

## CREATION OF A POSITIVE COVENANT & RESTRICTION ON THE USE OF LAND

### ON-SITE DETENTION SYSTEM (OSD) AND/OR ON-SITE RETENTION SYSTEM (RSD) AND/OR WATER SENSITIVE URBAN DESIGN SYSTEM (WSUD)

The registration of a positive covenant and restriction for an on-site detention system (or similar) is often one of the final hurdles before an Occupation Certificate can be issued in respect of a new build.

Penmans are regularly approached by owners, builders and surveyors to assist with positive covenants and restrictions that are required as part of the development consent process for various types of development including subdivisions, unit developments and stand-alone dwellings. We can assist with these matters for properties located anywhere within NSW.

These are sometimes referred to as “Section 88E requirements”. Essentially, they create both the right in favour of the Council for the OSD to be installed and remain on the land, and govern the restrictions on how that affected part of the land can be used. They create a permanent interest in land in favour of the Council.

We charge a fixed fee of **\$1,760** (inclusive of GST) together with out-of-pocket expenses (set out below). If the property is mortgaged, this includes us obtaining the consent of the lender. The lender will likely charge fees to provide consent, which differ from lender to lender and are usually charged by the lender to the owner directly. The Council may also engage lawyers, and if it does you will also be responsible for the Council’s legal fees.

#### Disbursements\*

Verification of Identity	\$29.90
DocuSign fee	\$8.50
Title Searches:     Before registration	\$31.00
Post registration	\$31.00
Dealing: Positive Covenant	\$33.93
Dealing: Restriction of Use	\$33.93
ASIC Search (if a Corporation)	\$28.03

*partnering with people since 1946*



We have Accredited Specialists in  
Property Law and Wills & Estates

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Registration Fees: Restriction of Use	\$175.70
Positive Covenant	\$175.70
Associated Plan	\$175.70
PEXA Fees	\$88.00

\*Disbursement amounts are current as of August 2025 and include GST, if applicable.

Included in our fixed fee is the cost of the preparation of all the necessary documents, liaising with the Council and Council's lawyers, surveyor and lender (if applicable), and registration of positive covenant and restriction.

The steps are:

- a) We will verify your identity (which is required for both our purposes and NSW Land Registry Services). This is done either in person or via a link sent to your mobile device;
- b) We will review the development consent and prepare the positive covenant and restriction and arrange for them to be approved by the Council and signed by the landowner and the Council;
- c) We will arrange mortgagee consent, if that is required; and
- d) We will arrange registration of both documents.

### Next Steps

Please fill in our [contact form](#) and include in the comments that you require a positive covenant and restriction on the use of land for an OSD/RSD/WSUD, and a member of our property team will be in contact with you.

The information contained in this fact sheet is not, nor is it intended to be, legal advice. You should consult a Solicitor for individual advice regarding your own situation. Liability limited by a scheme approved under Professional Standards Legislation.

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**Fixed fees current as of March 2026.**