

CUMBERLAND COUNCIL

Standard Terms for Restriction on the Use of Land and Positive Covenant commonly imposed by instrument under Section 88B of the Conveyancing Act, 1919 as amended.

*Restriction & Covenant for constructed **Onsite Stormwater Detention system/s** Pursuant to Section 88E of the Conveyancing Act, 1919.*

1. Terms of Restriction on the Use of Land:

Property Address:

Lot No. ... , Section.... ; DP.....

Terms of “Restriction On the Use of Land”:

The registered proprietor shall not make or permit or suffer the making of any alterations to the **On-site Stormwater Detention System**, which is constructed on the lot(s) burdened without the prior consent in writing of **Cumberland Council**. The expression “on site stormwater detention system “shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater, as well as all surfaces graded to direct stormwater to the temporary storage. Any on-site stormwater detention system constructed on the lot burdened is hereafter referred to as “the system”.

Name of Authority having the power to release vary or modify the above mentioned Restriction is **Cumberland Council**.

Execution by the Registered Proprietor

SIGNED in my presence by:

.....
Name of the Registered Proprietor

.....
Signature of the Registered Proprietor

.....
Address of the Registered Proprietor

.....
Name of Witness (BLOCK LETTERS)

.....
Signature of witness

.....
Address & Occupation of Witness

Execution by the Prescribed Authority

Authorised officer as Delegate of **Cumberland Council** pursuant to Section 378 of Local Government Act 1993.

.....
Name of Authorised Officer

.....
Signature of the Authorised Officer

.....
Position of Authorised Officer

.....
Name of Witness

.....
Signature of Witness

.....
Address of Witness

2. Terms of Positive Covenant:

Property Address:

Lot No. ... , Section.... ; DP.....

Terms of Positive Covenant

1. The registered proprietor of the lot(s) hereby burdened will in respect of the **On-site Stormwater Detention (OSD)** system:
 - (a) keep the 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 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.
 - (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.
 - (e) refer to the maintenance schedule and the approved stormwater plans as an appendix to items (a) and (b) mentioned above.
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.
 - (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) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the said work, 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.
3. This covenant shall bind all persons who are or claim under the registered proprietor(s) as stipulated in Section 88E(5) of the Act.

For the purposes of this covenant, "the system" means the **On-site Stormwater Detention System** constructed on the land, including all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins, and surfaces designed to temporarily detain stormwater, as well as all surfaces graded to direct stormwater to the temporary storage.

Terms of Positive Covenant Contd...

Property Address:

Lot No. ... , Section.... ; DP.....

4. Terms of Positive Covenant for the PUMP SYSTEM *(Additional terms for pump-out system)*

4.1 The registered proprietor covenants as follows with the Council in respect to the "**Pump-out System**" installed on land (which includes pumps, holding tank, delivery lines and electrical works) shown on the approved plans.

The registered proprietor shall:

- (a) Keep the pump system clean and free of silt, dirt, rubbish and debris.
- (b) Maintain, renew and repair the whole or parts of pump system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the-Council.
- (c) Carry out the matters referred in paragraphs (a) and (b).
- (d) Make no alterations to the pump system of elements thereof without prior consent in writing to the Council.
- (e) Permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the pump system for compliance with the requirements of this Clause.
- (f) Comply with the terms of any written notice issued by the Council in respect to the requirements of this Clause within the time stated in the notice.

4.2. In the event of the registered proprietor failing to comply with the terms of any written notice served in respect of the matters in Clause 4.1 the Council or its authorised agents may enter with an necessary equipment and carry out any work required to ensure the safe and efficient operation of the pump system and recover from the registered proprietor(s) the cost of carrying out the work, and if necessary, recover the amount due by legal proceedings (including legal costs and fees) and entry of a covenant charge on the land under Section 88F of the Conveyancing Act 1919. In carrying out any work under this Clause, the Council shall take reasonable precautions to ensure that the land is disturbed as little as possible.

Name of Authority having the power to release vary or modify the above mentioned **Positive Covenant** is **Cumberland Council**.

Execution by the Registered Proprietor

SIGNED in my presence by:

.....
Name of the Registered Proprietor

.....
Signature of the Registered Proprietor

.....
Address of the Registered Proprietor

.....
Name of Witness (BLOCK LETTERS)

.....
Signature of witness

.....
Address & Occupation of Witness

Execution by the Prescribed Authority

Authorised officer as Delegate of **Cumberland Council** pursuant to Section 378 of Local Government Act 1993.

.....
Name of Authorised Officer

.....
Signature of the Authorised Officer

.....
Position of Authorised Officer

.....
Name of Witness

.....
Signature of Witness

.....
Address of Witness