
  - Work as executed plan (WAE) must be provided with your authorisation of legal documents application. The WAE is a copy of the approved drainage construction plan, with the finished levels marked up in red, and stamped and signed by a registered surveyor.
  - Hydraulic engineer certificate must be provided to ensure the constructed site drainage system complies with the approved stormwater drainage plan and Council policies. The certificate must be from a qualified engineer registered on the national engineering register.
  - Photographic evidence of orifice plate and/or OSD tank/basin.
- 4 Lodge completed legal documents application and pay lodgement fee to Council**

↓ Hard copy documents and the application form must be submitted to Council as well as payment of the application fee. Council accepts applications at our customer service centres and through the post.
- 5 Engineering review**

↓ Council's development engineering team will review your application including the plans, a site inspection, and will sign your documents if they are satisfied with the information provided in the application.
- 6 Collection of signed documents**

↓ Council officers will contact you to organise collection of your signed documents.
- 7 Submission of documents to NSW land registry service**

↓ In accordance with their guidelines, submit your signed documents to NSW land registry service.

## Appendices

### 1. Council's standard wording

#### 1.1 Terms of restriction on the use of land - on-site stormwater detention system

The registered proprietors covenant with the Northern Beaches Council (Council) that they will not:

- I. Do any act, matter or thing which would prevent the structure and works from operating in an efficient manner.
- II. Make any alterations or additions to the structure and works or allow any development within the meaning of the Environmental Planning and Assessment Act 1979 to encroach upon the structure and works without the express written consent of the authority.
- III. This covenant shall bind all persons who claim under the registered proprietors as stipulated in section 88E(5) of the Act.

For the purposes of this covenant:

Structure and Works shall mean the on-site stormwater detention system constructed on the land as detailed on plans approved by Council No. {INSERT DA NUMBER} including all gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater on the land.

The Act means the Conveyancing Act 1919.

NAME OF AUTHORITY EMPOWERED TO RELEASE, VARY OR MODIFY THE RESTRICTION 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

### 1.2 Terms of positive covenant - on-site stormwater detention system

The registered proprietors covenant with the Northern Beaches Council (Council) that they will maintain and repair the structure and works on the land in accordance with the following terms and conditions:

- I. The registered proprietor will:
  - i. keep the structure and works clean and free from silt, rubbish and debris
  - ii. maintain and repair at the sole expense of the registered proprietors the whole of the structure and works so that it functions in a safe and efficient manner.
- II. For the purpose of ensuring observance of the covenant the Council may by its 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 (but at any time without notice in the case of an emergency) enter the land and view the condition of the land and the state of construction maintenance or repair of the structure and works on the land.
- III. The registered proprietors shall indemnify the Council and any adjoining land owners against any claims for damages arising from the failure of any component of the structure and works, or failure to clean, maintain and repair the structure and works.
- IV. By written notice the Council may require the registered proprietors to attend to any matter and to carry out such work within such time as the Council may require to ensure the proper and efficient performance of the structure and works and to that extent section 88F(2) (a) of the Act is hereby agreed to be amended accordingly.
- V. 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 or its authorised agents may enter the land with all necessary equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in IV hereof.
  - ii. The Council may recover from the registered proprietor in a Court of competent jurisdiction:
    - (a) Any expense reasonably incurred by it in exercising its powers under sub-paragraph i hereof. Such expense shall include reasonable wages for the Council's own employees engaged in effecting the said work, supervising the said work and administering the said work together with costs, reasonably estimated by the Council, for the use of machinery, tools and equipment in conjunction with the said work.
    - (b) Legal costs on an indemnity basis for issue of the said notices and recovery of the said 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.
- VI. This covenant shall bind all persons who claim under the registered proprietors as stipulated in section 88E(5) of the Act.



For the purposes of this covenant:

Structure and Works shall mean the on-site stormwater detention system constructed on the land as detailed on the plans approved by Council No. {INSERT DA NUMBER} including all gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater on the land.

The Act means the Conveyancing Act 1919.

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

### 1.3 Terms of positive covenant - pump out

The registered proprietors covenant with the Northern Beaches Council (Council) that they will maintain and repair the structure and works on the land in accordance with the following terms and conditions:

- I. The registered proprietor will:
  - i. keep the structure and works clean and free from silt, rubbish and debris
  - ii. maintain and repair at the sole expense of the registered proprietors the whole of the structure and works so that it functions in a safe and efficient manner.
- II. For the purpose of ensuring observance of the covenant the Council may by its 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 (but at any time without notice in the case of an emergency) enter the land and view the condition of the land and the state of construction maintenance or repair of the structure and works on the land.
- III. The registered proprietors shall indemnify the Council and any adjoining land owners against any claims for damages arising from the failure of any component of the structure and works, or failure to clean, maintain and repair the structure and works.
- IV. By written notice the Council may require the registered proprietors to attend to any matter and to carry out such work within such time as the Council may require to ensure the proper and efficient performance of the structure and works and to that extent section 88F(2) (a) of the Act is hereby agreed to be amended accordingly.
- V. 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 or its authorised agents may enter the land with all necessary equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in IV hereof.
  - ii. The Council may recover from the registered proprietor in a Court of competent jurisdiction:
    - (a) Any expense reasonably incurred by it in exercising its powers under sub-paragraph i hereof. Such expense shall include reasonable wages for the Council's own employees engaged in effecting the said work, supervising the said work and administering the said work together with costs, reasonably estimated by the Council, for the use of machinery, tools and equipment in conjunction with the said work.
    - (b) Legal costs on an indemnity basis for issue of the said notices and recovery of the said 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.
- VI. This covenant shall bind all persons who claim under the registered proprietors as stipulated in section 88E(5) of the Act.



For the purposes of this covenant:

Structure and Works shall mean the pump-out system constructed on the land as detailed on the plans approved by Council No. {INSERT DA NUMBER}.

The Act means the Conveyancing Act 1919.

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



## 2. Sample of a hydraulic engineer certificate

Dear Sarah,

**Re: Hydraulic Engineer Certificate**

We wish to certify that we have inspected the stormwater system and reviewed the Works as Executed drawings Ltd, Ref No ..... (date) and ..... dated (insert date) and found the system to be in general accordance with the stormwater hydraulic drawings prepared by us, drawing numbers (insert drawings numbers).

The design and construction of the stormwater system, including the car park drainage, as detailed in the above drawings, is in general accordance with Northern Beaches Council's Development Control Plan (DCP - insert number).

Please feel free to contact the undersigned, should you have any questions relating to this certificate.

Kind regards

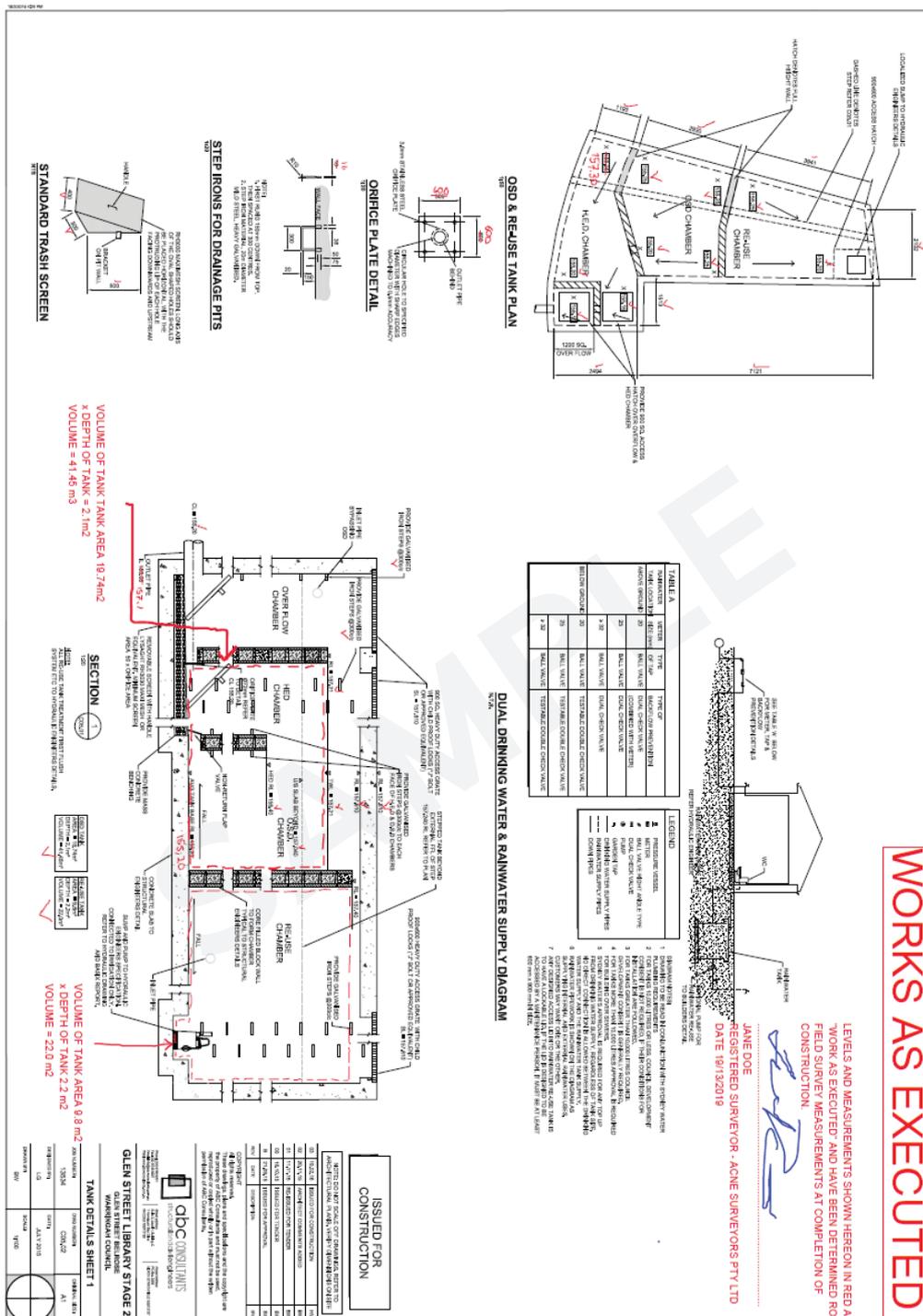
Consulting Engineers

B.E (Hons) MIEAust CPEng NPER



3. Sample of work as executed (WAE) plans

Details need to be overdrawn in red by a registered Surveyor on copy of the Council's approved drainage plan.





#### 4. Photographic evidence of and orifice plate and OSD tank/basin

Orifice plate example



OSD tank/basin example

