

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 **Overland flowpath/s** Pursuant to Section 88E of the Conveyancing Act, 1919. i) Terms of Restriction on the Use of*

1. Terms of Restriction on the Use of Land:

Property Address:

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

The registered proprietor shall not make or permit or suffer the making of any alterations to the **overland flowpath**, which is constructed on the lot(s) burdened without the prior consent in writing of **Cumberland Council**. The expression "**overland flowpath**" shall include all pipes, drains, walls, kerbs, pits, grates, fencing and all surfaces graded to direct the **overland flowpath** through the site. Any **overland flowpath** constructed on the lots burdened is hereafter referred to as "**the flowpath**".

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 lots hereby burdened will in respect of the **Overland flowpath**:
 - a) keep the **flowpath** clean and free from obstructions, rubbish and debris
 - b) maintain and repair at the sole expense of the registered proprietor the whole of the **flowpath** 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 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

2. Pursuant to Section 88F(3) of the Conveyancing Act 1919-64 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 the 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 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, tools and equipment in conjunction with the said work.
 - ii. legal costs on an indemnity basis for the 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.

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

Terms of Positive Covenant Contd...

Property Address:

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

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