

STANDARD RECITALS FOR EASEMENTS, RESTRICTIONS AND POSITIVE COVENANTS

Subdivision and Development Certification

THE **HILLS**
Sydney's Garden Shire



**THE HILLS SHIRE COUNCIL
SUBDIVISION AND DEVELOPMENT CERTIFICATION**

STANDARD RECITALS FOR EASEMENTS, RESTRICTIONS AND POSITIVE COVENANTS

SCHEDULE OF AMENDMENTS

A		July 2011
B	General housekeeping amendments.	November 2011
C	Rain garden restriction and positive covenant added. Bedroom numbers restriction added. Complying lots positive covenant deleted.	August 2012
D	Temporary right of carriageway and easement for services added.	September 2012
E	Rain garden restriction updated.	October 2012
F	Rain garden and flooding matters updated.	March 2013
G	Rural stormwater management restriction added. Front building setback restriction added. Zero lot line easement updated. Bushfire positive covenant updated.	August 2014
H	Bushland management plan restriction and positive covenant updated.	November 2014
I	Redundant matters removed. Vegetation management matters updated. Temporary public easements updated. Other housekeeping amendments.	March 2015
J	Endeavour Energy matters updated. Bushfire and vegetation management matters updated. By-law wording added.	April 2016
K	Onsite waste collection matters updated.	May 2016
L	Building envelope plan restriction added. Temporary Stormwater Management (Box Hill) matters added. Maintenance/ repair of shared access positive covenant updated. Bushfire matters updated. Other housekeeping amendments.	December 2016
M	Vegetation management matters updated. Temporary Stormwater Management (Box Hill) matters updated. Land Registry Services references updated.	February 2018
N	Additional bushfire matters added. Other housekeeping amendments.	August 2018
O	Bushfire matters updated.	September 2019

	Other housekeeping amendments.	
P	Bushfire matters updated.	August 2020

INDEX

A.	INTRODUCTION
B.	GENERAL NOTES
C.	STANDARD TERMS
D.	ENDEVOUR ENERGY STANDARD TERMS
E.	SPECIFIC TERMS
E1.	EASEMENTS:
	Temporary Public Access Easement
	Temporary Public Stormwater Outlet
	Temporary Stormwater Management (Box Hill)
	Zero Lot Line Dwellings
	Easement for Batter/ Support of Public Road
	Temporary Right of Carriageway
	Fire Trails
	Asset Protection Zone
E2.	RESTRICTIONS
	Onsite Stormwater Detention Systems
	Water Sensitive Urban Design Elements
	Rain Gardens (North Kellyville)
	Temporary Stormwater Management (Box Hill)
	Stormwater Management (Rural)
	Early Linen Release/ Completion of Outstanding Works
	Rainwater Tanks
	Overland Flowpath
	Flood Planning Level
	Front Building Setback
	Building Envelope Plan (Growth Centre Release Areas)
	Approved Dwelling Footprint
	Classified Road Rear Building Setback (Normal)
	Classified Road Rear Building Setback (Balmoral Road Release Area)
	Restricted Access

	Acoustic Requirements
	Residue Lots
	Bushfire Requirements/ Asset Protection Zone
	Vegetation Management Plan/ Restricted Development Area
	Geotechnical Constraints (Restricted Development Area)
	Geotechnical Constraints (Development of Lots)
	SEPP Affordable Rental Housing 2009
	SEPP Housing for Seniors or People with a Disability 2004
	Bedroom Numbers (Medium/ High Density Residential Development)
E3.	POSITIVE COVENANTS:
	Onsite Stormwater Detention Systems
	Water Sensitive Urban Design Elements
	Rain Gardens (North Kellyville)
	Temporary Stormwater Management (Box Hill)
	Basement Stormwater Pump System
	Absorption Trenches
	Overland Flowpath
	Bushfire Requirements/ Asset Protection Zone
	Vegetation Management Plan
	Geotechnical Constraints
	Flood Emergency Response Plan
	Waste Collection/ Bin Presentation
	Onsite Waste Collection
	Maintenance/ Repair of Shared Access (Clause 88BA of the Conveyancing Act 1919)
	Easement Encroachments
E4.	BY-LAWS:
	Vegetation Protection
	Bushfire Requirements/ Asset Protection Zone

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.
2. 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's Manager Subdivision and Development Certification or their nominated representative to vary any necessary wording requirements in respect of a particular development.
3. A Section 88B instrument is a legal document and should be prepared by a suitably qualified surveyor or solicitor.
4. 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. GENERAL NOTES

1. All public/ Council easements, restrictions or positive covenants must include a clause nominating the authority empowered to vary, release or modify the easement, restriction or positive covenant. This can be included at the bottom of the terms for each or as a single separate item at the end of Part 2 of the 88B Instrument. This should read:

Name of authority having the power to release, vary or modify the INSERT INSERT referred to is The Hills Shire Council.

2. Council must execute all Land Registry Services forms that intend to create or remove an encumbrance benefiting Council. Further, the Crown, public authorities or a service authority prescribed by the Regulations usually have similar requirements.
3. Where a form needs to be endorsed under Council Seal, an additional execution clause must be included on the plan administration sheet and 88B Instrument. Land Registry Services have produced a circular relating to how documents are to be executed and this circular must be followed.
4. Sunset clauses are generally not permitted, or necessary, and should only be included where prior approval is given by Council.
5. Private restrictions etc; are strongly discouraged. Where they are proposed, they cannot conflict with any restrictions etc; required by the consent, or other relevant matters, like a standard from a Development Control Plan or Local Environmental Plan. They also need to be included at the back of the Section 88B Instrument.
6. The writing shown in italics in this document is intended to assist in understanding and applying this document and should not be included in the terms used in an 88B Instrument.

C. 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. The easements included in Schedule 4A of the Conveyancing Act 1919 are:

Right of carriage way	Schedule 4A Part 1
Right of footway	Schedule 4A Part 2
Easement to drain water	Schedule 4A Part 3
Easement to drain sewage	Schedule 4A Part 4
Easement for repairs	Schedule 4A Part 5
Easement for drainage of sewage	Schedule 4A Part 6
Easement for drainage of water	Schedule 4A Part 7
Easement for electricity purposes	Schedule 4A Part 8
Easement for services	Schedule 4A Part 9
Easement for water supply	Schedule 4A Part 10
Right of access	Schedule 4A Part 11

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. The easements included in Schedule 8 of the Conveyancing Act 1919 are:

Right of carriage way	Schedule 8 Part 1
Right of foot way	Schedule 8 Part 2
Easement to drain water	Schedule 8 Part 3
Easement to drain sewage	Schedule 8 Part 4
Easement for repairs	Schedule 8 Part 5
Easement for batter	Schedule 8 Part 6
Easement for drainage of sewage	Schedule 8 Part 7
Easement for drainage of water	Schedule 8 Part 8
Easement for electricity purposes	Schedule 8 Part 9
Easement for overhang	Schedule 8 Part 10
Easement for services	Schedule 8 Part 11
Easement for water supply	Schedule 8 Part 12
Easement to permit encroaching structure to remain	Schedule 8 Part 13
Right of access	Schedule 8 Part 14
Easement for removal of support	Schedule 8 Part 15

5. Clause 88BA of the Conveyancing Act 1919 provides 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, where the terms included in these recitals would be used.

6. Clause 88BB of the Conveyancing Act 1919 provides for the automatic creation of cross-easements for party walls without the need to reference such an easement in the 88B Instrument. The plan must show a boundary of a lot as passing longitudinally through the whole or any part of a wall, with the wall labelled on the plan as a "party wall". Refer to Clause 88BB of the Conveyancing Act 1919 for more information.

D. ENDEVOUR ENERGY STANDARD TERMS

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

E. SPECIFIC TERMS

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

E1. 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 upon the extension of the adjoining public road to which it relates.

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 (Box Hill)

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 removal of the temporary stormwater management measures to which it relates. The "temporary stormwater management measures" are detailed on the plans approved by INSERT as Construction Certificate INSERT dated INSERT.

Zero Lot Line Dwellings

Easement for repairs (Conveyancing Act 1919 Schedule 8 Part 5) (amended)

Terms of Easement for repairs as per Part 5 Schedule 8 of the Conveyancing Act 1919 as amended together with the following addition:

1. The grant of this easement is made subject to the existence of, and the right of the owner of the lot burdened to construct, eaves and guttering from the structure on the lot burdened, that overhang the site of the easement.
2. The grant of this easement is made subject to the right of the owner of the lot burdened to carry out repairs and maintenance or improvements to any landscaping within the site of

the easement including installing a security gate at the entrance to the site of the easement from the front of the building structure on the lot burdened.

Easement for Batter/ Support of Public Road

Easement for batter

1. The body having the benefit of this easement, and every person authorised by it from time to time and at all times thereafter, may:
 - (a) Construct and maintain on the lot burdened, but only within the site of this easement, whatever earth, soil, cement, sand, clay and other material batter or embankment or removal of the whatever earth, soil, cement, sand, clay and other material batter or embankment is necessary or desirable, in the opinion of The Hills Shire Council, for the purpose of constructing, reconstructing and forever maintaining on the burdened lot a batter to serve as a support for any part of the adjacent road, including its under-surface.
 - (b) Do anything reasonably necessary for that purpose, including:
 - (i) Entering the lot burdened;
 - (ii) Taking anything on to the lot burdened; and
 - (iii) Carrying out work including all such incidental acts and things that may be necessary for the purpose of constructing, maintaining, repairing, altering or doing any work in the easement, including the removal and re-erection of any fences or other posts on the lot burdened.
2. The owner of the lot burdened must not:
 - (a) Interfere with, injure or damage the batter or embankment or the support it offers in any way which impairs its efficiency; or
 - (b) Use the site of this easement, or any other part of the lot burdened, or any other land, in a way which may affect or have a tendency to affect the stability of or the support provided by the batter or embankment for the road.
3. If the owner of the lot burdened does or allows anything to be done which damages the batter or embankment or impairs its effectiveness, they shall be liable, at their expense, to properly and substantially repair and make good all such injury and damage.

Temporary Right of Carriageway

Right of carriageway (Conveyancing Act 1919 Schedule 8 Part 1) (amended)

Terms of Right of carriageway as per Part 1 Schedule 8 of the Conveyancing Act 1919 as amended together with the following addition:

1. The easement will be extinguished upon alternate access to the public road network being made available.

Fire Trails

Easement for fire trail

1. With respect to this fire trail the registered proprietor/s of the lot/s benefited may:
 - (a) By any reasonable means pass across each lot burdened, but only within the site of this easement, for the purposes of access, maintenance, hazard reduction works, fire management works and responding to a bush fire or other emergency complying with the requirements of The Hills Shire Council and the NSW Rural Fire Service relevant and applicable at the time, and
 - (b) Do anything reasonably necessary for that purpose, including:
 - Entering the lot burdened, and
 - Taking anything on to the lot burdened, and
 - Carrying out work within the site of this easement, such as constructing, placing, repairing or maintaining trafficable surfaces, fire trails or structures.
2. In exercising those powers, the registered proprietor/s of the lot/s benefited must:
 - (a) Ensure all work is done properly, and
 - (b) Cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
 - (c) Cause as little damage as is practicable to the lot burdened and any improvement on it, and
 - (d) Restore the lot burdened as nearly as is practicable to its former condition, and
 - (e) Make good any collateral damage.

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

Asset Protection Zone

Easement for asset protection zone

1. For the purposes of this easement:

Asset protection zone has the meaning given to that term within Planning for Bushfire Protection 2019 (or equivalent where this document is superseded) produced by the NSW Rural Fire Service.
2. The registered proprietor/s of the lot/s hereby burdened by this easement must, in accordance with Australian Standard AS 3959-2009 Construction of buildings in bushfire-prone areas and Planning for Bushfire Protection 2019 (or equivalent where these documents are superseded):
 - (a) Create an asset protection zone within the area shown INSERT on the plan prior to commencement of any building works within the lot benefitted by this easement; and
 - (b) Maintain the area shown INSERT on the plan as an asset protection zone in perpetuity.
3. Full and free right for the registered proprietor/s and any contractor/s or employee/s of the registered proprietor/s of the lot/s benefited to access and traverse the area shown INSERT on the plan for the purpose of maintenance of the asset protection zone within the area

shown INSERT on the plan in accordance with Australian Standard AS 3959-2009 Construction of buildings in bushfire-prone areas and Planning for Bushfire Protection 2019 (or equivalent where these documents are superseded).

4. In so doing, the registered proprietor/s and any contractor/s or employee/s of the registered proprietor/s of the lot/s benefitted may take anything onto the area shown INSERT on the plan.

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

E2. RESTRICTIONS:

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

Onsite Stormwater Detention Systems

1. The registered proprietor shall not make or permit or suffer the making of any alterations to any onsite stormwater detention system which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of The Hills Shire Council.

The expression "onsite stormwater detention system" shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins, rainwater tanks (if an airspace "credit" is claimed against the storage volumes) and surfaces designed to temporarily detain stormwater as well as all surfaces graded to direct stormwater to the temporary storage.

The onsite stormwater detention system is detailed on the plans approved by INSERT as Construction Certificate Ref INSERT dated INSERT.

The above paragraph only applies to Construction Certificates issued by a certifier other than the Council, otherwise it must be removed.

2. The registered proprietor shall not erect or suffer the erection of any dwelling house or other structure on the lot(s) hereby burdened unless the registered proprietor has first constructed or has made provision for the construction of an onsite stormwater detention system on the said lot(s), in accordance with the design, construction and/ or provision requirements of The Hills Shire Council and to the satisfaction of The Hills Shire Council.

The expression "onsite stormwater detention system" shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins, rainwater tanks (if an airspace "credit" is claimed against the storage volumes) and surfaces designed to temporarily detain stormwater as well as all surfaces graded to direct stormwater to the temporary storage.

Clause 2 only applies where the construction of the onsite stormwater detention system is being deferred, which is only permitted where reflected in the conditions of consent issued by Council. Where the construction of the onsite stormwater detention system is being deferred, both Clause 1 and 2 must be included.

The above restriction is based on the model restriction included in the Upper Parramatta River Catchment Trust Onsite Stormwater Detention Handbook (December 2005) prepared by the former Upper Parramatta River Catchment Trust, now part of the Sydney Metro Catchment Management Authority.

Water Sensitive Urban Design Elements

1. The registered proprietor shall not make or permit or suffer the making of any alterations to any stormwater treatment measures/ water sensitive urban design elements which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of The Hills Shire Council.

The expression "stormwater treatment measures/ water sensitive urban design elements" means the infiltration systems, porous pavement, sediment basins, bio-retention swales, bio-retention basins, rain gardens, landscaped or vegetated swales, vegetated buffers, swale/ buffer systems, sand filter, wetlands, ponds, retarding basins, aquifer storage and recovery, rainwater reuse tanks, stormwater reuse tanks, gross

pollutant traps, pit inserts, silt/ oil arrestors or other proprietary products including all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins or surfaces graded to direct stormwater to the stormwater treatment measures/ water sensitive urban design elements.

The stormwater treatment measures/ water sensitive urban design elements is detailed on the plans approved by INSERT as Construction Certificate Ref INSERT dated INSERT.

The above paragraph only applies to Construction Certificates issued by a certifier other than the Council, otherwise it must be removed.

The above restriction is based on the model restriction included in the Upper Parramatta River Catchment Trust Onsite Stormwater Detention Handbook (December 2005) prepared by the former Upper Parramatta River Catchment Trust, now part of the Sydney Metro Catchment Management Authority and the document entitled Managing Urban Stormwater: Urban Design Consultation Draft (October 2007) prepared by the then NSW Department of Environment and Climate Change and the Sydney Metro Catchment Management Authority.

Rain Gardens (North Kellyville)

1. The registered proprietor shall not make or permit or suffer the making of any alterations to any rain garden which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of The Hills Shire Council.

The expression "rain garden" is defined as the pipes connecting from the downpipes, rainwater tank and surface inlet pits, inlet surcharge pit, surface storage volume, surface treatment including landscaping and vegetation, filter media, subsurface drainage and outlet pipe constructed in accordance with the design, construction and/ or provision requirements of The Hills Shire Council and to the satisfaction of The Hills Shire Council.

2. The registered proprietor shall not erect or suffer the erection of any dwelling house or other structure on the lot(s) hereby burdened unless the registered proprietor has first constructed or has made provision for the construction of a rain garden with a storage volume of INSERT and a surface area of INSERT on the said lot(s), in accordance with the design, construction and/ or provision requirements of The Hills Shire Council and to the satisfaction of The Hills Shire Council.
3. The registered proprietor shall not erect or suffer the erection of any dwelling house or other structure on the lot(s) hereby burdened unless the registered proprietor has first constructed or has made provision for the construction of a rain garden on the said lot(s), in accordance with the following table and the design, construction and/ or provision requirements of The Hills Shire Council and to the satisfaction of The Hills Shire Council.

Lot	Storage Volume	Surface Area
1	INSERT	INSERT
2	INSERT	INSERT

Clause 2 only applies where the construction of a rain garden within the lots created by a subdivision is being deferred until the building stage, which is only permitted where reflected in the conditions of consent issued by Council. Where the construction of a rain garden is being deferred, both Clause 1 and 2 must be included.

Clause 3 is an alternative to Clause 2 that can be used where the required storage volume/ surface area differs between lots within a subdivision.

2 only applies where the construction of a rain garden within the lots created by a subdivision is being deferred until the building stage, which is only permitted where reflected in the conditions of consent issued by Council. Where the construction of a rain garden is being deferred, both Clause 1 and 2 must be included.

The above restriction is based on the model restriction included in the Upper Parramatta River Catchment Trust Onsite Stormwater Detention Handbook (December 2005) prepared by the former Upper Parramatta River Catchment Trust, now part of the Sydney Metro Catchment Management Authority and the document entitled Managing Urban Stormwater: Urban Design Consultation Draft (October 2007) prepared by the then NSW Department of Environment and Climate Change and the Sydney Metro Catchment Management Authority.

Temporary Stormwater Management (Box Hill)

1. The registered proprietor shall not make or permit or suffer the making of any alterations to the temporary stormwater management measures constructed on the lot(s) burdened without the prior consent in writing of The Hills Shire Council.
2. The registered proprietor shall not erect or suffer the erection of any dwelling house or other structure on the lot(s) hereby burdened unless the temporary stormwater management measures have been removed complying with the requirements of The Hills Shire Council.

The "temporary stormwater management measures" are detailed on the plans approved by INSERT as Construction Certificate INSERT dated INSERT.

Clause 2 assumes the temporary measures are located on one or more approved/ planned residential lots. Slightly different wording may be required where this is not the case.

Stormwater Management (Rural)

The registered proprietor shall not erect or suffer the erection of any dwelling house or other structure on the lot(s) hereby burdened unless the registered proprietor has demonstrated that any stormwater runoff generated can be managed with respect to nuisance or flooding impacts on adjoining land or environmentally sensitive parts of the site as part of those works, in accordance with the design, construction and/ or provision requirements of The Hills Shire Council and to the satisfaction of The Hills Shire Council.

Early Linen Release/ Completion of Outstanding Works

No development shall be permitted on the lot(s) hereby burdened except for development in accordance with Development Consent DA INSERT issued by Council dated INSERT.

Rainwater Tanks

No dwelling shall be constructed on the lot(s) hereby burdened unless the registered proprietor has first constructed or has made provision for the construction of a rainwater tank with a minimum capacity of INSERT litres in accordance with the requirements of The Hills Shire Council.

The minimum rainwater tank volume for different release areas is tabulated below:

Balmoral Road Release Area	9,000 litres
Balmoral Road Release Area (Small Lot Housing/ Multi Dwelling Housing)	3,000 litres
Balmoral Road Release Area (Residential Flat Buildings)	20,000 litres

North Kellyville (Smalls Creek Catchment)	3,000 litres
North Kellyville (Cattai Creek Catchment)	4,000 litres
Box Hill	3,000 litres

Overland Flowpath

The registered proprietor of the lot(s) hereby burdened will in respect of the floodway:

1. Shall not make or permit or suffer the making of any alterations to the finished levels of the floodway, remove any of the associated drainage structures and flood protection devices or erect structures within the floodway.
2. Shall not make or permit or suffer the replacement or modification of fencing within the floodway except with open-style fencing complying with the requirements of The Hills Shire Council.
3. Shall not make or permit or suffer the placement or replacement of landscaping within the floodway except with grasses, shrubs in a moderate density or trees that in maturity have trunk diameters less than 300mm, complying with the requirements of The Hills Shire Council.

The expression "floodway" is all that area delineated INSERT on the plan.

Flood Planning Level

No dwelling house or other structure shall be constructed on the lot(s) hereby burdened with a finished floor level below the flood planning level INSERT associated with INSERT.

The "flood planning level" is the 1 in 100 year ARI storm event flood level plus a 0.5 metre freeboard sourced from INSERT prepared by INSERT dated INSERT.

Alternatively, where there are multiple flood planning levels that apply to a given lot, or where there are multiple lots each having a specific flood planning level, the following alternative wording can be used:

1. No dwelling house or other structure shall be constructed on the lot(s) hereby burdened with a finished floor level below the flood planning level shown in the table under point (3) below.
2. The "flood planning level" is the 1 in 100 year ARI storm event flood level plus a 0.5 metre freeboard sourced from INSERT prepared by INSERT dated INSERT. A copy of this information is held at Council Ref INSERT.
3. The flood planning level at any given point along the lot(s) burdened is defined by a level line perpendicular and coincident to a line represented by joining the levels shown in the table below:

Lot	FPL
1 (Northern Boundary)	RL 10 AHD
1 (Southern Boundary)	RL 12 AHD

Front Building Setback

No dwelling house or other structure shall be constructed on the lot(s) hereby burdened that is setback less than INSERT metres from the boundary with the primary road frontage complying with the requirements of The Hills Shire Council.

Building Envelope Plan (Growth Centre Release Areas)

No development shall be permitted on the lot(s) hereby burdened except for development in accordance with the building envelope plan prepared by INSERT Drawing INSERT Revision INSERT dated INSERT approved by INSERT.

Approved Dwelling Footprint

No part of a dwelling or other habitable building may be constructed or allowed to remain on the lot(s) hereby burdened unless it is contained wholly within the approved dwelling footprint delineated INSERT on the plan complying with the requirements of The Hills Shire Council.

Classified Road Rear Building Setback (Normal)

No dwelling house or other structure shall be constructed on the lot(s) hereby burdened that is setback to a classified road less than 6 metres for any single storey component increasing to 8 metres for any second storey component complying with the requirements of The Hills Shire Council.

Classified Road Rear Building Setback (Balmoral Road Release Area)

No dwelling house or other structure shall be constructed on the lot(s) hereby burdened that is setback to a classified road less than 10 metres complying with the requirements of The Hills Shire Council.

Restricted Access

No vehicular access or route to or from any part of INSERT and the lot(s) hereby burdened is permitted complying with the requirements of The Hills Shire Council.

Acoustic Requirements

No dwelling house or other structure shall be constructed on the lot(s) hereby burdened unless they are constructed in accordance with the following acoustic recommendations from the report prepared by INSERT dated INSERT complying with the requirements of The Hills Shire Council:

1. INSERT

Residue Lots

1. No development shall be permitted on the lot(s) hereby burdened until it is re-subdivided complying with the requirements of The Hills Shire Council.
2. No development shall be permitted on the lot(s) hereby burdened until it is re-subdivided with INSERT adjoining complying with the requirements of The Hills Shire Council.

This restriction only applies where specifically required in the conditions of consent issued by Council. Either Clause 1 or Clause 2, but not both, must be used.

Bushfire Requirements/ Asset Protection Zone

1. 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 The Hills Shire Council and the NSW Rural Fire Service relevant and applicable at the time.

2. The asset protection zone referred to has been determined at the subdivision stage based on a deemed-to-satisfy, or performance based, solution and relates to a setback measured from the bush fire threat where the radiant heat flux is 29 kilowatts per square metre, or less, and there is no flame contact (setback greater than flame length in radiant heat modelling) as required by Australian Standard AS 3959-2009 Construction of buildings in bushfire-prone areas and Planning for Bushfire Protection 2019 (or equivalent where these documents are superseded). The Bushfire Attack Level (BAL) needs to be determined at the building stage and may range from BAL Low through to BAL Flame Zone based on the setback to the bush fire threat. If the proposed dwelling is located closer to the bush fire hazard than proposed at the subdivision stage, or if the nature of the bush fire hazard has changed, the required BAL may be higher than BAL 29 which may impact building construction costs.

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.

Vegetation Management Plan/ Restricted Development Area

1. No development shall be permitted on the lot(s) hereby burdened within the restricted development area shown INSERT on the plan complying with the requirements of The Hills Shire Council.
2. No grazing of animals shall be permitted on the lot hereby burdened within the restricted development area shown INSERT on the plan complying with the requirements of The Hills Shire Council.

This is a general restriction that will typically need to be built upon in response to any site specific vegetation management requirements reflected in the consent issued by Council. Clause 2 should only be used where required by Council.

Geotechnical Constraints (Restricted Development Area)

No development shall be permitted on the lot(s) hereby burdened within the geotechnically sensitive/ constrained area delineated INSERT on the plan complying with the requirements of The Hills Shire Council.

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

Geotechnical Constraints (Development of Lots)

No development shall be permitted on the lot(s) hereby burdened unless it is considerate of the geotechnically sensitive/ constrained nature of the site as covered in the geotechnical report prepared by INSERT dated INSERT, complying with the requirements of The Hills Shire Council relevant and applicable at the time.

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

SEPP Affordable Rental Housing 2009

The use of the lot(s) hereby burdened is restricted in accordance with Clause 17 of State Environmental Planning Policy (Affordable Rental Housing) 2009 and Section 88E of the Conveyancing Act 1919 to the effect that for 10 years from the date of the issue of the Occupation Certificate:

1. The dwellings/ units proposed to be used for the purposes of affordable housing will only be used for the purposes of affordable housing; and
2. All accommodation that is used for affordable housing will be managed by a registered community housing provider.

SEPP Housing for Seniors or People with a Disability 2004

The use of the lot(s) hereby burdened is restricted in accordance with Clause 18 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and Section 88E of the Conveyancing Act 1919 to the effect that the development may be used for the accommodation of the following only:

1. Seniors or people who have a disability;
2. People who live within the same household with seniors or people who have a disability;
3. Staff employed to assist in the administration of and provision of services to housing provided under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Bedroom Numbers (Medium/ High Density Residential Development)

The registered proprietor shall not make or permit or suffer the making of any alterations or additions to the residential accommodation (including, but not limited to, individual units within a residential flat building or multi dwelling housing development) which is, or shall be, constructed on the lot(s) burdened that will result in the creation of additional bedrooms.

The number of bedrooms within each dwelling/ unit is shown on the plans/ details approved by Council as Development Consent DA INSERT, a copy of which is held at Council.

E3. POSITIVE COVENANTS:

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

Onsite Stormwater Detention Systems

1. The registered proprietor of the lot(s) hereby burdened will in respect of the onsite stormwater detention system:
 - (a) Keep the onsite stormwater detention system clean and free from silt, rubbish and debris;
 - (b) Maintain and repair at the sole expense of the registered proprietors the whole of the onsite stormwater detention system 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 and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant; and
 - (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.
2. Pursuant to Section 88F(3) of the Conveyancing Act 1919 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 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 subparagraph (a) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (a) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.
 - (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 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.

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

The above positive covenant is based on the model positive covenant included in the Upper Parramatta River Catchment Trust Onsite Stormwater Detention Handbook (December 2005) prepared by the former Upper Parramatta River Catchment Trust, now part of the Sydney Metro Catchment Management Authority.

Water Sensitive Urban Design Elements

1. The registered proprietor(s) covenant as follows with the Council benefited in respect to the stormwater treatment measures/ water sensitive urban design elements constructed and/ or installed on the lots(s), that they will:
 - (a) Keep the stormwater treatment measures/ water sensitive urban design elements clean and free from silt, rubbish and debris;
 - (b) Maintain and repair the stormwater treatment measures/ water sensitive urban design elements at the sole expense of the registered proprietor(s), so that it functions in a safe and efficient manner, in accordance with the manufacturers recommended requirements and/ or the "maintenance and procedures operational plan" as approved by INSERT as Construction Certificate Ref INSERT dated INSERT. A copy of this Construction Certificate is held at Council Ref INSERT. A copy of this plan is available to all owners and occupiers of the lot(s).
 - (c) For the purposes of ensuring observance of this covenant, permit The Hills Shire Council to enter the land and inspect the condition of the stormwater treatment measures/ water sensitive urban design elements and the state of construction, maintenance or repair of the stormwater treatment measures/ water sensitive urban design elements, for compliance with the requirements of this covenant.
 - (d) Notify Council after each programmed maintenance inspection.
 - (e) Comply with the terms of any written notice issued by the Council to attend to any matter and carry out such work within the time stated in the notice, to ensure the proper and efficient performance of the stormwater treatment measures/ water sensitive urban design elements and to that extent Section 88F(2)(a) of the Conveyancing Act 1919 is hereby agreed to be amended accordingly.
2. Pursuant to Section 88F(3) of the Act the Council shall have the following additional powers pursuant to this covenant:
 - (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 may enter the land with all necessary equipment and carry out any work considered by Council to be reasonable to comply with the said notice referred to 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 subparagraph (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 work.
 - (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 or providing any certificate required pursuant to Section 88G of the Act or obtaining any injunction pursuant 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.

The above positive covenant is based on the model positive covenant included in the document entitled Managing Urban Stormwater: Urban Design Consultation Draft (October 2007) prepared by the then NSW Department of Environment and Climate Change and the Sydney Metro Catchment Management Authority.

Rain Gardens (North Kellyville)

1. The registered proprietor(s) covenant as follows with the Council benefited in respect to the rain garden constructed and/ or installed on the lots(s), that they will:
 - (a) Keep the rain garden clean and free from silt, rubbish and debris;
 - (b) Maintain and repair the stormwater rain garden in accordance with the Rain Gardens Maintenance and Operations Plan prepared by The Hills Shire Council at the sole expense of the registered proprietor(s), so that it functions in a safe and efficient manner.
 - (c) For the purposes of ensuring observance of this covenant, permit The Hills Shire Council to enter the land and inspect the condition of the rain garden and the state of construction, maintenance or repair of the rain garden, for compliance with the requirements of this covenant.
 - (d) Comply with the terms of any written notice issued by the Council to attend to any matter and carry out such work within the time stated in the notice, to ensure the proper and efficient performance of the rain garden and to that extent Section 88F(2)(a) of the Conveyancing Act 1919 is hereby agreed to be amended accordingly.
2. Pursuant to Section 88F(3) of the Act the Council shall have the following additional powers pursuant to this covenant:
 - (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 may enter the land with all necessary equipment and carry out any work considered by Council to be reasonable to comply with the said notice referred to 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 subparagraph (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 work.
 - (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 or providing any certificate required pursuant to Section 88G of the Act or obtaining any injunction pursuant 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.

The above positive covenant is based on the model positive covenant included in the document entitled Managing Urban Stormwater: Urban Design Consultation Draft (October 2007) prepared by the then NSW Department of Environment and Climate Change and the Sydney Metro Catchment Management Authority.

Temporary Stormwater Management (Box Hill)

The registered proprietor(s) covenant as follows with the Council benefited in respect to the temporary stormwater management measures constructed on the lots(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 The Hills Shire Council.

The "temporary stormwater management measures" are detailed on the plans approved by INSERT as Construction Certificate INSERT dated INSERT.

Basement Stormwater Pump System

1. The registered proprietor of the lot(s) hereby burdened will in respect of the basement stormwater pump-out system:
 - (a) Maintain and repair at the sole expense of the registered proprietors the whole of the basement stormwater pump-out system 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 and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant; and
 - (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.

The expression "basement stormwater pump-out system" shall include all pump mechanisms, rising mains, collection sumps, ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to direct stormwater to the basement stormwater pump-out system.

2. Pursuant to Section 88F(3) of the Conveyancing Act 1919 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 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 subparagraph (a) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (a) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.
- (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 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.

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

Absorption Trenches

The registered proprietor of the lot(s) hereby burdened will maintain and repair at the sole expense of the registered proprietors the whole of the absorption trench so that it functions in a safe and efficient manner.

The expression "absorption trench" shall include all filter material, ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to direct stormwater to the absorption trench.

This positive covenant can only be used where Council has specifically permitted the use of an absorption trench, as reflected in the conditions of consent issued by Council.

The use of absorption trenches, in-principle, are discouraged as they do not provide for a legal point of discharge non-complying with Council's Design Guidelines Subdivisions/ Developments. It is understood that their use is necessary, as a last resort, in a small number of very low impact developments to address nuisance runoff in some established areas where the provision of a legal point of discharge for each lot was not considered as part of the initial subdivision.

Overland Flowpath

1. The registered proprietor(s) covenant as follows with the Council benefited in respect to the floodway constructed on the lots(s), that they will:
 - (a) Keep the floodway clean and free from silt, rubbish and debris;
 - (b) Maintain and repair the floodway at the sole expense of the registered proprietor(s), so that it functions in a safe and efficient manner;
 - (c) For the purposes of ensuring observance of this covenant, permit The Hills Shire Council to enter the land and inspect the condition of the floodway and the state of construction, maintenance or repair of the system, for compliance with the requirements of this covenant; and
 - (d) Comply with the terms of any written notice issued by the Council to attend to any matter and carry out such work within the time stated in the notice, to ensure the proper and efficient performance of the floodway and to that extent Section 88F(2)(a) of the Conveyancing Act 1919 is hereby agreed to be amended accordingly.

2. Pursuant to Section 88F(3) of the Act the Council shall have the following additional powers pursuant to this covenant:
 - (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 may enter the land with all necessary equipment and carry out any work considered by Council to be reasonable to comply with the said notice referred to 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 subparagraph (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 work.
 - (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 or providing any certificate required pursuant to Section 88G of the Act or obtaining any injunction pursuant 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.

The expression "floodway" is all that area delineated INSERT on the plan.

Bushfire Requirements/ Asset Protection Zone

1. The registered proprietor of the lot(s) hereby burdened will maintain at the sole expense of the registered proprietor the whole of the asset protection zone delineated INSERT on the plan, including, but not limited to, the removal of vegetation in accordance with fuel load requirements and restricting the placement of combustible materials, buildings or improvements, complying with the requirements of The Hills Shire Council and the NSW Rural Fire Service relevant and applicable at the time.
2. The registered proprietor of the lot(s) hereby burdened will maintain at the sole expense of the registered proprietor the whole of their lot as an asset protection zone, including, but not limited to, the removal of vegetation in accordance with fuel load requirements and restricting the placement of combustible materials, buildings or improvements, complying with the requirements of The Hills Shire Council and the NSW Rural Fire Service relevant and applicable at the time.
3. The registered proprietor of the lot(s) hereby burdened will maintain at the sole expense of the registered proprietor the whole of the asset protection zone measured from the outside walls of the existing dwelling house present at the time this plan was registered, for the distances defined in the following table, including, but not limited to, the removal of vegetation in accordance with fuel load requirements and restricting the placement of combustible materials, buildings or improvements, complying with the requirements of The Hills Shire Council and the NSW Rural Fire Service relevant and applicable at the time:

Orientation	APZ Distance/ Depth
-------------	---------------------

North	
South	
East	
West	

4. Any dwelling house or other habitable structure constructed on the lot(s) hereby burdened must be located wholly within the area nominated for development/ defined as an asset protection zone by this positive covenant. Any asset protection zone relating to this dwelling house or other habitable structure must also be contained to this same area, sized to comply with the requirements of The Hills Shire Council and the NSW Rural Fire Service relevant and applicable at the time.
5. The asset protection zone referred to has been determined at the subdivision stage based on a deemed-to-satisfy, or performance based, solution and relates to a setback measured from the bush fire threat where the radiant heat flux is 29 kilowatts per square metre, or less, and there is no flame contact (setback greater than flame length in radiant heat modelling) as required by Australian Standard AS 3959-2009 Construction of buildings in bushfire-prone areas and Planning for Bushfire Protection 2019 (or equivalent where these documents are superseded). The Bushfire Attack Level (BAL) needs to be determined at the building stage and may range from BAL Low through to BAL Flame Zone based on the setback to the bush fire threat. If the proposed dwelling is located closer to the bush fire hazard than proposed at the subdivision stage, or if the nature of the bush fire hazard has changed, the required BAL may be higher than BAL 29 which may impact building construction costs.

This is a general positive covenant relating to the establishment and maintenance of asset protection zones that may need to be built upon in response to any site specific bushfire requirements reflected in the consent issued by Council.

For each lot within a plan, only one of Clauses 1, 2 or 3 should be used. Clause 1 applies where the asset protection zone required by the consent only affects a portion of the lot(s), Clause 2 applies where the asset protection zone affects the entire lot(s) and Clause 3 applies where there is an existing dwelling house or other habitable structure on the lot(s).

Clause 4 needs to be used where a dwelling house or other habitable structure is expected to be constructed within the asset protection zone defined on the plan and included a complying asset protection zone sized and located at the building application stage.

Clause 5 needs to be added when called for by the consent/ Council staff.

Vegetation Management Plan

1. The registered proprietor of the lot(s) hereby burdened must comply with the vegetation management plan prepared by INSERT dated INSERT relating to the restricted development area shown INSERT on the plan throughout the occupation and use of the development complying with the requirements of The Hills Shire Council.
2. The registered proprietor of the lot(s) hereby burdened must maintain the rural fence and signage referred to in the vegetation management plan throughout the occupation and use of the development complying with the requirements of The Hills Shire Council.
3. Pursuant to Section 88F(3) of the Act the Council shall have the following additional powers pursuant to this covenant:
 - 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 may enter the land with all

necessary equipment and carry out any work considered by Council to be reasonable to comply with the said notice referred to 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 work.
 - (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 or providing any certificate required pursuant to Section 88G of the Act or obtaining any injunction pursuant 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.

This is a general positive covenant that will typically need to be built upon in response to any site specific vegetation management requirements reflected in the consent issued by Council. Clause 2 should only be used where required by Council.

Geotechnical Constraints

The registered proprietor of the lot(s) hereby burdened must comply with the geotechnical report prepared by INSERT dated INSERT relating to the geotechnically sensitive/ constrained area delineated INSERT on the plan throughout the occupation and use of the development complying with the requirements of The Hills Shire Council.

This is a general positive covenant that will typically need to be built upon in response to any site specific geotechnical requirements reflected in the consent issued by Council.

Flood Emergency Response Plan

The registered proprietor of the lot(s) hereby burdened must comply with the flood emergency response plan prepared by INSERT dated INSERT throughout the occupation and use of the development complying with the requirements of The Hills Shire Council.

This is a general positive covenant that will typically need to be built upon in response to any site specific flood emergency response requirements reflected in the consent issued by Council.

Waste Collection/ Bin Presentation

The registered proprietor of the lot(s) hereby burdened must present their garbage bins at INSERT for collection until such time as INSERT, complying with the requirements of The Hills Shire Council.

Onsite Waste Collection

1. In this covenant the expressions defined in this clause shall have the meanings ascribed to them unless the context otherwise requires:

Prescribed Authority means The Hills Shire Council and any local government Council with which that Council may merge and any other Prescribed Authority within the meaning of

Section 88E of the Conveyancing Act 1919 NSW which may be responsible for the removal of Waste from the land burdened.

Contractor means any entity engaged by the Prescribed Authority to remove waste from the land burdened and any sub-contractor, officer, employee or agent of that entity and includes any officer, employee or agent of the Prescribed Authority.

Owners Corporation means an owners corporation as defined in the Strata Schemes Management Act 1996 NSW or a community association, neighbourhood association or precinct association as defined in the Community Land Management Act 1989 NSW, as the case may be.

Waste includes any garbage, recyclables, vegetable or other materials which the registered proprietor or any user or occupier of the land burdened (or where such proprietor is an Owners Corporation, the registered proprietor of any lot in that scheme) leaves out for collection (whether in bins or otherwise) by the Prescribed Authority or the Contractor.

2. The registered proprietor of the land burdened must permit the Prescribed Authority and the Contractor to enter upon the land burdened with or without vehicles for the purpose of the removal of Waste and to remain upon such land for a reasonable time for the purpose of such removal.
3. The registered proprietor of the land burdened cannot make any claim against the Prescribed Authority or the Contractor for any repairs or damage caused to the land burdened as a result of the Prescribed Authority or the Contractor exercising the rights set out in clause 2.
4. The registered proprietor of the land burdened indemnifies the Prescribed Authority and the Contractor against any future claim for damage or loss arising from the exercise by the Prescribed Authority or the Contractor of the rights set out in clause 2 except to the extent that such damage or loss is a result of the negligence of the Prescribed Authority or the Contractor as the case may be.

Maintenance/ Repair of Shared Access (Clause 88BA of the Conveyancing Act 1919)

The registered proprietor of the lot(s) hereby burdened will in respect of the right of access INSERT referred to in the above plan:

1. Maintain the driveway surface and any associated drainage system in reasonable working condition.
2. Repair and/ or restore the driveway surface and associated drainage system as nearly as practicable to its former condition.
3. Share the costs of the above works equally (or proportionally to usage) with all other registered proprietors of other lots similarly burdened by this covenant.
4. Allow the placement and maintenance of a letterbox for any and all of the lots serviced by the right of access within the right of access at a location on either side of the driveway at the front of the site facing the road alignment.

Easement Encroachments

1. The registered proprietor of the lot(s) hereby burdened will in respect of any encroaching structure within the INSERT that exists on the title of the property:

- (a) Demolish any encroaching structure and remove the demolished materials from the property to an approved waste disposal location;
 - (b) The cost of all work associated with complying with sub-point (a) above shall be at the sole expense of the registered proprietors;
 - (c) Permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant; and
 - (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.
2. Pursuant to Section 88F(3) of the Conveyancing Act 1919 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(d) 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 subparagraph (a) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (a) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.
 - (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 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.

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

The expression "encroaching structure" is those structures delineated as such on the attached survey plan.

E4. BY-LAWS:

Identified in Part 5 of the community management statement as shown in italics below:

Vegetation Protection – The Hills Shire Council

1. The association must comply with the vegetation management plan prepared by INSERT dated INSERT relating to the restricted development area shown on the Deposited Plan throughout the occupation and use of the development complying with the requirements of The Hills Shire Council.
2. The association must maintain the rural fence and signage referred to in the vegetation management plan throughout the occupation and use of the development complying with the requirements of The Hills Shire Council.
3. The association shall not resolve to clear vegetation under the 10/50 Vegetation Clearing Scheme within the community association lot without the written consent of The Hills Shire Council. The association shall not consent to any application from a proprietor for the same, without the written consent of The Hills Shire Council.
4. This by-law shall not be amended in any way without the written consent of The Hills Shire Council.

Bushfire Requirements/ Asset Protection Zone – The Hills Shire Council

1. The association and registered proprietor/s of the lot/s must main the asset protection zone/s shown on the Deposited Plan and described in the associated Section 88B instrument.
2. The asset protection zone referred to has been determined at the subdivision stage based on a deemed-to-satisfy, or performance based, solution and relates to a setback measured from the bush fire threat where the radiant heat flux is 29 kilowatts per square metre, or less, and there is no flame contact (setback greater than flame length in radiant heat modelling) as required by Australian Standard AS 3959-2009 Construction of buildings in bushfire-prone areas and Planning for Bushfire Protection 2019 (or equivalent where these documents are superseded). The Bushfire Attack Level (BAL) needs to be determined at the building stage and may range from BAL Low through to BAL Flame Zone based on the setback to the bush fire threat. If the proposed dwelling is located closer to the bush fire hazard than proposed at the subdivision stage, or if the nature of the bush fire hazard has changed, the required BAL may be higher than BAL 29 which may impact building construction costs.
3. The association and registered proprietor/s of the lot/s must main the fire trails shown on the Deposited Plan and described in the associated Section 88B instrument.
4. The association and registered proprietor/s of the lot/s must main the fire trails shown on the plan annexed to this plan (refer to sheet INSERT).
5. The association must permit hazard reductions works when proposed by the Hills District Rural Fire Service and the Hills District Bush Fire Management Committee which involves the association lot.
6. The association must establish a protocol/ policy for appropriate consultation with the Hills District Rural Fire Service and confirm details and arrangements for permissions for fire management works on the association lot together with any other community engagement advice for the plan.

7. The registered proprietor/s and/ or the occupant/s of the lot/s must prepare a personal bush fire survival plan that stipulates their leave early or stay and defend course of action.
8. Annexed to this management statement is a bushfire emergency evacuation plan prepared by INSERT Reference INSERT dated INSERT.
9. Before each lot is occupied the registered proprietor/s of each of the lot/s must complete the bushfire emergency evacuation plan with their relevant household details.
10. The association and registered proprietor/s and/ or the occupant/s of the lot/s must establish an emergency control organisation at the first annual general meeting to be run in accordance with the bushfire emergency evacuation plan.
11. The emergency control organisation must be constituted by one representative from each lot as well as the chairperson of the executive committee (noting a person can be both).
12. The emergency control organisation must update the bushfire emergency evacuation plan and supply a copy to the Hills District Rural Fire Service, undertake an audit of any dwellings and other structures within the plan, advise registered proprietor/s and/ or the occupant/s of the lot/s of the bushfire emergency evacuation plan, ensure that the registered proprietor/s and/ or the occupant/s of the lot/s have prepared personal bush fire survival plan as per this by-law and implement the bushfire emergency evacuation plan.
13. This by-law shall not be amended in any way without the written consent of The Hills Shire Council.

This is a generic by-law that will need to be amended or built upon in response to any site specific bushfire requirements reflected in the consent issued by Council.