CUMBERLAND CITY 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 Compensatory Flood Storage
Pursuant to Section 88E of the Conveyancing Act, 1919.

i) 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 compensatory flood storage, which is constructed on the lot(s) burdened without the prior consent in writing of Cumberland Council. The expression “compensatory flood storage” shall include all 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 compensatory flood storage constructed on the lots burdened is hereafter referred to as “the flood storage”.

Name of Authority having the power to release, vary or modify the restriction …………. referred to is Cumberland Council.

(Note: Use above terms on separate page when creating Restriction on Use of Land - via Forms 13RPA, edition 1111)

ii) Terms of Positive Covenant:

1. The registered proprietor of the lots hereby burdened will in respect of the flood storage:
   a) keep the flood storage clean and free from rubbish and debris
   b) maintain and repair at the sole expense of the registered proprietor the whole of the flood storage 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.

Name of Authority having the power to release, vary or modify the Positive Covenant …………. referred to is Cumberland City Council.

(Note: Use above terms on separate page when creating Positive Covenant - via Forms 13PC, edition 1111 and the term “the flood storage” is to be defined as per the expression “compensatory flood storage” in (i) above)