

DRAFT

Planning Agreement

LAND:

[Street Address, Suburb/City of development]

PARTIES:

Goulburn Mulwaree Council

(Council)

[INSERT DEVELOPER NAME]

(Developer)

EXECUTED:

[INSERT DATE]

[insert name]

[insert name]

[insert name]

Goulburn
Mulwaree Council

Version control table to be deleted once PA finalised		
Version	Date	Notes
V1.01	24.10.2024	Draft PA Template
V1.02		
V1.03		
V1.04		
V1.05		
V1.06		
V1.07		
V1.08		
V1.09		
V1.10		
YELLOW highlight = text to be altered for each PA		

This draft Planning Agreement template is subject to legal review

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PARTIES

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

ACN ## of ## (Developer)

BACKGROUND

(For Development applications)

- A. On, ##insert, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to provide the Public Benefits if that Development Consent was granted.

(For changes to Environmental Planning Instruments)

- A. On, ##insert, the Developer made an application to the Council to amend the Goulburn LEP for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to provide the Public Benefits if Development Consent was granted.
- C. The Instrument Change was published in NSW Government Gazette No. ##insert on ##insert and took effect on ##insert.
- D. On, ##insert, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.

OPERATIVE PROVISIONS

1 Definitions

The following definitions apply unless the context otherwise requires:

Acquisition Act means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

Acceptance of Completion Notice means a notice issued by the Council to the Developer pursuant to **clause 10.2.1**

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

Assign as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.

Attributed Value means:

- (a) with respect to Designated Land, the amount specified in table 3 headed “Attributed Value” at **Schedule 6** for each item of Designated Land; and
- (b) with respect to each Item of Works, the Development Cost of that Item of Works determined in accordance with **clause 5.1**.

Authority means (as appropriate) any:

- (a) federal, state or local government;
- (b) department of any federal, state or local government;
- (c) any court or administrative tribunal; or
- (d) statutory corporation or regulatory body.

Bank Guarantee means a bank guarantee from an Australian bank that is provided to the Council by the Developer under this Agreement which is:

- (a) in a form acceptable to the Council;
- (b) unconditional and irrevocable; and
- (c) without an expiry date.

Bioretention Basin means water sensitive urban design infrastructure associated with the Works on Dedicated Lands being the range of measures that are designed to avoid or minimise the environmental impacts of urbanisation in terms of the demand for water and the potential pollution threat to natural waterways.

Business Day means between 9am and 5pm Sydney time on a day other than a Saturday, Sunday, any other local, state or federal public holiday and any day between 20 December and 10 January inclusive.

Claim against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Certifier has the same meaning as in the Act.

Complete, Completed, Completion means completed in accordance with the requirements of this Agreement.

Compliance Certificate has the same meaning as in the Act.

Construction Certificate has the same meaning as in Part 6 of the Act.

Council means Goulburn Mulwaree Council.

Date of Completion means, in relation to each Item of Work, the date on which the works are Completed being the earlier of:

- (a) the date an Item of Work is deemed to have been Completed under clause 10.3;
or
- (b) the date of Completion as set out in an Acceptance of Completion Notice.

Default Event means any of the following events:

- (a) a party fails to pay when due any amount payable by it under this Agreement;
- (b) a party fails to duly observe and perform any of its obligations under the Agreement;
- (c) a party gives a representation or warranty under the Agreement that is materially incorrect, untrue or misleading;
- (d) a party commits any other material breach of the Agreement; or
- (e) a party fails to comply with a material law.

Defect means anything in the Item of Works which:

- (a) adversely affects the ordinary use and/or enjoyment of that item; or
- (b) may require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect;

Defects Liability Period means, in relation to each Item of Works, the period during which the Developer will be liable for any defects under clause 10, as set out in **Item 6 of Schedule 2**

Designated Land means that part of the Land identified as Designated Land on the plan attached as **Schedule 8**.

Development means the development of the Land by the Developer as described in **Item 2 of Schedule 2**.

Development Application means a development application lodged by the Developer with Council in relation to the Development as described in **Item 3 of Schedule 2**.

Development Consent means a development consent issued under the Act with respect to the Development Application and the Development.

Development Cost means in relation to an Item of Works:

- (a) the construction costs of that Item of Works;
- (b) any costs incurred under a building contract in relation to that Item of Works; and
- (c) any costs or expenses payable to an Authority in relation to that Item of Works,

as determined by a Quantity Surveyor in accordance with **clause 5**

Developer means **XXXX**

Drainage Reserves and Basins means that part of the Works comprising drainage reserves and basins, as set out in **Table 1 of Schedule 6**

Encumbrance means an interest or power:

- (a) reserved in or over an interest in any asset;
- (b) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or
- (c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

Final Basin State means the completion of the following works to a Bioretention Basin:

- (a) removal of silt and grass from the Interim Basin to the depth of the filter material;
- (b) construction of Interim Basin to ultimate design in accordance with the drawings approved as part of the relevant Subdivision Works Certificate, including installation of geosynthetic clay liner or equivalent to 100mm above the depth of the filter material;
- (c) installation of sub surface drainage pipes, risers, flushing points, and pit connection;
- (d) installation of the drainage layer minimum 275mm thick;
- (e) installation of the transition layer minimum 100mm thick to prevent the migration of the filter media into the drainage layer;
- (f) installation of and filter media layer minimum 400mm thick in two lifts;
- (g) installation of tube stock planting,

in accordance with the Development Consent and this Agreement.

Final Lot means a lot created in the Development for separate residential occupation and disposition, 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 Agreement.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.

Insolvency Event means, in relation to the Developer, any of the following:

- (a) the Developer becomes insolvent;
- (b) the Developer assigns any of its property for the benefit of creditors or any class of them;
- (c) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Developer or the Developer enters into a scheme of arrangement with its creditors or is wound up;
- (d) the holder of a Security Interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale;
- (e) a judgment or order is made against the person in an amount exceeding \$10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 days after being made;
- (f) any step is taken to do anything listed in the above paragraphs; and
- (g) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

Inspection means an inspection of the works required by this Agreement undertaken at a specific and critical point of construction by the Certifier as set out in **Schedule 4**

Instrument Change means the amendment to the Goulburn Mulwaree Local Environmental Plan 2009 as set out in **Item 4 of Schedule 2**.

Item of Works means an individual item of the Works as set out in Item Error! Reference source not found. of **Table 1 in Schedule 6**.

Interim Basin means a Bioretention Basin, as constructed to the Interim Basin State.

Interim Basin State means the construction of a Bioretention Basin to the following standard: the construction of bio-retention basin bulk earthworks to base of future pond including embankment and outlet works (including planting above the filter media level to stabilise batters) for use as a temporary sediment and stormwater detention pond in accordance with the Development Consent and any relevant Subdivision Works Certificate.

Land means the land described in **Item 1 of Schedule 2**

Law means all applicable legislation, regulations, by-laws, common law and other binding order made by any Authority, including any applicable Planning Legislation and Environmental Law as defined at **clause 14.1**.

Maintenance Liability Period means the period of time, as set out in **Item 7 of Schedule 2**

Maintenance Obligations means those maintenance obligations set out in **Item D. of Schedule 6** to be undertaken in accordance with this Agreement.

Maintenance Security Amount means the amount of security required under clause 18 as set out in Table 2 of Schedule 6

Monetary Contributions means the monetary contributions set out in **Item C** in **Table 1** of **Schedule 6**.

Occupation Certificate means an occupation certificate as defined in section 6.4(c) of the Act.

Part 6 Certificate means a certificate issued under in Part 6 of the Act.

Planning Legislation means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

Public Benefits means the provision of the Works, the making of the Monetary Contributions, performance of the Maintenance Obligations and the dedication of the Designated Lands by the Developer in accordance with this Agreement.

Quantity Surveyor means someone selected from a list of Quantity Surveyors all of whom must be members of Panels for the NSW Department of Commerce or Local Government Procurement.

Residential Lot means a single lot created on the registration of a plan of subdivision as part of the Development intended to not be further subdivided and to be used for the purpose of the construction of one (1) or more residential dwellings.

Security Interest means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the Personal Property Securities Act 2009); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

Security Value means the value which is given to each Item of Work in **Table 2** of **Schedule 6** under the heading Security Value.

Subdivision Certificate means a subdivision certificate as defined in section 6.4(d) of the Act.

Subdivision Works Certificate means a subdivision works certificate as defined in section 6.4(b) of the Act.

Works means the works specified or described in **Item B** of **Schedule 6**.

Works as Executed Plan means a plan and supporting files that details the works as constructed and conforming with the approved engineering plans, specifications Table 1 and 4 of Schedule 6 and any such plans are in accordance with **Schedule 5**.

2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- 2.1.1 Any reference to **a clause**, annexures and schedules refers to a clause in, or annexure or schedule to this Agreement.

- 2.1.2 Any reference to a **statute** refers to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- 2.1.3 The singular includes the plural and vice versa.
- 2.1.4 A reference to a **person** includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
- 2.1.5 A reference to **executors**, administrators or successors refers to a particular person that includes their executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- 2.1.6 **Dollars, Australian dollars, dollars, \$, AUS \$ or A\$** is a reference to the lawful currency of Australia.
- 2.1.7 Where any period of time is calculated from the given day or day of an act or event, it is to be calculated exclusive of that day.
- 2.1.8 A **day** is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- 2.1.9 A **group of persons or things** is a reference to any two or more of them jointly and to each of them individually.
- 2.1.10 The words **include, including, for example** or **such** as are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- 2.1.11 If an act under this Agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
- 2.1.12 If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
- 2.1.13 Any time of day referenced in this agreement is a reference to Sydney time.
- 2.1.14 Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.
- 2.1.15 A reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
- 2.1.16 A reference to one gender extends and applies to the other.

3 Status

3.1 Planning Agreements

- 3.1.1 This Agreement is a planning agreement:

- (a) within the meaning set out in section 7.4 of the Act; and
- (b) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3.1.2 Schedule 1 sets out the application of section 7.4 of the Act in this Agreement.

3.2 Application

This Agreement applies to both the Land and the Development.

3.3 Operation of Agreement

3.3.1 Subject to paragraph 3.3.2, this Agreement operates from the date it is executed by both parties.

3.3.2 The following clauses of this Agreement will only operate if and when Council grants the Development Consent.

4 Application of section 7.11 and section 7.12

4.1 Application

4.1.1 The application of sections 7.11 and 7.12 of the Act to the Development are excluded to the extent set out in Items 4 and 5 of Schedule 1.

4.1.2 The Public Benefits are to be taken into consideration in determining a development contribution under section 7.11 of the Act with respect to the Development to the extent set out in Item 6 of Schedule 1.

5 Satisfaction of Public Benefit condition

5.1 Determination of Development Cost

5.1.1 Upon Completion of any Item of Works the Developer must within ten (10) Business Days notify the Council in writing of the Completion of that Item of Work in accordance with clause 10.1.1.

5.1.2 Upon receipt of written notification given under clause 10.1.1, the Council may, at the Developer's costs, appoint a Quantity Surveyor to independently assess the Development Cost of the relevant Item of Work either whole or part being the subject of the notice given under clause 10.1.1. The Quantity Surveyor shall issue a certificate in favour of both the Council and the Developer as to the Development Cost of the relevant Item of Work.

5.1.3 The determination of the Quantity Surveyor as to the Development Cost of an Item of Work under this clause is conclusive and binding on the parties except in the case of manifest error.

5.1.4 The Developer shall, within fifteen (15) Business Days of receipt of an invoice in relation to the independent Quantity Surveyor costs incurred pursuant to this clause, pay that invoice as directed by the Council.

5.2 Calculating Attributed Values

The parties acknowledge that where an Item of Works is identified in Schedule 6 as having an Attributed Value, the following mechanism will apply:

- 5.2.1 The Attributed Value for an Item of Work will be the Development Cost of that Item of Work or the Attributed Value of the Item of Work as identified at Schedule 6, whichever is the lesser amount.

5.3 Credit for Attributed Values

- 5.3.1 Once determined in accordance with clause 5.2, the Attributed Value of an Item of Works will generate a credit equal to the amount of that Attributed Value.

- 5.3.2 The Developer, by letter in writing to the Council, may then elect to use any credit generated under this clause to reduce any:

- (a) monetary section 7.11 or section 7.12 contribution required pursuant to a condition of Development Consent; or
- (b) Monetary Contributions required to be made under this Agreement.

6 Registration of this Agreement

6.1 Registration

This Agreement must be registered on the title of the Land pursuant to section 7.6 of the Act.

6.2 Obligations of the Developer

The Developer must, within fifteen (15) Business Days of execution of this Agreement:

- 6.2.1 do all things necessary to allow the registration of this Agreement to occur, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land; and
- 6.2.2 pay any costs incurred by the Council in undertaking that registration.
- 6.2.3 provide the Council with evidence that the Agreement has been registered on the title to the Land within fifteen (15) Business Days of registration.
- 6.2.4 registration on the title of the land must occur prior to the issuance of the first Construction, Subdivision Works or Subdivision Certificate whichever occurs first.

6.3 Removal from Title of the Land

- 6.3.1 The Council will do all things necessary to allow the Developer to remove the registration of this Agreement from the title of the Land where the Developer has:
- (a) provided all Monetary Contributions;

- (b) completed the Works;
 - (c) delivered the Public Benefits; and
 - (d) dedicated the Designated Land.
- 6.3.2 The Developer must pay any costs incurred by the Council in undertaking that discharge.
-

7 Provision of Public Benefits

7.1 Designated Land

- 7.1.1 The Developer must dedicate the Designated Lands to the Council:
- (a) free of any trusts, estates, interests, covenants and Encumbrances;
 - (b) by the dates specified in Schedule 6; and
 - (c) at no cost to the Council.
- 7.1.2 The Developer must meet all costs associated with the dedication of the Designated Lands in accordance with paragraph 7.1.1, including any costs incurred by the Council in relation to that dedication.
- 7.1.3 The Council must do all things reasonably necessary to enable the Developer to comply with paragraph 7.1.1.

7.2 Works

The Developer, at its cost, must:

- 7.2.1 if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the conduct of the Works;
- 7.2.2 carry out and complete each Item of Works by the time specified in Schedule 4; and
- 7.2.3 carry out and complete the Works:
- (a) in accordance with the requirements of, or consents issued, by any Authority;
 - (b) in accordance with the reasonable requirements of the Council and any applicable Development Consent; and
 - (c) in a proper and workmanlike manner complying with current industry practice and standards, including applicable Australian standards.

7.3 Protection of People and Property

The Developer is to use all reasonable endeavours in relation to the performance of its obligations under this Agreement to ensure that:

- 7.3.1 all necessary measures are taken to protect people and property;
- 7.3.2 unnecessary interference with the passage of people and vehicles is avoided; and
- 7.3.3 nuisances and unreasonable noise and disturbances are prevented.

7.4 Monetary Contributions

The Developer must make the Monetary Contributions to the Council in accordance with Schedule 6.

7.5 Indexation

7.5.1 The amount of each Monetary Contribution as required will be indexed in accordance with the following formula:

$$A = ((B \times C) / D)$$

where:

- A** = the indexed amount;
- B** = the value of the Monetary Contribution as set out in Schedule 6;
- C** = the Index most recently published before the date that the relevant item is provided, completed or paid as the case may be; and
- D** = the Index either current as at the date the agreement comes into effect, or where specifically set out in this Agreement.

If **A** is less than **B** then the amount of the relevant Monetary Contribution will not change.

7.5.2 For the purposes of paragraph 7.5.1:

- (a) each component of the Monetary Contribution is indexed as at the date it is paid; and
- (b) the Index means the Consumer Price Index (All Groups) for Sydney or such other index which replaces it from time to time.

7.5.3 Timing of contribution payments

- (a) Monetary Contribution payments that are required to be paid prior to the release of a Construction, Subdivision Works, or Subdivision Certificate may only be paid once the relevant application has been lodged for assessment, and no more than ten (10) business days before the issue of the relevant Certificate.

- (b) The Council reserves the right to decline and return payments made prematurely.

8 Verification of Works

- 8.1.1 The Developer must, prior to commencing any Works and at its own cost, engage an independent third-party consultant (Consultant) with proven specialised expertise in the design, inspection and commissioning of water sensitive urban design devices and in particular the devices covered by this Agreement.
- 8.1.2 Within seven (7) days of engaging the Consultant, the Developer must provide Council with the details of the Consultant, including the Consultant's name, and curriculum vitae setting out the Consultant's proven specialised expertise in the design, inspection and commissioning of water sensitive urban design devices.
- 8.1.3 When issuing a Completion Notice in accordance with clause 10.1, the Developer must provide the Council with independent written verification from the Consultant that the relevant Works have been completed:
 - (a) in accordance with this Agreement and any consents, approvals or permits required by a relevant Authority including the Council;
 - (b) in accordance with the scope and specifications for the Works as set out in Schedule 6, or as set out in any variation approved in accordance with clause 25.10, or any amendment to this Agreement; and
 - (c) in accordance with industry best practice.

9 Commencement of Works

9.1 Notice of Commencement

- 9.1.1 No later than ten (10) Business Days before the commencement of construction works in connection with the Development Consent and this Agreement, the Developer is to submit to the Council a Commencement Notice (**Commencement Notice**).
- 9.1.2 The Developer must include in the Commencement Notice the projected works schedule, milestone dates and the anticipated completion date of the Items of Work.
- 9.1.3 The Developer must include in the Commencement Notice contact details of the daily site supervisor and the main Project Manager.

10 Completion of Works

10.1 Issue of Completion Notice

- 10.1.1 When the Developer is of the opinion that an Item of Work has been completed, the Developer must notify the Council in writing. The notice must specify and include-
- (a) a description of the Item of Work completed;
 - (b) a full Works as Executed Plan package of information in accordance with Schedule 5;
 - (c) copies of all inspection and testing results undertaken;
 - (d) where required the written verification of the Consultant procured under clause 8;
 - (e) where required the certification that the design requirements of any Australian Standards have been met;
 - (f) A quantity cost report prepared by a Registered Surveyor that provides a detailed breakdown of the costs of the Item of Work; and
 - (g) any other supporting documentation relied upon to verify completion.

The Developer must provide and submit the above documentation with the completion notice as one single package of information for the Works Completed (**Completion Notice**).

- 10.1.2 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.
- 10.1.3 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 at the Developers expense and prior to the submission of a Completion Notice.
- 10.1.4 The Council may require, at its absolute discretion, the provision of an **Occupation Certificate, Subdivision Certificate or Compliance Certificate** to accompany the Completion Notice in order to accept.

10.2 Notice of Completion

The Council must provide notice in writing to the Developer within fifteen (15) Business Days that the relevant Item of Works the subject of a Completion Notice:

- 10.2.1 has been Completed (**Acceptance of Completion Notice**); or
- 10.2.2 request additional information that the Council acting reasonably considers necessary to assess the Item of Work for completion; or

10.2.3 will need to be inspected, tested, assessed or verified prior to issuing an Acceptance of Completion Notice; or

10.2.4 has not been Completed, in which case the notice must also detail:

- (a) those aspects of the Item of Works which have not been Completed; and
- (b) the work the Council requires the Developer to carry out in order to rectify those deficiencies.

10.3 Date of Completion

The date of completion of an Item of Work is the date recorded in the Acceptance of Completion Notice issued under 10.2.1.

10.4 Deemed Completion

If the Council does not provide the Developer with notice within the time specified in clause 10.2, the Item of Works subject of a Completion Notice will be deemed to have been Completed on the date the Completion Notice was received by the Council.

10.5 Effect of Council Notice

10.5.1 Where the Council serves notice on the Developer pursuant to clause 10.2.4, the Developer must:

- (a) rectify the deficiencies in that item in accordance with that notice within a reasonable time (not being less than ten (10) business days from the date it is issued by the Council); or
- (b) serve a notice on the Council that it disputes the matters set out in the notice.

10.5.2 Where the Developer:

- (a) serves notice on the Council in accordance with paragraph 10.2.4(b) the dispute resolution provisions of this Agreement apply; or
- (b) rectifies the Works in accordance with paragraph 10.5.1(a) it must serve upon the Council a new Completion Notice for the Item of Work. (**New Completion Notice**).

10.6 New Completion Notice

- (a) The provisions of clauses 10.1 to 10.6 (inclusive) apply to any New Completion Notice issued by the Developer.
- (b) Without limitation to clause 8, the Consultant must verify that the relevant Works the subject of rectification pursuant to a Notice issued by the Council under clause 10.2.4 have been completed in accordance with the requirements of that notice.

11 Defects liability

11.1 Defects Notice

11.1.1 Where any Item of Works is Complete, but that item contains a minor Defect that the Council agrees can be rectified during the Defects Liability Period, or the Council becomes aware of a Defect after serving an Acceptance of Completion Notice, the Council may issue a notice to the Developer (**Defects Notice**) concerning that Item of Works but only during the relevant Defects Liability Period.

11.1.2 A Defects Notice must contain the following information:

- (a) the nature and extent of the Defect;
- (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
- (c) the time within which the Defect must be rectified by the Developer (which must be a reasonable time and not less than ten (10) business days).

11.2 Developer to Rectify Defects

11.2.1 The Developer must rectify the Defects contained within a Defects Notice prior to the date specified in the Defects Notice.

11.2.2 The Developer must follow the procedure set out in **clause 10** in respect of the Completion of the rectification of any Defect as if a reference in that clause to an Item of Works is a reference to the relevant Defect.

11.3 Access to Designated Land

If the Developer is required to access, use and occupy any part of the Designated Land for the purpose of discharging its obligations under this clause 10 after the relevant Designated Land has been dedicated or transferred to the Council, the Council will grant a fee free licence to the Developer:

11.3.1 with respect to so much of the relevant Designated Land; and

11.3.2 for such period;

that is reasonably necessary to allow the Developer to properly discharge those obligations.

11.4 Inspection

11.4.1 The Council may undertake an audit, inspection or testing of developer work under suspicion of non-compliance of this Agreement or any legislation with or without giving reasonable notice in accordance with the relevant legislative requirements.

11.4.2 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 Works.

11.5 Right of Council to Step-in

The Council may, at its absolute discretion, enter upon the Land for the purpose of rectifying a Defect set out in the Defects Notice where the Developer has failed to comply with a Defects Notice, but only after giving the Developer five (5) business days written notice of its intention to do so.

11.6 Consequence of Step-in

If the Council elects to exercise the step-in rights granted to it under clause 11.5 then:

11.6.1 The Council may:

- (a) enter upon any part of the Land reasonably required to exercise those step-in rights; and
- (b) rectify the relevant Defects in accordance with the Defects Notice;

11.6.2 the Developer must not impede or interfere with the Council in exercising those rights; and

11.6.3 The Council may claim any costs incurred by it in doing so from the Developer as a liquidated debt.

11.7 Costs of the Council

Where the Council exercises its step-in rights under clause 11.5, it may:

11.7.1 call upon the Bank Guarantees provided by the Developer pursuant to clause 18.4 to meet any costs for which the Developer is liable under clause 11.6 and

11.7.2 recover as a debt due in a court of competent jurisdiction any difference between the amount of the Bank Guarantees and the costs incurred by the Council in rectifying the Defects.

11.8 The Council may call on Bank Guarantee

11.8.1 If the Developer does not comply with the terms of this clause, the Council may issue the Developer with a notice requiring the Developer to rectify the relevant default within twenty (20) business days from the date of that notice.

11.8.2 If the Developer fails to comply with a notice issued under paragraph 11.8.1 above, the Council, without limiting any other avenues available to it, may call on the relevant Bank Guarantee provided pursuant to clause 18.4 to the extent necessary to reimburse the Council for any costs incurred by it in rectifying the relevant default of the Developer.

11.9 Indemnity

The Developer indemnifies the Council against any Claim to the extent that the Claim arises as a direct result of a breach of this clause 11 by the Developer.

12 Maintenance of Reserves and Basins

12.1 Maintenance Obligations

12.1.1 The Developer must:

- (a) maintain the Drainage Reserves and Basins in the manner and extent described in Schedule 6 (Item D); and
- (b) for the period described in Schedule 6 (Item D) (timing), at no cost to the Council (**Maintenance Obligations**).

12.1.2 For the avoidance of doubt, the Drainage Reserves and Basins must be maintained in accordance with the Maintenance Obligations.

12.1.3 The Developer must keep a written record of maintenance undertaken of the Drainage Reserves and Basins and provide a copy to the Council upon request.

12.2 Notice requiring Maintenance Obligations to be carried out

12.2.1 If the Council, acting reasonably, is not satisfied that the Maintenance Obligations have been carried out in accordance with clause 12.1 with respect to one or more of the Drainage Reserves and Basins, or additional maintenance is required the Council may, by notice in writing:

- (a) direct the Developer to undertake the required maintenance; and
- (b) specify a time by which the Maintenance Obligation is required.

12.2.2 Upon receipt of a notice from the Council in accordance with clause 12.2 (Notice), the Developer must:

- (a) carry out the Maintenance Obligation in accordance with the Notice; and
- (b) provide the Council with written confirmation that the Maintenance Obligation has been satisfied.

13 Warranties and Indemnities

13.1 Warranties

The Developer warrants to the Council that:

- 13.1.1 it is able to fully comply with its obligations under this Agreement;
- 13.1.2 it has full capacity to enter into this Agreement; and

13.1.3 there is no legal impediment to it entering into this Agreement, or performing the obligations imposed under it.

13.2 Indemnity

Without limiting any other indemnities provided in this Agreement, the Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works, but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

14 Contamination

14.1 Definitions

For the purpose of this clause:

Contamination has the meaning given to that word in the *Contaminated Land Management Act 1997* (NSW).

Contaminated means subject to Contamination.

Environment means all components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter;
- (d) any living organism; and
- (e) natural or man-made or modified features or structures,
- (f) and includes ecosystems and all elements of the biosphere.

Environmental Law means all laws relating to the protection of or prevention of harm to the Environment including but not limited to any law relating to the use of land, planning, environmental assessment, the environmental or historic heritage, water, water catchments, pollution of air, soil, ground water or surface water, noise, soil, chemicals, pesticides, hazardous goods, building regulation, occupation of buildings, public health or safety, occupational health and safety, environmental hazard, any aspect of protection of the environment or the enforcement or administration of any of those laws (whether those laws arise under statute or the common law or pursuant to any permit, licence, approval, notice, decree, order or directive of any governmental agency or otherwise).

14.2 Warranty and Indemnity

The Developer warrants that:

- 14.2.1 except as disclosed in Schedule 7 of this Agreement, the Designated Land is not Contaminated; and

- 14.2.2 the Developer indemnifies and must keep indemnified the Council against all liability for and associated with all Contamination present in, on or under the Designated Land as at the date of dedication or transfer of the Designated Land to the Council in accordance with this Agreement.

14.3 Contamination caused by Developer

- 14.3.1 If Contamination in, on or under the Land or land which is outside the boundary of the Land is caused or contributed to by the Developer or as a direct consequence of the Works being undertaken or carried out by the Developer under this Agreement, the Developer will, at its own cost and within a reasonable time, remediate the Contamination to a standard suitable for the current and proposed future use of that land.
- 14.3.2 Where Contamination is caused or contributed to by the Developer as a direct consequence of the Works being undertaken or carried out by the Developer under this Agreement, and that Contamination is in, on or under any land that is owned or occupied by the Council, or under the management and control of the Council, the Developer indemnifies and must keep indemnified the Council against all liability for and associated with all such Contamination.

15 Determination of this Agreement

15.1 Determination

This Agreement will determine upon the Developer satisfying all of its obligations under the Agreement.

15.2 Effect of Determination

Upon the determination of this Agreement the Council will do all things necessary to allow the Developer to remove this Agreement from the title of the whole or any part of the Land as quickly as possible.

16 Prohibition on Assignment

- 16.1 The Developer may not Assign its rights or obligations under this Agreement without the prior written consent of the Council.
- 16.2 The Developer must not Assign its interest in the Land, other than a single Residential Lot approved pursuant to a Development Consent and created by the registration of a plan of subdivision, unless:
- 16.2.1 the Council consents to the Assignment; and
- 16.2.2 the proposed assignee enters into an agreement to the satisfaction of the Council under which the assignee agrees to be bound by the terms of this Agreement with respect to the relevant part of the Land being Assigned.

17 Compulsory Acquisition of the Designated Land

- 17.1 The Developer consents to the compulsory acquisition of the Designated Land:
- 17.1.1 in accordance with the Acquisition Act; and
 - 17.1.2 on the terms set out in this clause 17.
- 17.2 The Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer has committed a Default Event with respect to the dedication of that land under this Agreement.
- 17.3 If the Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
- 17.3.1 The Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
 - 17.3.2 The Council must complete that acquisition within twelve (12) months of the relevant Default Event.
- 17.4 The parties agree that the provisions of this clause 17 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of section 30 of the Acquisition Act.

18 Security

18.1 Delivery to Council of Bank Guarantee

Prior to the issue of a Construction Certificate, Subdivision Works or Subdivision Certificate for the Development, the Developer must deliver to Council one or more Bank Guarantees for an amount equal to the sum of the Security Value for the Works or obligations as set out in Table 2 of Schedule 6.

18.2 Value of Security

- 18.2.1 The Security Value shall be 125% of the value of the Item of Work or obligations.
- 18.2.2 The Security Value shall be indexed at time of payment in accordance with the indexation formula set out in clause 7.5
- 18.2.3 In addition to the 18.2.1 and 18.2.2 the security value shall include an escalation rate of 6% for each year the security value is to be held.

18.3 Timing of Security Payments

- 18.3.1 Security Values that are required to be paid prior to the release of a Construction Certificate, Subdivision Works or Subdivision Certificate may only be paid once the relevant application has been lodged for assessment, and no more than ten (10) business days before the issue of the relevant Certificate.

- 18.3.2 The Council reserves the right to decline or return a payment if that payment is made prematurely.
- 18.3.3 Where there is no requirement for a Part 6 Certificate to be issued the Security Values must be paid no less than ten (10) business days before works commence on site.

18.4 Council may call on Bank Guarantee

- 18.4.1 The Council may make an appropriation from the Bank Guarantee (and the proceeds of the Bank Guarantee, including any interest earned in respect of such proceeds) at any time, without prior notice to the Developer, in such amount as the Council, acting reasonably, thinks appropriate for the provision of the Works, the costs of rectifying any default by the Developer under this Agreement, ensuring due and proper performance of the Developer's obligations under this Agreement if:
- (a) an Insolvency Event occurs in respect of the Developer;
 - (b) the Developer fails to deliver, or comply with its obligations under this Agreement in relation to the delivery of the Works (including with respect to the rectification of Defects), and such failure has not been rectified to the reasonable satisfaction of the Council within ten (10) business days of receipt of written notice requiring performance of its obligations; or
 - (c) the Developer fails to provide the Public Benefits in accordance with this Agreement.
- 18.4.2 Within ten (10) business days of the Council making an appropriation from the Guarantee, the Council must notify the Developer of that appropriation.

18.5 Top Up of Bank Guarantee

Within ten (10) business days of being requested to do so by the Council the Developer must ensure that the amount secured by any Bank Guarantee is returned to the relevant level set out in clause 18.1.

18.6 Security during Defects Liability Period

- 18.6.1 Upon the completion of an Item of Work and the commencement of the Defects Liability Period, the Council must return any Bank Guarantees held by it with respect to the relevant Item of Works.
- 18.6.2 In exchange, the Developer must provide the Council with one (1) or more Bank Guarantees in a form acceptable to the Council for an amount equal to twenty per cent (20%) of the sum of the Security Value for that Item of Work.
- 18.6.3 In addition to the 18.6.2 the defects liability security value shall include an escalation rate of 6% for each year the security value is to be held.

18.7 Return of Bank Guarantee

Upon request the Council must return the remaining Bank Guarantees (if any) to the Developer within twenty (20) business days from the expiration of the Defects Liability Period for the last Item of Works that is Completed.

18.8 Bank Guarantee Not Required for Certain Public Benefits

A Bank Guarantee under this clause 18 is not required to be provided with respect to the Attributed Value of the Designated Lands.

19 Dispute Resolution

19.1 Notice of Dispute

19.1.1 If a dispute between the parties arises in connection with this Agreement or its subject matter (**Dispute**), then either party (First Party) must give to the other (Second Party) a notice which:

- (a) is in writing;
- (b) adequately identifies and provides details of the Dispute;
- (c) stipulates what the First Party believes will resolve the Dispute; and
- (d) designates its representative (**Representative**) with the necessary authority to negotiate and resolve the Dispute.

19.1.2 The Second Party must, within seven (7) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person with the necessary authority to negotiate and settle the Dispute (the representatives designated by the parties being together, the **Representatives**).

19.2 Conduct Pending Resolution

The parties must continue to perform their respective obligations under this Agreement if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

19.3 Further Steps Required before Proceedings

Subject to clause 19.12 and except as otherwise expressly provided in this Agreement, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 19.5 or determination by an expert under clause 19.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within seven (7) Business Days of the date a notice under clause 19.1 is served.

19.4 Disputes for Mediation or Expert Determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within seven (7) Business Days to either refer the matter to mediation under clause 19.5 or expert resolution under clause 19.6.

19.5 Disputes for Mediation

19.5.1 If the parties agree in accordance with clause 19.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within seven (7) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.

19.5.2 If the mediation referred to in paragraph 19.5.1 has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 19.6.

19.6 Choice of Expert

19.6.1 If the Dispute is to be determined by expert determination, this clause 19.6 applies.

19.6.2 The Dispute must be determined by an independent expert in the relevant field:

- (a) agreed between and appointed jointly by the parties; or
- (b) in the absence of agreement within seven (7) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.

19.6.3 If the parties fail to agree as to the relevant field within seven (7) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.

19.6.4 The expert appointed to determine a Dispute:

- (a) must have a technical understanding of the issues in dispute;
- (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
- (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.

- 19.6.5 The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.

19.7 Directions to Expert

- 19.7.1 In reaching a determination in respect of a dispute under clause 18.6, the independent expert must give effect to the intent of the parties entering into this Agreement and the purposes of this Agreement.
- 19.7.2 The expert must:
- (a) act as an expert and not as an arbitrator;
 - (b) not accept verbal submissions unless both parties are present;
 - (c) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (d) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
 - (e) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (f) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party fourteen (14) Business Days to make further submissions;
 - (g) issue a final certificate stating the expert's determination (together with written reasons); and
 - (h) act with expedition with a view to issuing the final certificate as soon as practicable.
- 19.7.3 The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
- (a) a short statement of facts;
 - (b) a description of the Dispute; and
 - (c) any other documents, records or information which the expert requests.

19.8 Expert May Convene Meetings

- 19.8.1 The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

19.8.2 The parties agree that a meeting under paragraph 19.8.1 is not a hearing and is not an arbitration.

19.9 Other Courses of Action

If:

19.9.1 the parties cannot agree in accordance with clause 19.4 to refer the matter to mediation or determination by an expert; or

19.9.2 the mediation referred to in clause 19.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within seven (7) Business Days after termination of the mediation;

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

19.10 Final Determination of Expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

19.11 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

19.12 Remedies Available under the Act

This clause 19 does not operate to limit the availability of any remedies available to the Council under sections 9.45 and 9.46 and Division 9.6 of the Act.

19.13 Urgent Relief

This clause 19 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this Agreement.

20 Position of the Council

20.1 Consent Authority

The parties acknowledge that the Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

20.2 Agreement does not Fetter Discretion

This Agreement is not intended to operate to fetter:

20.2.1 the power of the Council to make any Law; or

20.2.2 the exercise by the Council of any statutory power or discretion (**Discretion**).

20.3 Severance of Provisions

20.3.1 No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 19 is substantially satisfied;
- (b) in the event that paragraph 20.3.1(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

20.3.2 Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this Agreement contracted out of a provision or exercised a Discretion under this Agreement, then to the extent of this Agreement is not to be taken to be inconsistent with the Law.

20.4 No Obligations

Nothing in this Agreement will be deemed to impose any obligation on the Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

21 Confidentiality

21.1 Agreement not Confidential

The terms of this Agreement are not confidential, and this Agreement may be treated as a public document and exhibited or reported without restriction by any party.

22 GST

22.1 Definitions

In this clause:

Taxable Supply, GST, Tax Invoice and Input Tax Credit have the same meaning given to them in GST Law.

22.2 Non-monetary Supplies

- 22.2.1 The parties agree that any non-monetary supplies made by one party to the other pursuant to this agreement (including Works and the dedication of land) will be exempt from GST pursuant to Division 82 of the GST Law.
- 22.2.2 In the event that one party reasonably believes that the non-monetary supply it makes to the other is a Taxable Supply then the parties agree to negotiate in good faith to agree to the GST inclusive market value of that Taxable Supply as follows:
- (a) The party making the Taxable Supply will issue a Tax Invoice to the other as soon as practicable after agreeing to the GST inclusive market value and will disclose the amount of GST included in the GST inclusive market value.
 - (b) The recipient of the Taxable Supply will pay to the other party the amount of the included GST within fifteen (15) days of receiving the Tax Invoice.
- 22.2.3 In the event that both parties reasonably believe that each make a non-monetary Taxable Supply to the other, any GST payable by one party to the other will be offset against each other and any net difference will be paid by the party with the greater obligation.

22.3 Supply Expressed in Terms of Money

If any party reasonably believes that it is liable to pay GST on a supply expressed in terms of money (or where the consideration for the supply is expressed in terms of money) and made to the other party under this Agreement and the supply was not expressed to include GST, then:

- 22.3.1 the recipient of the supply must pay an amount equal to the GST on that supply to the other party;
- 22.3.2 the party making the supply will issue a Tax Invoice to the other party; and
- 22.3.3 the recipient of the supply will pay the amount of the GST to the supplier within fifteen (15) days of receiving the Tax Invoice.

22.4 Expenses and Costs Incurred

If any expenses or costs incurred by one party are required to be reimbursed by the other party under this Agreement, then the amount of the reimbursement will be calculated as follows:

- 22.4.1 The amount of the cost or expense incurred by the party seeking reimbursement will be initially calculated excluding any Input Tax Credit to which that party is entitled to claim.
- 22.4.2 This amount initially calculated will be increased by the applicable rate of GST to equal a GST inclusive reimbursement amount and this amount will be paid by the party liable to make the reimbursement.

22.4.3 The party being reimbursed will issue a Tax Invoice to the other at the GST inclusive reimbursement amount prior to being reimbursed.

22.5 Survival of Clause

This clause 22 continues to apply after the expiration or termination of this Agreement.

23 Access to Land

23.1 Application of Clause

This clause applies if the Developer accesses, uses and/or occupies any land owned by the Council in performing its obligations or exercising its rights under this Agreement (**Necessary Access**).

23.2 Terms of Licence

The terms of Schedule 3 apply to any Necessary Access.

24 Council Costs

24.1 Legal Costs

The Developer shall bear its own costs and those of the Council in relation to the preparation, negotiation, execution and registration of this Agreement and any document related to this Agreement.

24.2 Ongoing costs

The Developer shall bear its own costs and those of the Council in relation to the ongoing management and administration of this Agreement and any document related to this Agreement.

25 Administrative Provisions

25.1 Notices

25.1.1 Any notice, consent or other communication under this Agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered to that person's address;
- (b) sent by pre-paid express mail to that person's address; or
- (c) sent by email to that person's email address.

25.1.2 A notice given to a person in accordance with this clause is treated as having been given and received:

- (a) if delivered to a person's address on a Business Day, then the next business day, otherwise on the next Business Day;
- (b) if sent by pre-paid express mail, on the third Business Day after posting; and
- (c) if sent by email to a person's email address and a confirmation of receipt can be retrieved on a Business Day, then the next business day, otherwise on the next Business Day.

25.1.3 For the purpose of this clause the address of a person is the address set out in this Agreement or another address of which that person may from time to time give notice to each other person.

25.1.4 Council Notice Details

Goulburn Mulwaree Council

Attention: Chris Hargood
Position: Development Growth & Infrastructure Coordinator
Address: The Chief Executive Officer,
 Locked Bag 22, Goulburn, NSW, Australia, 2580]
Email: chris.hargood@goulburn.nsw.gov.au
CC email: council@goulburn.nsw.gov.au
Reference: DA/XXXX/YYYY_PA [insert text specific to communication]

25.1.5 Developer notice details

[Insert Developer's name]

Attention: [XXXXXXX]
Address: [XXXXXXX],
 [XXXXXXX], NSW, Australia, 2580]
Email: [XXXXXX]

25.2 Entire Agreement

This Agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

25.3 Waiver

- 25.3.1 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.
- 25.3.2 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.
- 25.3.3 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 waiver of any other obligation or breach in any other circumstance or instance.

25.4 Counterparts

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

25.5 Unenforceability

Any provision of this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

25.6 Power of Attorney

Each attorney who executes this Agreement on behalf of a party declares that the attorney has no notice of:

- 25.6.1 the revocation or suspension of the power of attorney by the grantor; or
- 25.6.2 the death of the grantor.

25.7 Governing Law

The law in force in the State of New South Wales governs this Agreement. The parties:

- 25.7.1 submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this Agreement; and
- 25.7.2 may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of forum non conveniens.

25.8 Review Requirements

- 25.8.1 The Parties agree to review during the event that either party believes that a change in circumstance has or will occur that will affect the operation and carrying out of this agreement.
- 25.8.2 Review of this agreement is required if any Legislation is introduced or changed to the affect that it would limit, stop, substantially change or otherwise hinder the operation or implementation of this agreement in the opinion of either Party.
- 25.8.3 The Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this agreement should reasonable and necessary amendments be identified.
- 25.8.4 If this agreement becomes illegal, unenforceable or invalid as a result of any change to Legislation, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

25.9 Further Agreements

This Agreement does not restrict further agreements between the Parties that are not inconsistent with this Agreement.

25.10 Variations

- 25.10.1 The design or specification of Works may be varied by agreement in writing between the Parties without the need to amend this Agreement.
- 25.10.2 The Developer may, by written notice to the Council, propose any variation to design or specifications of any Works (**Works Variation Notice**).
- 25.10.3 The Council must, within fifteen (15) business days of receipt of a Works Variation Notice respond in writing, by either:
 - (a) requesting any additional information that the Council considers necessary to review, consider and make an informed decision in relation to the Works Variation Notice; or
 - (b) agreeing to any or all variations proposed in the Works Variation Notice; or
 - (c) proposing an alternate variation to any or all variations proposed in the Works Variation Notice (**Alternate Variation**); or
 - (d) refusing any or all variations proposed in the Works Variation Notice if that variation(s) would, in the Council's opinion, adversely affect the public benefit being provided under this Agreement.
- 25.10.4 The Developer must within ten (10) business days after receiving a notice in accordance with clause 25.10.3, notify the Council in writing whether the Alternate Variation can be effected, and, if it can be effected, the Developer's estimate of the:

- (a) effect on the progress of the Development (including the Date of Completion); and
 - (b) cost (including all warranties and time-related costs, if any) of the Alternate Variation.
- 25.10.5 The Council must within fifteen (15) business days of receipt of a written notice under clause 25.10.4 made in writing either accept or reject the Alternate Variation.
- 25.10.6 The Council may, by written notice to the Developer, reasonably require the Developer to vary the design or specification of the Works, in which case the Developer must comply with that requirement unless the Alternate Variation:
- (a) materially affects the Development;
 - (b) materially reduces the financial return or profitability of the Development; or
 - (c) will result in increased cost or delay in the Works undertaken by the Developer.
- 25.10.7 The following variations cannot be dealt with by clause 24.10. Such matters must be the subject of a formal amendment to this Agreement.
- (a) a change to the staging of the Development that changes the timing and amount of any Monetary Contribution, Security Value; or Attributed values; or
 - (b) a change to the timing or amount of any Monetary Contribution, Security Value; or Attributed values; or
 - (c) a change to the public benefits to be delivered; or
 - (d) a change that is not of a minor nature.

25.11 Surrender of Right of Appeal

The Developer is not to commence or maintain any proceedings in any court, tribunal or similar appealing against or questioning the validity of this agreement or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Agreement.

25.12 Notations under section 10.7(5) of the Act

The Council may, at its absolute discretion, make a notation on a planning certificate issued under section 10.7(5) of the Act detailing the application or affect the planning agreement has on the Land.

25.13 Issue of Part 6 Certificates

- 25.13.1 The issuance of a Construction Certificate, Subdivision Works or Subdivision Certificate must not occur unless the terms of this Agreement have been satisfied; and
- 25.13.2 Written evidence from the Council delegate at clause 25.1.4 has been provided confirming that the terms of this Agreement have been met relevant to the certificate to be issued.

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Signing Page

Executed by the parties as a deed:

Dated

Executed by [insert developers name] [insert
ACN/ABN] in accordance with s.127(1) of the)
Corporations Act 2001:)
)

Signature of Director

Signature of Director or Company Secretary

Print full name

Print full name

Executed by [insert developers name] [insert)
ACN/ABN] by its attorney [insert name of attorney)
[insert ACN/ABN] under power of attorney [insert book)
ref] in accordance with s.127(1) of the *Corporations Act*)
2001:)

Signature of Director

Signature of Director or Company Secretary

Print full name

Print full name

Signed, sealed and delivered for **GOULBURN**)
MULWAREE COUNCIL (ABN 84 049 849 319) by its)
authorised delegate pursuant to s.377 of the *Local*)
Government Act 1993 (NSW), in the presence of:)
)

Signature of witness

Signature of delegate

Name

Name of delegate

Address of witness

Position of delegate

Draft

Schedule 1. Requirements under section 7.4 of the Act

ITEM	REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
1.	<p>Planning instrument and/or Development Application – (Section 7.4(1)) The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) [##insert]</p> <p>(b) [##insert]</p> <p>(c) [##insert]</p>
2.	<p>Description of land to which this agreement applies – (Section 7.4(3)(a))</p>	<p>The land to which the Agreement applies is the Land, as set out in Item 1 of Schedule 2.</p>
3.	<p>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</p>	<p>The development to which this Agreement applies is the Development.</p> <p>The changes to the Goulburn Mulwaree Local Environmental Plan 2009 to which this Agreement applies are as set out in the Planning Proposal.</p>
4.	<p>Application of section 7.11 of the Act – (Section 7.4(3)(d))</p>	<p>The application of sections 7.11 of the Act [##select is or is not] excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under sections section 7.11 [##select will or will not] be required to be paid.</p>
5.	<p>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</p>	<p>The application of sections 7.12 of the Act [##select is or is not] excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under sections section 7.12 [##select will or will not] be required to be paid.</p>

ITEM	REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
6.	Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	The Public Benefits [##select are or are not] to be taken into consideration in determining a development contribution under section 7.11 of the Act.
7.	Mechanism for Dispute resolution – (Section 7.4(3)(f))	Refer to clause Error! Reference source not found. of the Agreement.
8.	Enforcement of this agreement – (Section 7.4(3)(g))	Refer to clauses 6 and 19 of the Agreement.
9.	No obligation to grant consent or exercise functions – (Section 7.4(3)(9))	Refer to clause 20.4 of the Agreement.

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Schedule 2. Contract Details

ITEM		DESCRIPTION
1.	Land	[[insert]]
2.	Development	[[insert]]
3.	Development Application	[[insert]]
4.	Instrument Change	[[insert]]
5.	Attributable Value (clause 5)	Applies to the extent set out in Table 3 of Schedule 6.
6.	Defects Liability Period (clause 11)	24 months from the relevant Date of Completion
7.	Maintenance Liability Period (clause 12)	As set out in Table 2 of Schedule 6.
8.	Security Amounts (clause 18)	As set out in Table 2 of Schedule 6.
9.	Additional Specifications	As set out in Table 4 of Schedule 6.
10.	[[insert any additional details]]	[[insert details as required]]

Schedule 3. Terms of Licence

1. Definitions

For the purposes of this Schedule 3:

- 1.1. the **Land** is the land being accessed under the Licence;
- 1.2. the **Licence** means the licence of the Land to which this Schedule applies;
- 1.3. the **Licensee** is the party accessing the Land; and
- 1.4. the **Licensor** is the owner of the Land.

2. Licence

2.1. Personal Rights

- 2.1.1. The Licence is personal to the Licensee.
- 2.1.2. The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- 2.1.3. The Licensor may refuse the granting of consent under paragraph 2.1.2) without reason and at its absolute discretion.

3. Leasehold Interest

This deed does not grant to the Licensee a leasehold interest in the Land. The parties agree that:

- 3.1.1. the Licence does not confer exclusive possession of the Land on the Licensee;
- 3.1.2. the Licensee may not exclude the Licensor, its officers, employees and invitees from:
 - (a) entry onto the Land; and/or
 - (b) the performance of any works on the Land;

provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the activities being carried out on the Land by the Licensee;

- 3.1.3. the Licensee does not have any right to quiet enjoyment of the Land; and
- 3.1.4. the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensor.

4. Compliance with authorities

4.1. No Warranty as to Suitability for Use

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the purposes of the Licensee.

4.2. Compliance with the Terms of the Consents

The Licensee must comply with the requirements of all Authorities in relation to its access to the Land and the conduct of any activities on it by the Licensee.

4.3. Compliance with Directions from Authorities

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Licensor and which arise from the conduct of any activities on the Land by the Licensee.

4.4. Obtaining Further Consents

4.4.1. If the Licensee requires further consents to conduct activities on the Land it must:

- (a) make such applications itself; and
- (b) bear all costs incurred by it in relation to obtaining the relevant consent.

4.4.2. The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application to any Authority.

4.5. Making good

4.5.1. The Licensee must make good all damaged occasioned to the land and any assets on that land that are damaged in anyway in obtaining access to and in the undertaking of any works on the land.

4.5.2. The Licensor agrees that it will, where required, make good all damage within ten (10) business days of the damage occurring.

5. Limitation of the Licensor's liability

5.1. Insurances

5.1.1. The Licensee must effect and keep current and in force the following policies of insurance:

- (a) a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
 - i. personal injury or death of any person; and
 - ii. loss or damage to property;
- (b) Workers compensation insurance under the Workers Compensation Act 1987 covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the activities on the Land by the Licensee;

- (c) A comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the activities on the Land by the Licensee; and
- (d) A contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the activities on the Land by the Licensee.

5.1.2. The policies referred to in paragraphs 4.1.1(a), 4.1.1(c) and 4.1.1(d) must note the interest of the Licensor as principal.

5.2. Inspection of Insurance

5.2.1. The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.

5.2.2. The licensor may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies wherever requested by the Licensor.

5.3. Cancellation of Insurance

If any policy is cancelled either by the Licensee or the insurer the Licensor must notify the Licensor immediately.

5.4. Risk

The Licensee uses and occupies the Land at its own risk.

5.5. Indemnity

The Licensee indemnifies the Licensor against any Claim (of whatever nature) made in respect of the Licensee's use and/or occupation of the Land.

Schedule 4. Inspection & Testing Requirements

1. Inspection of Works

As a minimum the Works are to be inspected by the Certifier at the following stages of construction (where required) and a satisfactory inspection result received. Where a portion of the works is not approved, no further work may proceed whereby the failed portion of the work may become incorporated into any new works.

Additional inspections other than those described below may be required by the Certifier.

1.1. Erosion and Sediment Control and Site Set Up

- (a) Implementation of all required erosion and sediment control measures before commencement of construction.
- (b) All required site set up works required to satisfy all prior to commencement conditions.

1.2. Drainage

- (a) Trench excavated, bedding material placed, and pipes/conduits (showing pipe class) laid prior to backfilling and Non-cohesive granular backfilling material up to haunch.
- (b) Filter material placed in subsoil drains prior to backfilling.
- (c) Pit walls, wing walls and head walls with reinforcement and place prior to casting.
- (d) Connection to existing system prior to backfilling.
- (e) Channel/watercourse tail out works after construction.

1.3. Pavement Construction

- (a) Prior to works commencing approval of the material used in road pavements shall be obtained from Council, including the source of the material and most recent material testing.
- (b) Sub-grade proof roll test (a visual and deflection check by fully laden water cart with capacity of 10,000 litres of water) or in accordance with T198.
- (c) Sub-base proof roll test at kerb alignment (a visual check and roller test with 10t smooth drum roller) or in accordance with T198.
- (d) Base course Benkelman Bean test carried out by NATA registered Geotechnical Engineer at 10m intervals.

1.4. Wearing Surface

- (a) Application of the wearing surface shall not occur without the approval of the Council. The following shall be submitted to Council to demonstrate compliance

with Goulburn Mulwaree Council Engineering specification prior to approval to seal.

- (b) Inspection sampling and testing plans.
- (c) Survey conformance report for subgrade, subbase and base prior to the proof roll inspection.
- (d) Materials test report for each layer of pavement i.e. subgrade, subbase, base (CBR test, Compaction test etc) prior to the proof roll inspection
- (e) Benkelman Beam Test results.
- (f) Visual inspection of the initial seal/primer seal prior to application of the final wearing surface.
- (g) Core Drills of the wearing surface will be undertaken by Council.

1.5. Footpath, Off-road Cycleway and Shared Way Works

- (a) Sub-grade roller test (1.8t smooth drum roller).
- (b) Concrete footpaths, cycleways, shared ways and pathways formed, set out with chaired reinforcement in place, movement joints etc prior to placement of concrete.

1.6. On-site Detention System (OSD)

- (a) Sub-grade roller test (1.8t smooth drum roller).
- (b) Steel and formwork for tank/pit prior to placement of concrete.
- (c) Pipes upstream/downstream of tank/pit prior to backfilling.

1.7. Installation of Stormwater Quality Devices

- (a) Prior to works commencing approval of the material used in stormwater quality devices such as stormwater bio filtration systems shall be obtained from Council, including the source of the material and most recent material testing.
- (b) The reduced base level of the basin upon which the drainage and bio filtration system is to be constructed, must be demonstrated on site that the base is either level or has been provided with the required falls. Certification from a registered surveyor is required.
- (c) Inspection of each layer in the stormwater quality device prior to placement of the next layer.
- (d) Prior to the planting of any plants, approval shall be obtained from the Certifier.

1.8. In-situ Concrete

- (a) Sub-grade roller test (10t smooth drum roller, 1.8t for tight spaces in agreement with Council).

- (b) Steel and formwork prior to placement of concrete.

2. Sampling and Testing of Materials

As a minimum all materials incorporated into the work shall be subject to inspection, testing and approval by the Certifier in accordance with the following table.

Additional requirements other than those described below may be required by the Certifier.

MATERIAL	STANDARD	HOLD POINT	TEST VERIFICATION
Concrete	AS3600	Concrete pour	Manufacturers certification
Ready Mixed Concrete	AS1379	Concrete pour	NATA Certificate
Hardened Concrete	AS1012	7-day, 28-day strength	NATA Certificate
Reinforcing Bars/Wire	AS/NZS4671	Concrete pour	Manufacturers certification
Interlocking Concrete and Clay Paver Units	AS/NZS4456	Taking delivery	NATA Certificate
Precast Reinforced Box Culvert	AS1597	Taking delivery	Manufacturers certification
Pipes	As for pipe type	Taking delivery	Manufacturers certification
Compacted Sub-grade	AS1289, AS3798	Pavement construction	Proof rolling, NATA Certificate
Compacted Sub base	AS1289, AS3798	Placing base course	Proof Rolling, NATA Certificate
Compacted Base Course	AS1289, AS3798	Road surfacing	Proof Rolling, NATA Certificate and Benkelman Beam
Asphaltic Concrete	AS2891, RTA T612	Completion of asphalt works	NATA Certificate
Earth Fill	AS1289, AS3798	Taking delivery	NATA Certificate and Plan
Crushed Rock	RTA QA 3051, RTA, T114, T213, T215, T221, T276	Taking delivery	NATA Certificate
Natural Gravel	RTA T106, T114, T108, T109, T215	Taking delivery	NATA Certificate

Schedule 5. Works as Executed Information

The Developer must provide a copyright free set of Works as Executed plans and supporting electronic files in accordance with this Schedule 5.

1. Works as Executed Plans

- 1.1. The Works as Executed Plans are the approved design plans amended to indicate the as-built nature of the work as they deviate from the approved plans and include-
- (a) any departure from the approved plans, such departure must be shown clearly in red with all other colours displayed as either a grey scale or in black ink;
 - (b) any additional work that has been undertaken;
 - (c) the location of council conduits, utility services infrastructure, subsoil drains associated with road pavements;
 - (d) stop valves, hydrants, sewer manholes, sewer junctions, interlot drainage, inlet junctions, stormwater drainage and pits, headwalls, Gross Pollutant Traps, rip rap and scour protection, etc;
 - (e) the extent of filter media, sub soil drainage, slope batters, weir outlets, spillways channels, embankments, rip rap and scour protection, access ramps, hardstand areas, fencing locations and all other features associated with any Bioretention Basin;
 - (f) all other details of works to be handed over to Council; and
 - (g) for any stormwater pipe identified to be laid at a grade of 2% or less the verification method of the as built grade is a theodolite. This must be clearly identified on a Works as Executed Plans
- 1.2. The Works as Executed Plans are to be certified by a registered surveyor that the Works as Executed drawings are a full and accurate representation of the constructed works.

2. Provision of GIS data

- 2.1. The GPS electronic data below is required to be captured and provided with the Works as Executed information. The provider must certify that the data provided complies with this clause.
- (a) Survey Type/Standard - Real Time Kinematic (RTK) by registered surveyor
 - (b) Projection – GDA2020(MGA55)
 - (c) Position quality - Within 20mm horizontal, 30mm vertical

- (d) File format - Co-ordinates to be provided in Excel *.xls spreadsheet or comma delimited *.txt or .csv; and line data to be provided in either MapInfo Tab or DWG formats
- (e) Data required - Co-ordinates, AHD height, point codes and unique ID's, distinct lines connecting individual coordinate points clearly differentiated in colour for discrete assets. Levels in MGA (AHD)
- (f) Code legend - Code legend to be provided

2.2. The following points, line and related tables are required

- (a) Property - Individual lot boundary points;
- (b) Roads, Kerbs and gutter at invert to show line and length, including at tangent points. Footpaths on both edges to show line and length. Traffic island around the outside edge to show size and shape;
- (c) Water Supply - Water mains at T-junctions and length. Hydrants at the centre of the cover. Stop valves at the centre of the cover. Meter boxes at the centre of the box;
- (d) Sewer - Manholes at centre of lid. Property connections at the intersection point with the main and at the end of the junction;
- (e) Stormwater - Pits at the centre of the lid. Headwalls at the centre of the headwall. Property connections at the intersection point with the main and at the end of the junction. Water quality devices e.g. swales, bio-detention basins, at relevant points to provide the outline and profile; and
- (f) Other - Other significant infrastructure features.

3. Files to be provided

3.1. To satisfy a requirement to provide Works as Executed plans, the Developer must provide as a minimum the following Works as Executed Files-

- (a) A full set of the Works as Executed Plans in PDF; and
- (b) A full set of the Works as Executed Plans in DWG format; and
- (c) The supporting GIS data files

Schedule 6. Public Benefits & Security Values

1. Overview

The Developer in accordance with this Schedule 6 and this Agreement must provide each Public Benefits and Security Values identified in the tables below, by the due date corresponding to that Public Benefit or Security Value, and any additional specifications identified for that Public Benefit set out in Table 4 of Schedule 6.

2. Table 1 – Public Benefits

Contribution	Public Purpose	Manner & Extent	Timing	Contribution Credit	Value of Works
A. Dedication of Land					
B. Carrying out of Work					
C. Monetary Contribution					

Contribution	Public Purpose	Manner & Extent	Timing	Contribution Credit	Value of Works
D. Maintenance Obligations					

3. Table 2 – Security Values

Security	Purpose	Timing	Value

4. Table 3 – Attributable Values

Contribution	Attributed Value	Timing	Comments

Contribution	Attributed Value	Timing	Comments

5. Table 4 – Additional Specifications

Item of Work	Purpose	Additional Specifications	Timing

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Schedule 7. Disclosures

No disclosures made by the Developer for the purposes of clause 14.2 or insert disclosures made

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Schedule 8. Designated Lands

Insert Designated Land Plans

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Schedule 9. Plans

Insert plans as required

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[insert name]

[insert name]

[insert name]

Goulburn
Mulwaree Council