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# **BUSINESS PAPER**

## **Additional Item**

### **Ordinary Council Meeting**

**2 April 2019**

**Warwick Bennett  
General Manager**



We hereby give notice that an Ordinary Meeting of Council will be held on:

Tuesday, 2 April 2019 at 6pm  
in the Council Chambers, Civic Centre  
184 - 194 Bourke Street, Goulburn

**Order Of Business**

**12 Items for Determination .....5**  
12.11 Variation to the Joseph's Gate Voluntary Planning Agreement .....5

**Cr Bob Kirk**  
**Mayor**

**Warwick Bennett**  
**General Manager**



**12 ITEMS FOR DETERMINATION**

**12.11 VARIATION TO THE JOSEPH'S GATE VOLUNTARY PLANNING AGREEMENT**

**Author:** Scott Martin, Director Planning & Environment

**Authoriser:** Warwick Bennett, General Manager

- Attachments:**
1. [Landscape Master Plan](#)  
  2. [Voluntary Planning Agreement](#)  

<b>Link to Community Strategic Plan:</b>	EN3 Protect and rehabilitate waterways and catchments. EN4 Maintain a balance between growth, development and environmental protection through sensible planning. IN3 Maintain and improve road infrastructure and connectivity.
<b>Cost to Council:</b>	Costs to Council will be recouped as part of the VPA
<b>Use of Reserve Funds:</b>	Nil

**RECOMMENDATION**

That:

1. The report from the Director Planning and Environment in relation to a proposed variation to the Joseph’s Gate Voluntary Planning Agreement (VPA) be received.
2. Council supports a variation to the VPA to defer the completion of the Stage 1 pedestrian pathway between the development site and Wollondilly Avenue until such time as the fill on the site has been examined in terms of the contents and stability.
3. The deferral of the pedestrian pathway only be supported upon receipt of a final design and the submission of a monetary bond amounting to the value of the works.
4. The Mayor and General Manager be delegated authority to endorse the written agreement.

**BACKGROUND**

On 15 August 2017 a Deferred Commencement consent for development application DA/0182/1617 was issued for a proposed staged subdivision of land into 115 lots at 153 Taralga Road, Goulburn. This is commonly known as the Joseph’s Gate development.

The development application granted consent for:

- Demolition of structures
- Boundary adjustment
- Staged subdivision of land into 112 residential lots with 3 residue lots; and
- Construction of associated infrastructure

A VPA was entered into with the developer on 21 September 2017 (refer Attachment), which included the construction of a pedestrian pathway including a boardwalk over steep terrain from the site to join the footpath in Wollondilly Avenue and the former Boathouse site. A copy of the landscape plan indicating the affected area has also been attached.

The VPA requires these developer works to be completed prior to issue of the Subdivision Certificate for Stage 1. The application for this subdivision certificate is likely to be lodged within the next 4-6 weeks.

**REPORT**

As reported to the Cr Briefing Session held 26 March 2019, the steep terrain has identified some stability and fill issues which need to be resolved prior to construction of the walkway between the development site and Wollondilly Ave.

In order to overcome these issues, Council is required to be satisfied after site investigations that the terrain will be suitable for the construction of a walkway. The need to carry out this work means that the footpath construction work has to be delayed. This will therefore impact upon the ability for the developer to meet their commitments as per the VPA.

Given the imminent lodgement of the subdivision certificate application for Stage 1 the applicant has requested that the required connection of the footpath between the development site and Wollondilly Avenue be deferred until the matter is resolved. This could result in the works being deferred until the completion of Stages 2 or 3 at the earliest.

The applicant has demonstrated a willingness to complete the work, and their request is considered fair and reasonable given the underlying circumstances.

In accordance with Clause 16.1 of the VPA *the design or specification of a Developer Work may be varied by agreement in writing between the parties, acting reasonably, without the necessity for an amendment to this Deed.* It is the opinion of staff that this request meets with the intention of the clause.

Staff are currently seeking a final design of the footpath and boardwalk works. It is thought reasonable that this plan be received and a monetary bond amounting to the value of the works be held as security should Council support the variation.











## Deed

### **St Joseph's Redevelopment Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Goulburn Mulwaree Council**

**The Trustees of the Roman Catholic Church for the  
Archdiocese of Canberra and Goulburn as Trustees of the  
Chancery Office**

Date:

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**lindsaytaylorlawyers**  
Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia  
T 02 8235 9700 • F 02 8235 9799 • W [www.lindsaytaylorlawyers.com.au](http://www.lindsaytaylorlawyers.com.au) • E [mail@lindsaytaylorlawyers.com.au](mailto:mail@lindsaytaylorlawyers.com.au)  
ABN 29 682 671 304

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**St Joseph’s Redevelopment Planning Agreement  
Goulburn Mulwaree Council**



**The Trustees of the Roman Catholic Church for the Archdiocese of  
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## **St Joseph’s Redevelopment Planning Agreement**

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**St Joseph's Redevelopment Planning Agreement**

**Goulburn Mulwaree Council**

**The Trustees of the Roman Catholic Church for the Archdiocese of  
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**St Joseph's Redevelopment Planning Agreement**

**Summary Sheet**

**Council:**

**Name:** Goulburn Mulwaree Council  
**Address:** Locked Bag 22 Goulburn NSW 2580  
**Telephone:** (02) 4823 4444  
**Facsimile:** (02) 4823 4456  
**Email:** council@goulburn.nsw.gov.au  
**Representative:** Warwick Bennett

**Developer:**

**Name:** The Trustees of the Roman Catholic Church for the Archdiocese of Canberra  
and Goulburn as Trustees of the Chancery Office  
**Address:** GPO Box 3089 Canberra ACT 2601  
**Telephone:** (02) 6201 9800  
**Email:** helen.delahunty@cg.org.au  
**Representative:** Helen Delahunty

**Land:**

See definition of *Land* in clause 1.1.

**Development:**

See definition of *Development* in clause 1.1.

**Development Contributions:**

See clause 9 and Schedule 1.

**Application of s94, s94A and s94EF of the Act:**

See clause 8.

**St Joseph's Redevelopment Planning Agreement**

**Goulburn Mulwaree Council**

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**Security:**

See Part 4.

**Registration:**

See clause 32.

**Restriction on dealings:**

See clause 33.

**Dispute Resolution:**

See Part 3.



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**St Joseph's Redevelopment Planning Agreement**Under s93F of the *Environmental Planning and Assessment Act 1979***Parties****Goulburn Mulwaree Council** ABN 84 049 849 319 of 184-194 Bourke  
Street, Goulburn NSW 2580 (**Council**)

and

**The Trustees of the Roman Catholic Church for the  
Archdiocese of Canberra and Goulburn as Trustees  
of the Chancery Office** ABN 12 689 322 721 of GPO Box 3089 Canberra  
ACT 2601 (**Developer**)**Background**

- A The Developer is constituted as a body corporate under the *Roman Catholic Church Property Act 1936* (NSW) for the Archdiocese of Canberra and Goulburn.
- B The Developer is the owner of the Land.
- C The Developer has lodged the Development Application with Council for the Development.
- D The Developer is prepared to make the Development Contributions in connection with the carrying out of the Development in accordance with this Deed.

**Operative provisions****Part 1 - Preliminary****1 Interpretation**

- 1.1 In this Deed the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Approval** includes approval, consent, licence, permission or the like.

**Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under

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the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

**Background Intellectual Property** means Intellectual Property that:

- (a) relates to a Developer Work,
- (b) exists at the date of this Deed or is later created but not as a result of performing this Deed,
- (c) does not belong to a third party.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Defect** means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

**Defects Liability Period** in respect of a Developer Work means the period of 2 years commencing on the date of Practical Completion of the Developer Work.

**Developer Work** means a Work specified or described in Part B of Schedule 1, including design, construction, supervision, testing and certification.

**Developer Work Completion Date** means the date specified in Column 4 of Schedule 1 in respect of a Developer Work.

**Developer Work – Hard Landscaping** means seating notes, bench seats, interpretive signage, playground, pedestrian culvert crossing, boardwalk, concrete footpaths, irrigation as set out in the Landscape Masterplan within the Northern Reserve and the Riverside Reserve.

**Developer Work – Soft Landscaping** means trees, plants, grass, garden beds, irrigated turf play area, as set out in the Landscape Masterplan within the Northern Reserve and the Riverside Reserve.

**Development** means development the subject of Development Consent to Development Application DA/0182/1617 lodged with the Council on 20 December 2016, as modified from time to time.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

**Dispute** means a dispute or difference between the Parties under or in relation to this Deed.

**Equipment** means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

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**Final Lot** means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

**Force Majeure Event** means an earthquake, cyclone, fire, riot or serious civil commotion, sabotage, act of a public enemy, act of God (excluding storms), war, revolution, radioactive contamination or flood, the effects of which cannot be prevented by taking those steps a prudent and competent person would take.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Independent Certifier** means a suitably qualified and experienced independent certifier appointed by agreement between the Parties.

**Intellectual Property** means all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

**Land** means land comprised in Lot 2 in DP1186483 and any lot created by the subdivision of that lot.

**Landscape Handover and Maintenance Protocol** means the protocol set out in Schedule 5.

**Landscape Masterplan** means the plan in Schedule 3.

**Landscape Specifications** means the specifications in Schedule 4.

**Maintenance** means maintenance of the Developer Work – Hard Landscaping and the Developer Work – Soft Landscaping in accordance with the Landscape Handover and Maintenance Protocol.

**Maintenance Period** in relation to a Developer Work means a period of 2 years commencing on the day immediately after the Practical Completion Date of the Developer Work..

**Northern Reserve** means the part of the land marked as '*Drainage Reserve 2*' on the Staging Plan.

**Other Land** means land owned or occupied by a person other than the Developer or the Council to which entry and access is needed by the Developer to perform this Deed.

**Party** means a party to this Deed.

**Practical Completion**, in relation to a Developer Work, occurs when the Council has issued a Practical Completion Certificate for the Developer Work.

**Practical Completion Certificate** means a certificate issued by an Independent Certifier to the effect that, in the reasonable opinion of the Independent Certifier, the Developer Work is substantially complete and any incomplete part or Defect is of a minor nature.

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**Practical Completion Date** means the date when Practical Completion of a Developer Work occurs.

**Principal Contractor** means the Person defined in as the Principal Contractor under the WHS Law or an equivalent under Commonwealth work health and safety laws.

**Rectification Notice** means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

**Rectify** means rectify, remedy or correct.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

**Riverside Reserve** means the part of the land marked as 'Drainage Reserve 1' on the Staging Plan.

**Stage** means a stage of the Development as shown on the Staging Plan.

**Staging Plan** means the plan in Schedule 2.

**Subdivision Certificate** has the same meaning as in the Act.

**Third Party Copyright** means copyright relating to the Developer Works that is owned by a person other than the Council or the Developer.

**WHS Law** means the *Work Health and Safety Act 2011 (NSW)* and *Work Health and Safety Regulation 2011 (NSW)*.

**Work** means the physical result of any building, engineering or construction work in, on, over or under land.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
  - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
  - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
  - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
  - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
  - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

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- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
  - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
  - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
  - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
  - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
  - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
  - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
  - 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
  - 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
  - 1.2.16 Any schedules, appendices and attachments form part of this Deed.
  - 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

**2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

**3 Commencement**

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
  - 3.1.1 both executed the same copy of this Deed, or
  - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.
- 3.3 The obligation to make Development Contributions only arise in connection with the carrying out of the Development.

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**4 Application of this Deed**

- 4.1 This Deed applies to the Land and to the Development.

**5 Warranties**

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
  - 5.1.2 are able to fully comply with their obligations under this Deed.

**6 Further agreements**

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

**7 Surrender of right of appeal, etc.**

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

**8 Application of s94, s94A and s94EF of the Act to the Development**

- 8.1 This Deed excludes the application of s94 and s94A of the Act to the Development.
- 8.2 This Deed does not exclude the application of s94EF of the Act to the Development.

**Part 2 – Development Contributions****9 Provision of Development Contributions**

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1 and any other provision of this Deed relating to the making of Development Contributions.
- 9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.



**St Joseph's Redevelopment Planning Agreement****Goulburn Mulwaree Council****The Trustees of the Roman Catholic Church for the Archdiocese of  
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- 10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public reserve or drainage reserve under the *Local Government Act 1993*.
- 10.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 10.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 10.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

**11 General Obligations relating to Developer Work**

- 11.1 The Developer is to carry out and complete each Developer Work in a good and workmanlike manner having regard to the intended purpose of the Work and in accordance with:
  - 11.1.1 the location, design, specifications, material and finishes for the Work approved by the Council;
  - 11.1.2 any relevant Approval;
  - 11.1.3 the lawful requirements of any Authority; and
  - 11.1.4 all applicable laws.
- 11.2 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed is supplied or made available.

**12 Warranties relating to Developer Work**

- 12.1 The Developer warrants to Council that:
  - 12.1.1 it has obtained or will obtain all Approvals and has complied or will comply with all laws and applicable industry standards in relation to a Developer Work;
  - 12.1.2 if any aspect of a Developer Work does not comply with this Deed, the Council may pursue its legal and equitable rights and remedies relating to the non-compliance; and
  - 12.1.3 the Developer Work, when completed will be fit for purpose.
- 12.2 The Developer will procure in favour of the Council from the Principal Contractor, and any other person engaged in relation to a Developer Work, as required, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Developer Work.

**St Joseph's Redevelopment Planning Agreement****Goulburn Mulwaree Council****The Trustees of the Roman Catholic Church for the Archdiocese of  
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- 13.1 The Developer is responsible for meeting all Costs of and incidental to each Developer Work in accordance with this Deed.

**14 Ownership & Care of Developer Work**

- 14.1 The Developer owns, and is responsible for care of, a Developer Work, and bears all risk and liability in connection with the Developer Work, until the Developer Work vest in the Council.

**15 Work Health & Safety**

- 15.1 The Council acknowledges that the Developer proposes to engage the Principal Contractor who, once engaged, will have management and control of the workplace relating to the Developer Work.
- 15.2 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Developer Works unless and until such time that the Developer engages a person to construct a Developer Work, or engages another person conducting a business, or undertaking, to be the Principal Contractor for the Developer Work, and authorises the person to have management or control of the workplace relating to the Developer Work and to discharge the duties of a Principal Contractor under WHS Law.
- 15.3 If the Developer at any time terminates the engagement of the person engaged to construct the Developer Work or to otherwise be the Principal Contractor for the Developer Work, the Developer becomes the Principal Contractor until such time as a new person is appointed to construct the Developer Work or to otherwise be the Principal Contractor for the Developer Work.
- 15.4 The Developer is to use its reasonable endeavours to ensure that all persons involved in the Developer Work comply with relevant WHS Law and procedures, including but not limited to:
- 15.4.1 following published government and industry WHS guidelines,
  - 15.4.2 providing WHS induction training,
  - 15.4.3 keeping and regularly updating WHS records,
  - 15.4.4 preparing and maintaining an WHS management plan,
  - 15.4.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
  - 15.4.6 providing safe work method statements for all tasks and ensuring they are complied with,
  - 15.4.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
  - 15.4.8 identifying hazards and assessing risks using due diligence,
  - 15.4.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,
  - 15.4.10 reviewing risk assessments and controlling measures,

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- 15.4.11 providing information to employers and contractors about WHS,
- 15.4.12 documenting site-specific safety procedures.
- 15.5 The Developer is to use its reasonable endeavours to ensure that:
  - 15.5.1 the Council can audit, inspect and test a Developer Work without breaching WHS Law,
  - 15.5.2 the Council can access and use a Developer Work without breaching WHS Law.
- 15.6 The Developer is to promptly inform the Council of any incident occurring in relation to a Developer Work where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

**16 Variation to Developer Work**

- 16.1 The design or specification of a Developer Work may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 16.2 The Council is not to unreasonably delay, or withhold its Approval, to any written request made by the Developer to vary, at the Developer's Cost, the design or specification of a Developer Work.
- 16.3 The Council may reasonably require the Developer, at the Council's Cost, to vary the design or specification of a Developer Work.
- 16.4 The Developer is to promptly comply with any such requirement of the Council.

**17 Construction commencement notice**

- 17.1 The Developer is to notify the Council of its intention to commence construction of a Developer Work not less than 5 business days' before that construction commences.

**18 Protection of people, property & utilities**

- 18.1 The Developer is to use all reasonable endeavours in relation to the performance of its obligations under this Deed to ensure that:
  - 18.1.1 all necessary measures are taken to protect people and property,
  - 18.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 18.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 18.2 Without limiting clause 18.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

**St Joseph's Redevelopment Planning Agreement****Goulburn Mulwaree Council****The Trustees of the Roman Catholic Church for the Archdiocese of  
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- 19.1 The Developer is responsible for obtaining all necessary rights to lawfully enter, occupy, and carry out a Developer Work on Other Land.
- 19.2 The Developer is not to commence a Developer Work on Other Land until it has obtained the written consent of each owner and any tenant of the Other Land to enter, occupy, and carry out the Developer Work.
- 19.3 Upon receiving reasonable prior notice from the Developer, the Council is to allow the Developer, to enter, occupy, and use specified Council owned or controlled land at any reasonable time if the occupation or use of the land by the Developer is reasonably necessary for a Developer Work.
- 19.4 Upon receiving reasonable prior notice from the Council, the Developer is to provide the Council with safe and unhindered access at any reasonable time to any land on which a Developer Work is being, or have been, carried out.
- 19.5 The Council must comply with the Developer's reasonable safety requirements while on any land on which the Developer Work is being carried out.

**20 Audit, inspection, testing of Developer Work**

- 20.1 The Council may undertake an audit, inspection or test of a Developer Work at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.
- 20.2 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Developer Work.
- 20.3 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Developer Work, the Developer is to:
  - 20.3.1 take the action in the manner, and within the time, the Council reasonably requires, and
  - 20.3.2 provide evidence to the Council that the action has been taken.
- 20.4 If an audit, inspection or test shows that the Developer Work has not been carried out in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.
- 20.5 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Developer Work is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.

**21 Council's obligations relating to Work**

- 21.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

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**22 Practical Completion of Developer Work**

- 22.1 Prior to commencement of any Developer Work, the Developer is to provide evidence to the Council that the Independent Certifier has been appointed for the purpose of certifying Practical Completion of Developer Work.
- 22.2 The Developer is to obtain a Practical Completion Certificate for a Developer Work by not later than the Developer Works Completion Date.
- 22.3 The Developer is to give the Council not less than 10 business days' prior written notice of its intention to request the Independent Certifier to issue a Practical Completion Certificate for a Developer Work.
- 22.4 As a precondition to issuing a Practical Completion Certificate, the Independent Certifier may require the Developer to complete, rectify or repair the Developer Work to the reasonable satisfaction of the Council.
- 22.5 The Developer is to arrange for the Independent Certifier to inspect the Developer Work in the presence of a representative of each of the Council and the Developer before a Practical Completion Certificate is issued by the Independent Certifier.
- 22.6 As a precondition to issuing a Practical Completion Certificate, the Independent Certifier may require the Developer to rectify or repair any specified part of the Developer Work to bring the Developer Work into conformity with the Approval for the Developer Work given by the Council under this Deed.
- 22.7 The Developer is to promptly comply with any such requirement of the Independent Certifier.
- 22.8 The Developer is to give the Council a copy of a Practical Completion Certificate for the Developer Work immediately after it is issued by the Independent Certifier.

**23 Transfer of ownership**

- 23.1 A Developer Work vests in the Council on and from the date the land on which the Developer Work is located is dedicated to the Council..

**24 Works-As-Executed-Plan**

- 24.1 No later than 14 days after Practical Completion of a Developer Work, the Developer is to submit to the Council a full Works-As-Executed-Plan for the Developer Work in a format agreed to by the Council.
- 24.2 The Developer, being the copyright owner in the Works-As-Executed Plan, assigns the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.
- 24.3 If the Developer is not the copyright owner of the Work-As-Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

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- 25.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 25.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 25.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice given by the Council.

**26 Removal of Equipment**

- 26.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
  - 26.1.1 remove any Equipment from that land and make good any damage or disturbance to the land as a result of that removal, and
  - 26.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

**Part 3 – Dispute Resolution****27 Expert determination**

- 27.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
  - 27.1.1 the Parties to the Dispute agree that it can be so determined, or
  - 27.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 27.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 27.3 If a notice is given under clause 27.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 27.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 27.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 27.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 27.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.



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**28 Mediation**

- 28.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 27 applies.
- 28.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 28.3 If a notice is given under clause 28.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 28.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 28.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 28.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 28.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

**Part 4 - Enforcement****29 Security for performance**

- 29.1 The Developer is not to apply for, or cause, suffer or permit an application to be made for the first Subdivision Certificate:
- 29.1.1 that creates a Final Lot in Stage 1 unless the plan of subdivision to which the application relates contains the words '*public reserve*' or '*drainage reserve*' marked on the Riverside Reserve,
- 29.1.2 that creates a Final Lot in Stage 3 unless the plan of subdivision to which the application relates contains the words '*public reserve*' or '*drainage reserve*' marked on the Northern Reserve.
- 29.2 The Parties acknowledge that the requirements for the Developer:
- 29.2.1 in clause 29.1, and
- 29.2.2 to obtain Practical Completion for a Developer Work before the issuing of certain Subdivision Certificates,
- sufficiently secures the Developer's obligations to provide Development Contributions under this Deed.

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- 30.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 30.1.1 specifying the nature and extent of the breach,
  - 30.1.2 requiring the Developer to:
    - (a) rectify the breach if it reasonably considers it is capable of rectification, or
    - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
  - 30.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 30.2 If the Developer fails to comply with a notice given under clause 30.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 30.3 Any costs incurred by the Council in remedying a breach in accordance with clause 30.2 may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 30.4 For the purpose of clause 30.4, the Council's costs of remedying a breach the subject of a notice given under clause 30.1 include, but are not limited to:
- 30.4.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 30.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 30.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 30.5 The Council may only exercise any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court, if the Developer has failed to comply with a notice given under clause 30.1

**31 Enforcement in a court of competent jurisdiction**

- 31.1 Subject to clause 30.5, the Parties may enforce this Deed in any court of competent jurisdiction.
- 31.2 For the avoidance of doubt, subject to clause 30.5, nothing else in this Deed prevents:
- 31.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or

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31.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

**Part 5 – Registration & Restriction on Dealings**

**32 Registration of this Deed**

- 32.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.
- 32.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
  - 32.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
  - 32.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 32.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 32.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
  - 32.4.1 in so far as the part of the Land concerned is a Final Lot, upon the registration of the plan of subdivision that creates the Final Lot,
  - 32.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

**33 Restriction on dealings**

- 33.1 The Developer is not to:
  - 33.1.1 sell or transfer the Land, other than a Final Lot, or
  - 33.1.2 assign the Developer’s rights or obligations under this Deed, or novate this Deed,

to any person unless the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer’s rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council.
- 33.2 Subject to clause 33.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 33.1.
- 33.3 Clause 33.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

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**Part 6 – Indemnities & Insurance****34 Risk**

- 34.1 The Developer performs this Deed at its own risk and its own cost.

**35 Release**

- 35.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

**36 Indemnity**

- 36.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence, fraud, wilful misconduct or default.

**37 Developer's Insurances**

- 37.1 Until a Developer Work vests in the Council, the Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to the Developer Work:
- 37.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Developer Work (including but not limited to the Cost of demolition and removal of debris, consultants' fees and Authorities' fees), to cover the Developer's liability in respect of damage to, or destruction of, the Work,
  - 37.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
  - 37.1.3 workers compensation insurance as required by law, and
  - 37.1.4 any other insurance required by law.
- 37.2 If the Developer fails to comply with its obligations relating to insurances under this Deed, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including but not limited to by recovery as a debt due in a court of competent jurisdiction.
- 37.3 The Developer is not to commence construction of a Developer Work unless it has first provided to the Council satisfactory written evidence of all of the insurances required under this Deed.

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**Part 7 – Other Provisions****38 Confidentiality**

- 38.1 Each party must keep confidential and must not publicly announce or disclose information about:
- 38.1.1 documents, plans and other material clearly identified as confidential, or which should reasonably be considered confidential,
  - 38.1.2 any tender by the Developer relating to a Developer Work.
- 38.2 In particular, any party receiving confidential information must:
- 38.2.1 treat the information as it would its own confidential material,
  - 38.2.2 promptly notify the Council if it becomes aware that the law might require the information to be disclosed,
  - 38.2.3 ensure that only authorised persons have access to the information and that it is stored safely and securely.
- 38.3 The Parties must immediately notify each other if they become aware of a breach of confidentiality relating to a Developer Work or this Deed.
- 38.4 The confidentiality obligations contained in this Deed survive the completion of the Developer Work or the termination of this Deed, whichever occurs first, by 5 years, unless otherwise agreed in writing between the Parties.
- 38.5 The confidentiality obligations contained in this Deed do not apply if a disclosure of confidential information is required:
- 38.5.1 by law,
  - 38.5.2 by the Listing Rules of the Australian Securities Exchange Limited,
  - 38.5.3 to enable a Party to perform its obligations, or to make or defend any claim or dispute, under this Deed,
  - 38.5.4 under this Deed,
- but only if, before the Party discloses any confidential information, it notifies the other Party in writing of the information it proposes to disclose and explains why it proposes to do so.

**39 Ownership of Intellectual Property**

- 39.1 Nothing in this Deed affects the ownership of Background Intellectual Property or Third Party Intellectual Property unless expressly provided to the contrary in this Deed.
- 39.2 The Developer grants to the Council a royalty-free, irrevocable, perpetual, non-exclusive licence to use all copyright it owns in the designs and specifications of a Developer Work as may be necessary for the purpose of:
- 39.2.1 using, maintaining and disposing of a Developer Work,
  - 39.2.2 modifying and developing the Developer Work,
  - 39.2.3 completing the Developer Work on termination of this Deed,
  - 39.2.4 Rectifying Defects relating to the Developer Work.

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- 39.3 The Developer is to use its reasonable endeavours to ensure that the Council is granted a licence as may be necessary to use copyright in the designs and specifications of a Developer Work on the same terms as that given to the Developer from each subcontractor engaged in relation to the Developer Work.
- 39.4 The Developer is to otherwise use its reasonable endeavours to ensure that the Council is granted a licence as may be necessary to use all Third Party Copyright in the designs and specifications of a Developer Work on the best commercial terms reasonably available.

**40 Force Majeure**

- 40.1 If a Party is affected, or likely to be affected, by a Force Majeure Event, that Party must promptly notify the other Party, giving:
- 40.1.1 full details of the event,
  - 40.1.2 an estimate of its duration,
  - 40.1.3 the obligations under this Deed it affects and how much it will affect them,
  - 40.1.4 the steps either taken or planned to manage its effects.
- 40.2 A Party's obligations under this Deed are suspended if those obligations are affected by a Force Majeure Event for as long as the event continues.
- 40.3 A Party affected by a Force Majeure Event must do all it reasonably can to remove, overcome or minimise the effects of the event as quickly as possible.

**41 Developer as trustee entity**

- 41.1 The Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn are trustees of Church trust property within the meaning of the *Roman Catholic Church Property Act 1936 (NSW)*, which includes the Land, and have the functions in relation to the Land conferred or imposed by or under that Act.

**42 Annual report by Developer**

- 42.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 42.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

**43 Review of Deed**

- 43.1 The Parties agree to review this Deed annually, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.



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- 43.2 For the purposes of clause 43.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
  - 43.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 43.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
  - 43.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
  - 43.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 43.1 (but not 43.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

**44 Notices**

- 44.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
  - 44.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 44.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 44.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 44.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 44.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
  - 44.3.1 delivered, when it is left at the relevant address,
  - 44.3.2 sent by post, 2 business days after it is posted,
  - 44.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
  - 44.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 44.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

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**45 Approvals and Consent**

- 45.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 45.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

**46 Costs**

- 46.1 Each party is to bear its own costs in relation to the preparation, negotiation, execution and registration of this Deed, and any document related to this Deed.

**47 Entire Deed**

- 47.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 47.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

**48 Further Acts**

- 48.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

**49 Governing Law and Jurisdiction**

- 49.1 This Deed is governed by the law of New South Wales.
- 49.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 49.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

**50 Joint and Individual Liability and Benefits**

- 50.1 Except as otherwise set out in this Deed:
- 50.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 50.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

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- 51.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

**52 Illegality**

- 52.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

**53 Severability**

- 53.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 53.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

**54 Amendment**

- 54.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

**55 Waiver**

- 55.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 55.2 A waiver by a Party is only effective if it:
- 55.2.1 is in writing,
  - 55.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 55.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 55.2.4 is signed and dated by the Party giving the waiver.
- 55.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 55.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied

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waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

- 55.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

**56 GST**

- 56.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

**Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 56.2 Subject to clause 56.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 56.3 Clause 56.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 56.4 No additional amount shall be payable by the Council under clause 56.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 56.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 56.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 56.5.2 that any amounts payable by the Parties in accordance with clause 56.2 (as limited by clause 56.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 56.6 No payment of any amount pursuant to this clause 56, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly

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agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

- 56.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 56.8 This clause continues to apply after expiration or termination of this Deed.

**57 Explanatory Note**

- 57.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 57.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

**St Joseph’s Redevelopment Planning Agreement**

**Goulburn Mulwaree Council**

**The Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn as Trustees of the Chancery Office**



**Schedule 1**

(Clause 9)

**Development Contributions**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Contribution</b>	<b>Public Purpose</b>	<b>Manner &amp; Extent</b>	<b>Timing</b>
<b>A. Dedication of Land</b>			
1. Dedication of Riverside Reserve	Drainage reserve; Public open space	Dedication free of cost to the Council	Upon the registration of the first plan of subdivision that creates a Final Lot in Stage 1
2. Dedication of Northern Reserve	Public open space	Dedication free of cost to the Council	Upon the registration of the first plan of subdivision that creates a Final Lot in Stage 3
<b>B. Carrying out of Work</b>			
3. Embellishment of Riverside Reserve	Drainage reserve; Public open space	Generally in accordance with the Landscape Masterplan and Landscape Specifications	Practical Completion prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 1.
4. Embellishment of Northern Reserve (including pedestrian walkways, community playground, directional signage)	Public open space	Generally in accordance with the Landscape Masterplan and Landscape Specifications	Practical Completion prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 3
<b>C. Other material public benefits</b>			
5. Maintenance of embellished Riverside	Drainage reserve;	Maintenance of embellished Riverside Reserve	Maintenance to be carried out during the Maintenance Period

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Reserve and Northern Reserve	Public open space	and Northern Reserve in accordance with the Landscape Handover and Maintenance Protocol
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**Schedule 2**

(Clause 1.1)

**Staging Plan**

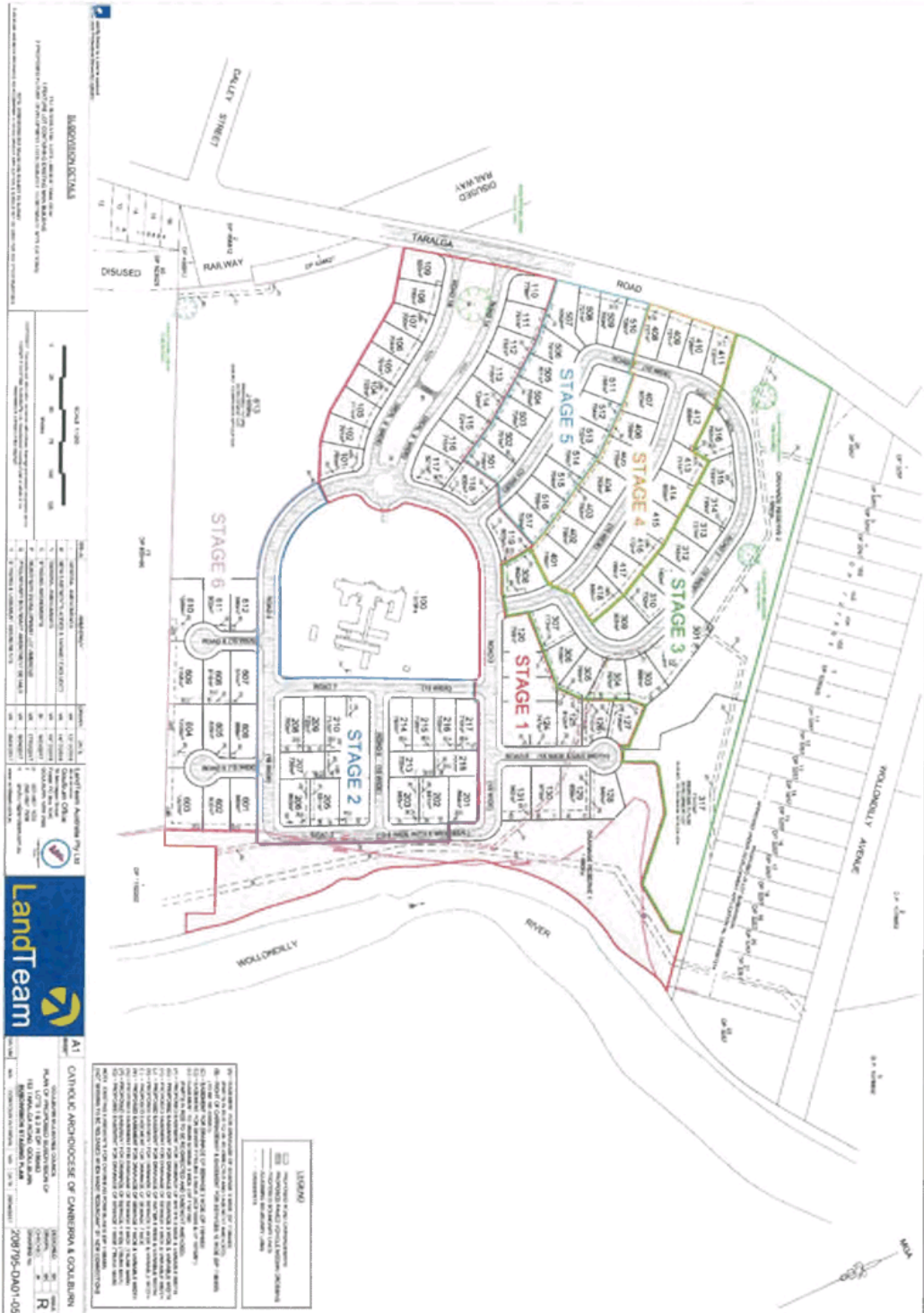
See the following page.



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CCCG\_CCG17001\_017

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**Schedule 3**

(Clause 1.1)

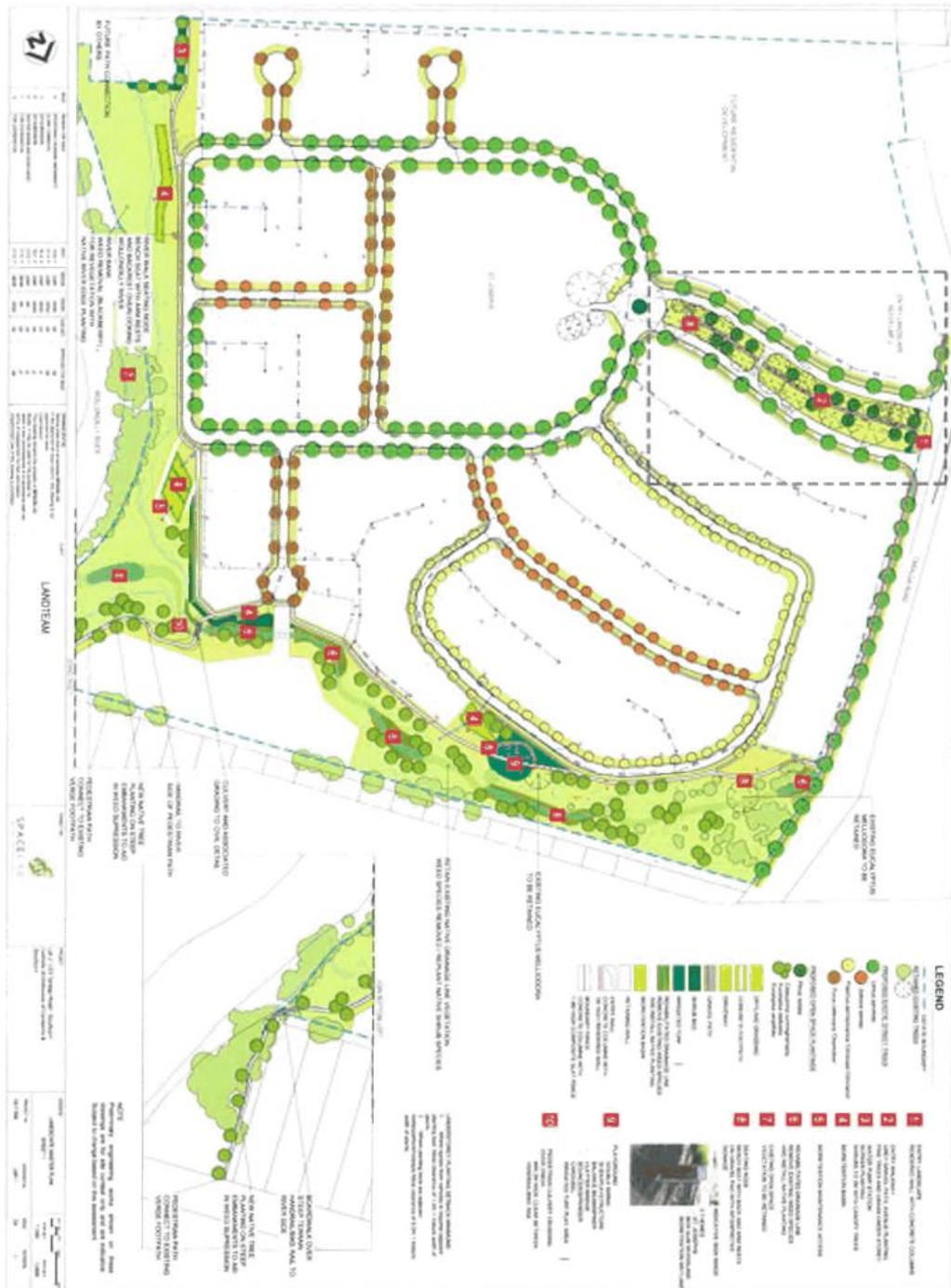
**Landscape Masterplan**

See the following page.

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**Schedule 4**

(Clause 1.1)





**Landscape Specifications**

See the following pages.

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ITEM	DETAILS	LOCATION	EXAMPLE IMAGES	NOTES
CONCRETE FOOTPATH 603P2.10	<b>MATERIAL:</b> 25MPA CONCRETE <b>COLOUR:</b> GREY <b>FINISH:</b> BROOMED <b>DIMENSIONS:</b> MIN. 2000mm W x 100mm D	OPEN SPACE AREAS - REFER 16-1199-LMP1.1		<ul style="list-style-type: none"> <li>SAWCUT JOINTS EVERY 3m</li> <li>EXPANSION JOINTS EVERY 6m</li> <li>MINIMUM F72 MESH REINFORCEMENT (CENTRALLY LOCATED)</li> <li>MINIMUM 75mm DEPTH COMPACTED FCR BASE</li> </ul>
SEATING 814P1	<b>MATERIAL:</b> STEEL OR POWDER COAT ALUMINIUM FRAME, HARDWOOD TIMBER OR ALUMINIUM SLATS <b>COLOUR:</b> TBC <b>DIMENSIONS:</b> MIN. 1800mm W x 435mm H (SEAT BASE)	SEATING/SIGNAGE NODE AREAS - REFER 16-1199-LMP1.1		<ul style="list-style-type: none"> <li>ALL SEATS TO INCORPORATE BACK AND ARM REST</li> <li>SEATS TO BE FIXED TO SUBSURFACE CONCRETE FOOTING BENEATH COMPACTED DECOMPOSED GRANITE SURFACE</li> <li>SEATS TO BE INSTALLED AS PER MANUFACTURERS DETAILS</li> </ul>
SIGNAGE NODE 814P1	<b>MATERIAL:</b> STEEL OR POWDER COAT ALUMINIUM FRAME, ALUMINIUM PANEL WITH PRINTED GRAPHICS, COMPACTED DECOMPOSED GRANITE SURFACE <b>COLOUR:</b> TBC <b>DIMENSIONS:</b> DECOMPOSED GRANITE MIN 75mm D, SIGNAGE TBC	SEATING/SIGNAGE NODE AREAS - REFER 16-1199-LMP1.1		<ul style="list-style-type: none"> <li>ALL SIGNAGE FIXED TO SUBSURFACE CONCRETE FOOTING BENEATH COMPACTED DECOMPOSED GRANITE SURFACE</li> <li>SIGNAGE PANNELS TO HAVE CLEAR ANTI-GRANITTE COATING</li> <li>COMPACTED DECOMPOSED GRANITE TO BE STABILISED (SOILBOND OR CEMENT)</li> </ul>
BOARDWALK 819P1	<b>MATERIAL:</b> POWDER COAT OR GALVANISED STEEL FRAME, FIBRE REINFORCED PLASTIC (FRP) WALKING SURFACE, STEEL HANDRAIL <b>COLOUR:</b> TBC <b>DIMENSIONS:</b> BOARDWALK MIN. 2000mm W, HANDRAIL 1300mm H	STEEP TERRAIN ADJACENT TO RIVER - REFER 16-1199-LMP1.1		<ul style="list-style-type: none"> <li>BOARDWALK TO BE FIXED TO CONCRETE FOOTINGS AS PER ENGINEER DETAILS</li> <li>WORK TO BE UNDERTAKEN AS PER AS2156-3 WALKING TRACKS PART 1 &amp; AS2156-2 WALKING TRACKS PART 2</li> </ul>






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ITEM	DETAILS	LOCATION	EXAMPLE IMAGES	NOTES
TURFING 907P1	TYPE: EVERGREEN SUPPLIER: CANTURE ‘CANBERRA BLEND’ INSTALLATION: YEAR ROUND ON PREPARED SUBGRADE	PLAYGROUND AREA - REFER 16-1199-LMP1-1		<ul style="list-style-type: none"> <li>LOCALLY GROWN TURF, SUITED TO CANBERRA AREA SEASONAL CONDITIONS</li> <li>FULL SUN TO PART SHADE APPLICATIONS</li> <li>WILL STAY GREEN OVER THE WINTER MONTHS</li> </ul>
CULVERT CROSSING 818P1 (SEE SHEET 3 FOR FURTHER DETAILS)	MATERIAL: PRECAST CONCRETE CULVERT, GALVANISED STEEL HANDRAILS, CONCRETE PATH TO CENTRE OF CROSSING DIMENSIONS: CULVERTS: 2400mm L x 1500mm H x 360mm W (BOTH) HANDRAIL: 1300mm H CONCRETE PATH: MIN 2000mm W	CREEK CROSSING - REFER 16-1199-LMP1-1		<ul style="list-style-type: none"> <li>ALL CULVERTS TO BE REINFORCED CONCRETE</li> <li>ALL BARRIER FENCING TO BE IN ACCORDANCE WITH AUSTRROADS REQUIREMENTS</li> <li>ALL WORKS TO BE AS PER ENGINEERS DETAILS</li> </ul>
ROCKS (UP TO 1000mm DIAMETER) 816P1	MATERIAL: BASALT DIMENSIONS: MIN 600mm, MAX 1000mm DIAMETER	MULTIPLE AREAS - REFER 16-1199-LMP1-1		<ul style="list-style-type: none"> <li>ALL BOULDER ROCKS TO BE SET 1/2 INTO SUBGRADE</li> <li>BOULDERS TO BE ROUNDED WITH FLATISH TOPS AND HAVE NO SHARP EDGES</li> </ul>
PLAYGROUND 813P1	REFER VPA SHEET 3 FOR ITEMS WITHIN PLAYGROUND	PLAYGROUND AREA - REFER 16-1199-LMP1-1		<ul style="list-style-type: none"> <li>ALL PLAYGROUND ITEMS AND DESIGN TO COMPLY WITH AS4685 (2014), PLAYGROUND EQUIPMENT AND SURFACING, AS4422 (2016), PLAYGROUND SURFACING - SPECIFICATIONS, REQUIREMENT AND TEST METHOD, AS/NZS 4886.1, PLAYGROUNDS AND PLAYGROUND EQUIPMENT</li> <li>ALL PLAYGROUND ITEMS TO UNDERGO INDEPENDENT CERTIFICATION, DESIGN AND CONSTRUCTION PHASES TO BE REVIEWED AND CERTIFIED BY AN INDEPENDENT PLAYGROUND INSPECTOR, LEVEL 3 ACCREDITATION</li> </ul>
IRRIGATION 904P1-1A	TURF AREA AROUND PLAYGROUND TO HAVE A FULLY AUTOMATED IRRIGATION SYSTEM	TURF AREA AT PLAYGROUND - REFER 16-1199-LMP1-1		<ul style="list-style-type: none"> <li>AS1477 (2006), PVC PIPES AND FITTINGS FOR PRESSURE APPLICATIONS, AS1482 (2016), QUICK COUPLING VALVES, AS2580 (2013), PLUMBING AND DRAINAGE SET OUT, AS2580 (2013), PLUMBING AND DRAINAGE SET OUT, AS2580 (2013), PLUMBING AND DRAINAGE SET OUT, AS2580 (2013), PLUMBING AND DRAINAGE SET OUT</li> <li>VALVES TO BE OPERATED BY A LICENSED PLUMBER, INCLUDING REGULATOR APPROPRIATE FOR CONNECTION TO MAINS WATER SUPPLY INCLUDING SEPARATE METER AS REQUIRED</li> <li>A LICENSED PLUMBER/IRRIGATION DESIGNER IS TO PREPARE SCHEMATIC DESIGNS FOR THE IRRIGATION SYSTEM AS PART OF THE CONSTRUCTION CERTIFICATE DRAWINGS</li> <li>THE IRRIGATION SYSTEM WILL INCLUDE A PERMANENT CONNECTION TO THE MAIN WATER SUPPLY, INCLUDING A BACKFLOW PREVENTION DEVICE, DURABLE COMMERCIAL QUALITY SPRINKLERS, SOLAR PANEL, STATION CONTROLLERS AND VALVE BOXES TO AID IN MAINTENANCE</li> <li>WORKS AS EXECUTED (WAS) DRAWINGS, ALL SPARE PARTS, CONTROLLER PINS AND GUARANTEES ARE TO BE SUPPLIED TO THE APPROVALS AUTHORITY TO GUIDE FUTURE USE AND MAINTENANCE</li> </ul>



**St Joseph’s Redevelopment Planning Agreement  
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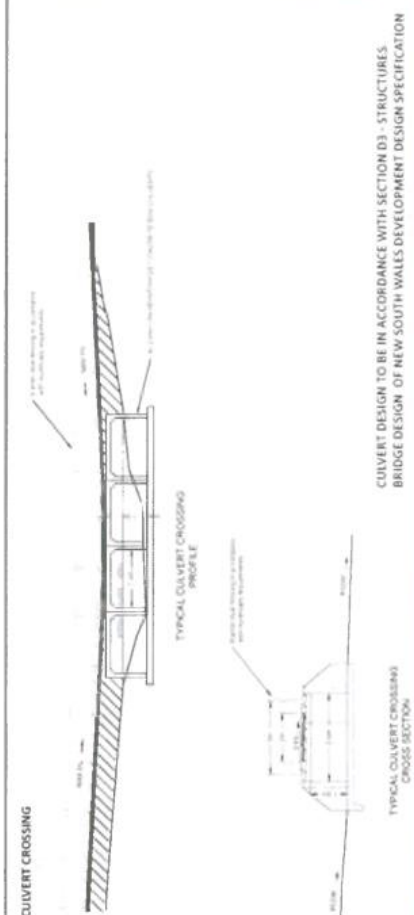
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- PLAYGROUND EQUIPMENT**
- 1 DOUBLE SWING SET  
TIMBER OR POWDER COAT STEEL
  - 2 PLAY STRUCTURE  
INCLUDING SLIDE AND CLIMBING SECTIONS
  - 3 CLATTER BRIDGE  
TIMBER STRUCTURE
  - 4 CAROUSEL/MERRY-GO-ROUND  
INCORPORATE WHEELCHAIR ACCESS
  - 5 SPRINGER/BOUNCER  
MINIMUM NUMBER OF 2
  - 6 PLAYGROUND SOFTFALL SURFACE  
WETPOUR TO REQUIRED IMPACT PROPERTIES
  - 7 PLAYGROUND WOOD CHIP MULCH  
MINIMUM DEPTH OF 100mm
- NOTE:**  
AT TIME OF HANDOVER ALL MAINTENANCE MANUALS,  
INSPECTIONS, HOLD POINTS, AND COMPLIANCE  
CERTIFICATES ARE TO BE PROVIDED TO COUNCIL.



AREAS OF WET POUR SOFTFALL  
(TO MITIGATE WEAR-TO MULCH  
AREAS)

AREAS OF WOOD CHIP MULCH



ST. JOSEPH'S - VPA SHEET 3

SPACELAB

**St Joseph's Redevelopment Planning Agreement****Goulburn Mulwaree Council****The Trustees of the Roman Catholic Church for the Archdiocese of  
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**Schedule 5**

(Schedule 1 Part C)

**Landscape Handover and Maintenance Protocol**

1. On Practical Completion of a Developer Work, Council is to attend an on-site meeting to inspect both Developer Work – Hard Landscaping and Developer Work – Soft Landscaping.
2. At or prior to the Practical Completion Date for a Developer Work the Developer's contractor will provide a maintenance plan for the Developer Work – Hard Landscaping and Developer Work – Soft Landscaping.
3. Subject to being satisfied, acting reasonably, that the Developer Work is consistent with the approved plans and specifications, Council shall issue a certificate of conditional acceptance, subject to the maintenance of the Developer Work by the Developer's contractor in accordance with the maintenance plan for a period of 104 weeks from the Practical Completion Date for the Developer Work.
4. In respect of the Developer Work – Hard Landscaping the maintenance plan will address:
  - Inspection and repair of cracks and / or undermining to the footpaths within the open space;
  - A maintenance schedule for the playground, to ensure that upon completion of the Maintenance Period it will be in a good state of repair, well maintained, and meets a fit for purpose standard as generally prescribed in:
    - AS4685 (2014): Playground equipment and surfacing;
    - AS4422 (2016): Playground surfacing – Specifications, requirement and test method; and
    - AS/NZS 4486.1: Playgrounds and playground equipment;
  - A maintenance schedule for the boardwalk, to ensure that upon completion of the Maintenance Period it will be in a good state of repair, well maintained, and meets a fit for purpose standard as generally prescribed in:
    - AS2156.1 Walking Tracks Part 1; and
    - AS2156.2 Walking Tracks Part 2;
  - A maintenance schedule for the seats and signage, to ensure that upon completion of the Maintenance Period they will be in a good state of repair, well maintained, and meet a fit for purpose standard;
5. In respect of the Developer Work – Soft Landscaping the maintenance plan will address:
  - Mowing of open space grass areas (excluding residential verges);



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- 
- Over sowing of patchy grass areas;
  - Watering of all new trees,
  - Replacement of dead or diseased trees, shrubs & groundcovers;
  - Weed control and spraying of grass areas and garden beds;
  - Formative pruning of all trees (including adjustment or replacement of stakes and removal of stakes/ties when tree is self-supporting);
  - Mulch top ups to gardens to maintain a minimum 100mm depth;
  - Checking/maintenance of irrigations system.
6. From the Practical Completion Date of a Developer Work, the Developer’s contractor will maintain the Developer Work – Hard Landscaping and the Developer Work – Soft Landscaping in accordance with the maintenance plan for a period of 104 weeks.
  7. During the Maintenance Period Council will attend quarterly inspections to view the status of the landscape, and provide written commentary as to any remedial works that it reasonably considers are required to meet the requirements of the maintenance plan.
  8. Within 4 weeks prior to the completion of the 104-week Maintenance Period, the Council is to attend an on-site meeting to inspect the Developer Work – Hard Landscaping and the Developer Work – Soft Landscaping.
  9. For Council to accept handover of the Developer Work – Hard Landscaping and the Developer Work – Soft Landscaping it will need to be satisfied, acting reasonably, that:
    - All Developer Work – Hard Landscaping are free of material defects, are in a good state of repair and fit for purpose, including, but not limited to:
      - that all concrete pathways are to be free of structural cracks and / or undermining;
      - that the playground is free of material defects, in a good state of repair and well maintained, and meets a fit for purpose standard as generally prescribed in:
        - AS4685 (2014): Playground equipment and surfacing;
        - AS4422 (2016): Playground surfacing – Specifications, requirement and test method; and
        - AS/NZS 4486.1: Playgrounds and playground equipment;
      - that the boardwalk is free of material defects, in a good state of repair and well maintained, and meets a fit for purpose standard as generally prescribed in:
        - AS2156.1 Walking Tracks Part 1; and
        - AS2156.2 Walking Tracks Part 2; and

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- 
- that the seats and signage are free of material defects, in a good state of repair and well maintained, and meet a fit for purpose standard.
  - Developer Work – Soft Landscaping meets the following specifications:
    - Dryland and irrigated grass has healthy growth and at least 85% coverage across the site;
    - All dead or diseased trees and dead or diseased shrub & groundcover bed plantings have been replaced and all plants are established, firm in the ground, and showing a dominant leader consistent with the age and the prevailing growing conditions over the Maintenance Period;
    - All garden beds are mulched with a minimum 100mm cover required;
    - Weeds in (grassed and shrub bed areas) have been controlled as per the maintenance plan;
    - Irrigation is installed as specified, without material defects, and is functioning to specification.
10. Upon Council being satisfied, acting reasonably, that the assets are presented as noted above, the Council will issue a certificate of acceptance.
11. All Developer Work – Hard Landscaping and the Developer Work – Soft Landscaping will transfer from the Developer and become the property and responsibility of the Council on and from the date the land on which the relevant work is located is dedicated to the Council.

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**Execution**

**Executed as a Deed**

**Dated:** *21<sup>st</sup> September 2017*



**Executed on behalf of the Council**

*[Signature]*  
\_\_\_\_\_  
General Manager  
*[Signature]*  
\_\_\_\_\_  
Mayor

*[Signature]*  
\_\_\_\_\_  
Witness  
*[Signature]*  
\_\_\_\_\_  
Witness

**Executed on behalf of the Developer** The Common Seal of the Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn was affixed hereto in the presence of:

*[Signature]*  
\_\_\_\_\_  
Name/Position: Archbishop Christopher Prowse

*[Signature]*  
\_\_\_\_\_  
Name/Position: Trustee: Anthony Percy

*[Signature]*  
\_\_\_\_\_  
Name/Position: Trustee: John Woods



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**Appendix**

(Clause 57)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

**Explanatory Note**

**Draft Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Parties**

**Goulburn Mulwaree Council** ABN 84 049 849 319 of 184-194 Bourke Street, Goulburn NSW 2580 (**Council**)

and

**The Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn as Trustees of the Chancery Office** ABN 12 689 322 721 of GPO Box 3089 Canberra ACT 2601 (**Developer**)

**Description of the Land to which the Draft Planning Agreement Applies**

Lot 2 in DP1186483 known as 153 Taralga Road, Goulburn and any lot created by the subdivision of that lot.

**Description of Proposed Development**

Development the subject of Development Consent to Development Application DA/0182/1617 lodged with the Council on 20 December 2016. The Development comprises the staged subdivision of the Land to create 112 residential lots, two super lots for further development (subject to further development applications) and two public reserves.

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**Summary of Objectives, Nature and Effect of the Draft  
Planning Agreement****Objectives of Draft Planning Agreement**

To provide additional land for drainage reserves and public open space to Council.

**Nature of Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(3) of the Act).

**Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Developer,
- excludes the application of s94, s94A or s94EF of the Act to the Development,
- makes provision for the carrying out of embellishment works to drainage and open space land,
- makes provision for the dedication of land for drainage and open space purposes,
- imposes obligations on the Developer in relation to the carrying out of specified Works, the handing over of those Works to the Council and the rectification of defects and maintenance of those Works,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
- has the effect of prohibiting the issuing of certain Subdivision Certificates unless and until Development Contributions are provided in accordance with the Draft Planning Agreement,
- provides for the provision of works as executed plans in respect of Works carried out by the Developer,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the agreement.

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**Assessment of the Merits of the Draft Planning Agreement**

**The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies,
- provides land for public purposes in connection with the Development,
- provides and co-ordinates community services and facilities in connection with the Development,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

**How the Draft Planning Agreement Promotes the Public Interest**

The Draft Planning Agreement promotes the public interest by providing for works to be carried out for drainage reserves and public open space at the Developer’s cost and for the land on which those works are carried out to be dedicated to Council at no cost. It also promotes the objects of the Act as set out in s5(a)(ii)-(v) and 5(c) of the Act.

**For Planning Authorities:**

***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A

***Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted***

N/A

***Councils – How the Draft Planning Agreement Promotes the Elements of the Council’s Charter***

Under Section 8A of the *Local Government Act 1993*, the following guiding principles apply to the exercise of functions by councils and are relevant to the Draft Planning Agreement:

- (c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Councils should work with others to secure appropriate services for local community needs.

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The Draft Planning Agreement promotes the elements of the Council's charter by implementing the following Strategies in the Council's Delivery and Operational Plan:

- 1.6.2 To investigate options for expanded community recreation facilities
  - Additional public spaces
  - Major improvements to existing public spaces
  - NRM protection enhancement
- 1.7.1 The Management of financial, economic, engineering and other practices applied to physical assets with the objective of providing the required level of service in the most cost effective manner
- 4.1.1 To care for and protect our waterways and catchments
- 5.1.1 To protect local heritage, public places and amenity including protection of significant architecture, indigenous heritage and the natural environment
- 5.2.1 To develop culture and leisure facilities/activities

***All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

The Developer Work set out in the agreement is consistent with Council's 2017/18 Capital Works Program. Ongoing maintenance of the embellishments and land to be dedicated to Council can be accommodated in Council's Delivery Plan and the relevant Operational Plan/s

***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

Yes. In accordance with clause 29, the application for certain Subdivision Certificates must contain certain information in the plan of subdivision. Further, in accordance with Schedule 1, certain Subdivision Certificates will not be issued until certain work are carried out.

