

# Voluntary Planning Agreement

***[Insert date]***

City of Parramatta Council  
*ABN 49 907 174 773*

BaptistCare NSW & ACT  
*ABN 90 000 049 525*

# Contents

<b>Parties</b>	<b>4</b>
<b>Background</b>	<b>4</b>
<b>Operative part</b>	<b>4</b>
1 <i>Definitions</i>	4
2 <i>Interpretation</i>	7
3 <i>Planning Agreement under the Act</i>	9
4 <i>Application of this agreement</i>	9
5 <i>Operation of this agreement</i>	9
6 <i>Contributions to be made under this agreement</i>	9
6.1     Works	9
6.2     Dedication of Land	10
6.3     Public Access and Easements	10
7 <i>Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development</i>	10
8 <i>Registration of this agreement</i>	11
8.1     Developer Interest	11
8.2     Registration of this agreement	11
8.3     Removal from Register	12
8.4     Caveat	12
9 <i>Review of this agreement</i>	12
10 <i>Dispute Resolution</i>	12
10.1    Reference to Dispute	12
10.2    Notice of Dispute	12
10.3    Representatives of Parties to Meet	13
10.4    Further Notice if Not Settled	13
10.5    Mediation	13
10.6    Expert determination	14
10.7    Litigation	14
10.8    No suspension of contractual obligations	15
11 <i>Enforcement</i>	15
11.1    Default	15
11.2    Bank Guarantee	15
11.3    Compulsory Acquisition	17
11.4    General Enforcement	17

12	<i>Assignment and Dealings</i>	18
	12.1 Assignment	18
	12.2 Transfer of Land	18
13	<i>No fetter</i>	18
	13.1 Discretion	18
	13.2 No fetter	19
	13.3 Planning Certificates	19
14	<i>Notices</i>	19
	14.1 Notices	19
	14.2 Notices sent by email:	20
	14.3 Receipt of Notices sent by email	20
15	<i>General</i>	21
	15.1 Relationship between parties	21
	15.2 Time for doing acts	21
	15.3 Further assurances	21
	15.4 Joint and individual liability and benefits	21
	15.5 Variations and Amendments	21
	15.6 Counterparts	21
	15.7 Legal expenses and stamp duty	21
	15.8 Entire agreement	22
	15.9 Representations and warranties	22
	15.10 Severability	22
	15.11 Invalidity	22
	15.12 Waiver	22
	15.13 GST	23
	15.14 Governing law and jurisdiction	23
	<b>Schedule 1 Scope of Works</b>	<b>24</b>
	<b>Schedule 2 Construction Terms</b>	<b>28</b>
	<b>Schedule 3 Easement Terms</b>	<b>33</b>
	<b>Schedule 4 Summary of requirements (section 7.4)</b>	<b>35</b>
	<b>Annexure A Plan</b>	<b>37</b>

# Agreement

## Date

## Parties

### First party

<b>Name</b>	City of Parramatta Council ( <b>Council</b> )
<b>ACN</b>	49 907 174 773
<b>Contact</b>	Manager, Land Use Planning
<b>Telephone</b>	(02) 9806 5050

### Second party

<b>Name</b>	BaptistCare NSW & ACT ( <b>Developer</b> )
<b>ABN</b>	90 000 049 525
<b>Contact</b>	David Cowdery, Property Group Manager
<b>Telephone</b>	02 9023 2577

## Background

- A. On 15 February 2015, the Developer made an application to the Council for the Instrument Change 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 dated 7 May 2018 by the Developer to enter into this agreement to make contributions for public purposes associated with the Instrument Change and the Development.

## Operative part

### 1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

**Address** means a party's address set out in the Notices clause of this agreement;

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

**Bank Guarantee** means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,

- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay the amount or amounts of money specified in this agreement to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

**Certificate of Practical Completion** means the written certificate confirming the Works, or part of the Works, have been completed to the Council's satisfaction, acting reasonably, issued under clause 6.1(d) of Schedule 2;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

**Construction Certificate** means a construction certificate as defined under s 6.4(a) of the Act;

**Construction Terms** means the terms set out in Schedule 2;

**Contributions Plan** has the same meaning as under the Act;

**CPI** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

**Dedication Land** means that parts of the Land to be dedicated to Council in accordance with this agreement, as shown on the Plan;

**Development** means any future development of the Land for residential purposes including basement car parking;

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

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

**Easement Site** means the part of the Land identified on the Plan as 'High Ecological Impact Zone';

**Easement Terms** means the terms of a public access easement as set out in Schedule 3;

**Fax Number** means a party's facsimile number set out in the Notices clause of this agreement;

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

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

**Insolvent** means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within [21] days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (g) an execution or analogous process is levied or enforced against the property of that party;
- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable.

**Instrument Change** means an amendment made to the Parramatta LEP which is substantially in accordance with the Planning Proposal and which:

- (a) rezones all of the Land that is presently zoned 'R2 – Low Density Residential' to 'R4 – High Density Residential';
- (b) increases the maximum building height for the Land to 14 metres and 16 metres in accordance with Figure 46 of the Urban Design Report; and
- (c) increases the maximum permissible floor space ratio for the Land to 1:1;

**Land** means Lot 1 DP 1033201 and Lot 2 DP 364225, known as 264-266 Pennant Hills Road, Carlingford;

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**Occupation Certificate** means an occupation certificate as defined under section 6.4(c) of the Act;

**Parramatta LEP** means the *Parramatta Local Environmental Plan 2011*;

**Plan** means the plan contained in Annexure A;

**Planning Proposal** means the document entitled '*Planning Proposal, BaptistCare Site, 264-268 Pennant Hills Road, Carlingford*' prepared by DFP Planning Consultants on behalf of Council dated February 2015 submitted to the Department of Planning and Environment for gateway determination and determined on 12 September 2016 (No. PP\_2016\_COPAR\_002\_00), for the rezoning of the Land by means of an amendment to the Parramatta LEP, as updated in June 2017 and on 12 June 2018, and as supplemented by the Urban Design Report;

**Public Road** has the same meaning as in the *Roads Act 1993*;

**Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

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

**Related Body Corporate** has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

**Road Works** means the Works identified in:

- (a) the second dot point in column 3 of item 2; and
- (b) item 3,

of the table in Schedule 1;

**Transferee** has the meaning given in clause 12.2;

**Urban Design Report** means the report entitled '*264-268 Pennant Hills Road, Carlingford – Urban Design Report*' dated 28 May 2018 prepared by Urbis; and

**Works** means the work set out in Schedule 1.

## 2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;

- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO, general manager or managing director)** the president, CEO, general manager or managing director of a body or Authority includes any person acting in that capacity;
- (g) **(requirements)** a requirement to do anything includes a requirement to cause that thing to be done, and a requirement not to do anything includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred



to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;

- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

### 3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 3 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

### 4 Application of this agreement

This agreement applies to:

- (a) the Instrument Change,
- (b) the Development; and
- (c) the Land.

### 5 Operation of this agreement

This agreement commences on and from the date that:

- (a) it is executed by all parties; and
- (b) the Instrument Change is made.

### 6 Contributions to be made under this agreement

#### 6.1 Works

- (a) The Developer will carry out the Works in accordance with this agreement, including the Construction Terms and any Development Consent granted for the Works.
- (b) The Works must be completed and (if applicable) delivered to the relevant public authority in accordance with the timeframes specified in Schedule 1.
- (c) The parties agree and acknowledge that the Works serve the following public purposes:
  - (i) the provision of (or the recoupment of the cost of providing) public amenities or public services in accordance with s 7.2(2)(a) of the Act;
  - (ii) the provision of (or the recoupment of the cost of providing) affordable housing in accordance with s 7.2(2)(b) of the Act;
  - (iii) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land in accordance with s 7.2(2)(c) of the Act; and
  - (iv) the conservation or enhancement of the natural environment in accordance with s 7.2(2)(f) of the Act.

- (d) Council acknowledges that the Road Works require further Approval by Roads and Maritime Services NSW.

## 6.2 *Dedication of Land*

- (a) The Developer must dedicate or cause to be transferred to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax.
- (b) The obligation to dedicate the Dedication Land will be taken to have been satisfied when either:
  - (i) a Certificate of Title is issued by NSW Land Registry Services for the whole of the Public Road identifying the Council as the registered proprietor of that land without encumbrances ; or
  - (ii) when the Public Road is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 9 of the *Roads Act 1993*.
- (c) The Dedication Land must be dedicated in accordance with the timeframes specified in Schedule 1.

## 6.3 *Public Access and Easements*

- (a) The Developer will, at no cost to Council, register against the title to the Land an easement burdening that part of the Land comprising the Easement Site in favour of the Council permitting public access to the Easement Site and generally in accordance with the Easement Terms.
- (b) The Developer's obligation under clause 6.3(a) will be satisfied when the Developer provides to the Council a copy of the relevant title search showing the registration of the easement.
- (c) The easement required under clause (a) must be registered in accordance with the timeframes specified in Schedule 1.
- (d) The parties agree that the proposed covenant and easement under this clause will serve the following public purposes:
  - (i) the provision of public amenities or public services in accordance with s 7.2(2)(a) of the Act; and
  - (ii) the conservation or enhancement of the natural environment in accordance with s 7.2(2)(f) of the Act.

## 7 *Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development*

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.

## 8 Registration of this agreement

### 8.1 *Developer Interest*

The Developer represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

### 8.2 *Registration of this agreement*

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer, at its own expense, must:
  - (i) procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date;
  - (ii) procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration; and
  - (iii) provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.
- (c) The Developer at its own expense will take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
  - (i) The consent of each person who:
    - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - (B) is seized or possessed of an estate or interest in the Land,
  - (ii) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
  - (iii) The execution of any documents; and
  - (iv) The production of the relevant duplicate certificates of title,to enable the registration of this agreement in accordance with this clause 8.2.
- (d) Council consents to the registration of any dealings on the title to the Land that are reasonably required to comply with this agreement or the Development Consent, or to facilitate the Development. Dealings include easements, covenants, restrictions, plans of subdivision or consolidation and strata or stratum plans of subdivision or consolidation.
- (e) Council will promptly do all things reasonably required by the Developer, including provide consent in its capacity as caveator or as a party to this agreement, to enable the Developer to register dealings in accordance with clause 8.2(d).

### 8.3 *Removal from Register*

The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

### 8.4 *Caveat*

- (a) The Developer acknowledges and agrees that:
  - (i) when this agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
  - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within ten Business Days after the Developer complies with clause 8.2 and must not lodge any other caveats on the titles to any of the Land

## 9 *Review of this agreement*

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

## 10 *Dispute Resolution*

### 10.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

### 10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other party of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

### 10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting,
  - (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
  - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

### 10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5 or by expert determination under clause 10.6.

### 10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
  - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);

- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
  - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

### 10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
  - (i) Agreed upon and appointed jointly by the parties; and
  - (ii) In the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
  - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
  - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

### 10.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

## 10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

## 11 Enforcement

### 11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

### 11.2 *Bank Guarantee*

- (a) Prior to the issue of a Construction Certificate the Developer must provide to the Council:
  - (i) a Bank Guarantee in the amount of \$2,627,532 to secure the cost of the Developer carrying out the Works referred to in items 1 to 6 of Schedule 1 (excluding the Road Works); and separately
  - (ii) a Bank Guarantee in the amount of \$2,554,946 to secure the cost of the Developer carrying out the Road Works,in accordance with this agreement.
- (b) The Council (acting reasonably) may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee, require at any time the Developer to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain rectification of the errors. The Developer must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.
- (c) The Council may call on a Bank Guarantee provided under this clause if:
  - (i) the Developer is in material or substantial breach of this agreement and have failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 11.1 of this agreement; or
  - (ii) the Developer becomes Insolvent.
- (d) Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause (a), the Developer must provide Council with one or more replacement Bank Guarantees (**Replacement Bank Guarantee**) in an amount calculated in accordance with the following:

$$A = \frac{B \times D}{C}$$

Where:

A is the amount of the Replacement Bank Guarantee,

B is the amount of the Bank Guarantee to be replaced,

C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,

D is the CPI for the quarter ending immediately before the date of the Replacement Bank Guarantee,

provided A is greater than B.

- (e) On receipt of a Replacement Bank Guarantee provided under clause 11.2(d), the Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (f) At any time following the provision of a Bank Guarantee under this clause, the Developer may provide the Council with one or more replacement Bank Guarantees totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.
- (g) Subject to clause 11.2(c), the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
  - (i) any obligation of the Developer under this agreement that is secured by the Bank Guarantee in accordance with clause 11.2(a); and
  - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (h) The Council must promptly return a Bank Guarantee provided under this clause to secure the provision of any Works if requested by the Developer and:
  - (i) For items of the Works to which the Construction Terms apply:
    - (A) A Certificate of Practical Completion has been issued for the item of Works to which the Bank Guarantee relates; and
    - (B) The Developer has provided a Bank Guarantee under clause 6.5 of the Construction Terms (defects liability guarantee) for that item of Works; and
    - (C) If the Bank Guarantee relates to other items of Works for which a Certificate of Practical Completion has not been issued, a replacement Bank Guarantee is provided by the Developer in an amount determined by the Council acting reasonably, that is equivalent to the costs of constructing those other items of Works; and
  - (ii) For items of the Works to which the Construction Terms do not apply:



- (A) the Works are complete in accordance with the relevant Approvals;  
and
  - (B) if the items of Works are situated on Dedication Land, the relevant land has been dedicated or transferred to Council.
- (i) For the avoidance of doubt, the Developer may direct Council in writing to continue to hold a Bank Guarantee in satisfaction of the requirement to submit a Bank Guarantee under clause 6.5 of the Construction Terms for defects liability.
  - (j) Nothing in this clause 11.2 prevents or restricts the Council from taking any enforcement action in relation to:
    - (i) any obligation of the Developer under this agreement; or
    - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,
 that is not or cannot be satisfied by calling on a Bank Guarantee.

### 11.3 *Compulsory Acquisition*

- (a) If the Developer does not dedicate the Dedication Land to Council as required by this agreement, the Council may compulsorily acquire the relevant land, in which case the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may call upon any Bank Guarantee provided under clause 11.2 to cover any costs, including legal costs, incurred by the Council on acquisition of the land.
- (b) Clause 11.3(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between the Developer and Council, the Developer must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 11.3(a).
- (d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land under clause 11.3(a).
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 11.3(a) that are not or cannot be recovered by calling on a Bank Guarantee.

### 11.4 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and

- (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

## 12 Assignment and Dealings

### 12.1 Assignment

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other party.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

### 12.2 Transfer of Land

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
  - (i) The Developer satisfies the Council (acting reasonably) that the proposed Transferee is financially capable of complying with the Developer's obligations under this agreement;
  - (ii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council (acting reasonably) containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
  - (iii) The Transferee delivers to the Council replacement Bank Guarantees as required by this agreement;
  - (iv) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine (acting reasonably), and
  - (v) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.
- (b) Clause 12.2(a) does not apply to the transfer or disposal by the Developer of a strata lot to a purchaser. The Developer may transfer or dispose of a strata lot to a purchaser without notice to Council.

## 13 No fetter

### 13.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent or other Approval (all referred to in this agreement as a "**Discretion**").

### 13.2 *No fetter*

No provision of this agreement is intended to constitute any fetter on the exercise of 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 a 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 is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of 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 in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

### 13.3 *Planning Certificates*

The Developer acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 10.7 of the Act that this agreement affects the Land.

## 14 Notices

### 14.1 *Notices*

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this agreement:
  - (i) to City of Parramatta Council: PO Box 32, Parramatta, NSW 2124  
Fax: 02 9806 5917  
Email: [Council email]  
Attention: Manager, Land Use Planning
  - (ii) to BaptistCare NSW & ACT: Level 2, 22 Brookhollow Avenue, Baulkham Hills NSW 2153  
Fax: 90232501  
Email: dcowdery@baptistcare.org.au  
Attention: David Cowdery, Property Group Manager
- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and

- (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

**14.2 Notices sent by email:**

- (a) A party may serve a Notice by email if the Notice:
  - (i) includes a signature block specifying:
    - (A) the name of the person sending the Notice; and
    - (B) the sender's position within the relevant party;
  - (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
  - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
  - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
    - (A) to City of Parramatta Council:                      Attention: Manager, Land Use Planning  
[Council email]
    - (B) to Baptistcare NSW &ACT: Attention: David Cowdery, Property Group  
Manager  
dcowdery@baptistcare.org.au
- (b) The recipient of a Notice served under this clause 14.2 must:
  - (i) promptly acknowledge receipt of the Notice; and
  - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 14.2 does not invalidate service of a Notice under this clause.

**14.3 Receipt of Notices sent by email**

- (a) A Notice sent under clause 14.2 is taken to be given or made:
  - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
  - (ii) when the Notice enters an information system controlled by the recipient;  
or
  - (iii) when the Notice is first opened or read by the recipient,
 whichever occurs first.
- (b) If under clause 14.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm

(local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

## 15 General

### 15.1 *Relationship between parties*

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

### 15.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

### 15.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

### 15.4 *Joint and individual liability and benefits*

Except as otherwise set out in this agreement, any agreement, covenant, representation or warranty under this agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

### 15.5 *Variations and Amendments*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

### 15.6 *Counterparts*

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

### 15.7 *Legal expenses and stamp duty*

- (a) The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this agreement, including the reasonable costs of obtaining any legal advice in connection with this agreement,

no later than 10 Business Days after receiving a demand from the Council to pay such costs.

- (b) The Developer agrees to pay or reimburse the reasonable costs and expenses incurred by Council in connection with the advertising and exhibition of this agreement in accordance with the Act.
- (c) The Developer agrees to pay Council any administrative fees reasonably incurred as required by Council, acting reasonably, in connection with the administration of this agreement.

#### *15.8 Entire agreement*

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

#### *15.9 Representations and warranties*

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

#### *15.10 Severability*

If a clause or part of a clause of this agreement 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. 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 agreement, but the rest of this agreement is not affected.

#### *15.11 Invalidity*

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 15.11(b) applies.

#### *15.12 Waiver*

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### **15.13 GST**

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.
- (d) If the Council is obliged to pay any GST on any supply made under or in accordance with this agreement, the Developer indemnifies the Council for the amount of any such payment the Council is required to make.

#### **15.14 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## Schedule 1                      Scope of Works

The Works described in column 1 of the table below must be completed in accordance with clause 6.1 within the timeframe specified in column 2, and must be undertaken in accordance with the scope specified in column 3.

Item	Column 1 <b>Item of Work</b>	Column 2 <b>Timing</b>	Column 3 <b>Scope of Works</b>
1	Public domain improvement works along the western side of Martins Lane	<p>To be completed:</p> <ul style="list-style-type: none"> <li>- no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or</li> <li>- prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or</li> <li>- the date that is 36 months after the issue of the first Occupation Certificate for any building the area marked 'Site A' on the Plan, whichever occurs first.</li> </ul> <p>Upon completion of works in Column 3 to the Council's satisfaction, the land shown highlighted in orange on the Plan will be dedicated to Council within 28 days.</p>	<ul style="list-style-type: none"> <li>• Demolition of existing paths and road pavement as required to complete public domain upgrades.</li> <li>• Tree protection works.</li> <li>• Public domain upgrades including infrastructure, street lighting, landscaped verges, and footpaths</li> </ul> <p>NOTE: Public domain upgrades to be undertaken in conjunction with works detailed in Item 2.</p>
2	Martins Lane upgrade	<p>To be completed:</p> <ul style="list-style-type: none"> <li>- no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or</li> <li>- prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or</li> <li>- the date that is 36 months after the issue of the first Occupation</li> </ul>	<ul style="list-style-type: none"> <li>• Demolition of existing road pavement.</li> <li>• Full width road surface upgrade along the frontage of the land.</li> <li>• New street lighting.</li> <li>• New Colorbond fencing along the eastern side of Martins Lane to replace existing dilapidated fencing to</li> </ul>



Item	Column 1 Item of Work	Column 2 Timing	Column 3 Scope of Works
		Certificate for any building the area marked 'Site A' on the Plan, whichever occurs first.	properties, subject to agreement by owners.  NOTE: Pavement upgrades to be undertaken in conjunction with works detailed in Item 1.
3	Signalisation of the intersection of Pennant Hills Road and Baker Street	To be completed: - no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or - prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or - the date that is 36 months after the issue of the first Occupation Certificate for any building the area marked 'Site A' on the Plan, whichever occurs first.	<ul style="list-style-type: none"> <li>• Installation of new traffic signals including milling and re-sheeting existing road surfaces in the vicinity of the intersection.</li> <li>• New line-marking.</li> <li>• New signage.</li> <li>• New pedestrian crossing.</li> </ul>
4	Provision of a new north-south road to link with the new east-west road	To be completed: - no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or - prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or - the date that is 36 months after the issue of the first Occupation Certificate for any building the area marked 'Site A' on the Plan, whichever occurs first.  Upon completion of works in Column 3 to the Council's satisfaction, land shown highlighted in pink on the Plan	Provision of new road pavement, including infrastructure, street lighting, line marking, landscaped verges, and combined footpath/cyclepath.

Item	Column 1 Item of Work	Column 2 Timing	Column 3 Scope of Works
		will be dedicated to Council within 28 days.	
5	New left in slip lane from Pennant Hills Road to link with the new north-south road connection to the new east-west road	<p>To be completed:</p> <ul style="list-style-type: none"> <li>- no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or</li> <li>- prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or</li> <li>- the date that is 36 months after the issue of the first Occupation Certificate for any building the area marked 'Site A' on the Plan,</li> </ul> <p>whichever occurs first.</p> <p>Upon completion of works in Column 3 to the Council's satisfaction, land shown highlighted in pink on the Plan will be dedicated to Council within 28 days.</p>	Provision of new road pavement, including infrastructure, street lighting, line marking, landscaped verges and footpath with marked crossing at the northern end of the north-south road.
6	Provision of a new east-west road through the site linking the north-south road (Item 4) to Martins Lane	<p>To be completed:</p> <ul style="list-style-type: none"> <li>- no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or</li> <li>- prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or</li> <li>- the date that is 36 months after the issue of the first Occupation Certificate for any building the area marked 'Site A' on the Plan,</li> </ul> <p>whichever occurs first.</p> <p>Upon completion of works in Column 3 to the Council's satisfaction, the</p>	Provision of new road pavement, including infrastructure, street lighting, line marking, landscaped verges, and footpaths.

Item	Column 1 Item of Work	Column 2 Timing	Column 3 Scope of Works
		land shown highlighted in green on the Plan will be dedicated to Council within 28 days.	
7	Public access and maintenance of the high ecological constraint area and associated Blue Gum High Forest vegetation at the southern portion of the site	An easement for public access with a width of 20m must be registered prior to the issue of an Occupation Certificate for the Development on the area marked 'Site B' on the Plan.	<ul style="list-style-type: none"> <li>• Maintenance of the area identified as High Ecological Impact Zone (20m wide) to a standard to be agreed between Council and BaptistCare.</li> <li>• Registration of an easement in accordance with the Easement Terms.</li> <li>• The easement may exclude some areas within the High Ecological Impact Zone which are designated to be sensitive or areas where public access may result in adverse environmental impacts.</li> </ul>
8	Affordable housing	To be completed prior to the issue of the last Occupation Certificate for the Development of the area marked 'Site A' on the Plan.	Provision of 162 affordable housing dwellings to be managed by BaptistCare NSW & ACT at least until 1 January 2045, in accordance with the agreement between BaptistCare NSW & ACT and NSW Department of Family and Community Services

## Schedule 2 Construction Terms

### 1 Interpretation

For the purposes of this Schedule 2, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply and, unless context indicates a contrary intention:

**Builder** means any entity contracted under the Construction Contract to carry out the Works.

**Construction Contract** means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

**Defects Liability Period** means the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Works.

**Independent Certifier** means a certifier jointly appointed by Council and the Developer to perform the duties under clauses 6.1 and 6.4 of this Schedule 2.

**Superintendent** means the Superintendent appointed under any Construction Contract.

**Works**, where that term appears in this Schedule 2, means only those Works identified in items 1, 2, 4, 5 and 6 of the table in Schedule 1 of this agreement.

### 2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.

2.3 The Developer must ensure that the Works carried out under this agreement are carried out:

- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence, and the Developer does not breach these Construction Terms where the Developer complies with the terms of the Approval.

### 3 Costs of Works

All costs of the Works must be borne by the Developer.

### 4 Project Management and Contractor Engagement

4.1 The Developer will be responsible for managing the Works.

4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to:

- (a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and
- (b) invite a Council representative to be present at each on-site meeting that directly concerns the Works attended by the Superintendent.

## **5 Communication**

The Developer must keep Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

## **6 Completion**

### **6.1 Practical Completion**

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Independent Certifier accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Independent Certifier that the Works are complete.
- (b) Within 10 Business Days of receipt of the notice under clause 6.1(a) of this Schedule 2, the Independent Certifier will carry out an inspection of the Works and will, acting reasonably, either:
  - (i) provide written certification to the Developer that the Works have been completed, in the form of a Certificate of Practical Completion; or
  - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 6.1(b)(ii) of this Schedule 2, the Developer will provide that information to the Independent Certifier or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 6.1(a) of this Schedule 2 for written certification that the Works have been completed.
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works. The Independent Certifier is required to issue a Certificate of Practical Completion within 10 Business Days of all required information being provided by the Developer in response to any request pursuant to clause 6.1(b)(ii) of this Schedule 2.

### **6.2 Delivery of documents**

The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of:

- (a) all "as built" full-sized drawings, specifications and relevant operation and service manuals;

- (b) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
- (c) copies of all Approvals required for use of the land subject to the Works.

### 6.3 **Assignment of Warranties and Causes of Action**

- (a) The Developer must use reasonable endeavours to assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

### 6.4 **Defects Liability Period**

- (a) The Council may, at any time during the Defects Liability Period, instruct the Independent Certifier to inspect the Works for the purpose of identifying potential defects.
- (b) Following an inspection of the Works carried out during the Defects Liability Period, the Independent Certifier (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
  - (i) action required to be undertaken by the Developer to rectify that defect (**Rectification Works**); and
  - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (c) The Developer must comply with the Rectification Notice by:
  - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
  - (ii) keeping the Independent Certifier and the Council reasonably informed of the action to be taken to rectify the defect; and
  - (iii) carrying out the Rectification Works.
- (d) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (e) When the Developer considers that the Rectification Works are complete, the Developer must notify the Independent Certifier and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (f) The Independent Certifier must inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under clause 6.4(e) of this Schedule 2 and, acting reasonably:
  - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
  - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.

- (g) The Developer must meet all costs of and incidental to rectification of defects under this clause 6.4.
- (h) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:
  - (i) call upon any Bank Guarantee provided to the Council under clause 6.5 of this Schedule 2 to meet its costs of carrying out Rectification Works; and
  - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.
- (i) The Developer must request that the Independent Certifier inspect the Works 28 days prior to the end of the Defects Liability Period. The Independent Certifier must inspect the Works at any time after receiving the request from the Developer and before the end of the Defects Liability Period.
- (j) If, prior to the end of the Defects Liability Period:
  - (i) the Developer fails to request the inspection, or
  - (ii) the Independent Certifier does not carry out the inspection,
 the Council may extend the Defects Liability Period so that the inspection may be carried out.

#### 6.5 **Security for Defects Liability**

- (a) Prior to the issue of a Certificate of Practical Completion for each item of the Works the Developer must deliver to the Council Bank Guarantees in an amount equivalent to 2.5% of the construction costs for the particular item of Works.
- (b) The Developer advises and the Council acknowledges its awareness that the Bank Guarantees may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
  - (i) any Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
  - (ii) the Developer procures an agreement from the Builder that the Council will be entitled to call on any Bank Guarantee provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bank Guarantee referred to in clause 6.5(a) of this Schedule 2 for that item of Works (or any remaining balance of it) to the Developer.
- (d) Notwithstanding clause 6.4(d) of this Schedule 2, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not

deliver the balance of any Bank Guarantees provided to it until that defect has been rectified.

- (e) The Council must deliver the balance of any Bank Guarantee for the Defects Liability Period to the Developer within 14 days after the Defects Liability Period has ended.

## **7 Risk**

The Developer undertakes the Works entirely at its own risk.

## **8 Insurance**

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
  - (i) construction works insurance for the value of the Works;
  - (ii) public risk insurance for at least \$20 million;
  - (iii) workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by clause 8(a) of this Schedule 2 upon request by the Council, acting reasonably, throughout the term of this agreement.

## **9 Indemnities**

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

## **10 Intellectual Property Rights**

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer have or receive intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.



## Schedule 3 Easement Terms

### 1 Definitions

In this easement:

**Land** means *[insert lot and plan number]*; and

**Easement Site** means the part of the Land marked '*[insert]*' on the attached plan.

### 2 Access

The owner of the Land grants to the Council and members of the public full and free right to go, pass and repass over the Easement Site at all times:

- (a) with or without companion animals (as defined in the Companion Animals Act 1998) or other small pet animals, provided such animals are restrained or otherwise controlled at all times and owners of such animals remove and dispose any waste from such animals; and
- (b) on foot without vehicles (other than wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;

for all lawful purposes.

### 3 Maintenance

The owner of the Easement Site must, to the satisfaction of Council, acting reasonably:

- (i) keep the Easement Site above (including any services in, on or under the Easement Site) in good repair and condition;
- (ii) maintain and repair the Easement Site and all improvements on the Easement Site;
- (iii) keep the Easement Site clean and free from rubbish; and
- (iv) maintain sufficient public liability insurance covering the use of the Easement Site in accordance with the terms of this Easement.

### 4 Rules

The owner of the Easement Site must ensure that any rules made by an Owner's Corporation relating to the Easement Site have been approved by the Council, acting reasonably.

### 5 Nuisance

If any member or members of the public loiter or congregate, for any purpose which the owner of the Easement Site, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.

### 6 Safety

- (a) The owner of the Easement Site may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Easement Site.
- (b) The owner of the Easement Site may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals,

bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Easement Site.

**7 Restricted access**

The owner of the Land may with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily close or temporarily restrict access through all or part of the Easement Site for the time and to the extent necessary but only on reasonable grounds for the purposes of:

- (a) construction, construction access, repairs, maintenance, replacement and alteration to the Easement Site or any improvements in, on or under the Easement Site; or
- (b) security, public safety or evacuation of the Easement Site and adjoining buildings.

**8 Release**

The Council is solely empowered to release this Easement.

**9 Variation**

This Easement may only be varied by written agreement between the Council and the owner of the Land.

## Schedule 4

## Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p><b>Planning instrument and/or Development Application</b> – Section 7.4(1)</p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p>Yes</p> <p>Yes</p> <p>No</p>
<p><b>Description of the application</b></p>	<p>The application for the Instrument Change as defined in clause 1 (definitions)</p>
<p><b>Description of the land to which the planning Agreement applies</b> – Section 7.4(3)(a)</p>	<p>The Land as defined in clause 1 (definitions)</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement</b> – Section 7.4(3)(c)</p>	<p>See clause 6 (contributions to be made under this agreement)</p>
<p><b>Applicability of section 7.11 of the Act</b> – Section 7.4(3)(d)</p>	<p>See clause 7 (application of s7.11, s7.12 and s7.24 of the Act to the Development)</p>
<p><b>Applicability of section 7.12 of the Act</b> – Section 7.4(3)(d)</p>	<p>See clause 7 (application of s7.11, s7.12 and s7.24 of the Act to the Development)</p>
<p><b>Applicability of section 7.24 of the Act</b> – Section 7.4(3)(d)</p>	<p>See clause 7 (application of s7.11, s7.12 and s7.24 of the Act to the Development)</p>
<p><b>Mechanism for dispute resolution</b> – Section 7.4(3)(f)</p>	<p>See clause 10 (dispute resolution)</p>
<p><b>Enforcement of the Planning Agreement</b> – Section 7.4(3)(g)</p>	<p>See clause 11 (enforcement)</p>
<p><b>Registration of the Planning Agreement</b> – Section 7.4(3)(g)</p>	<p>See clause 8 (registration)</p>
<p><b>No obligation to grant consent or exercise functions</b> – Section 93F(9)</p>	<p>See clause 13 (no fetter)</p>

Executed as an agreement

**Executed by City of Parramatta City** )  
**Council** under seal in accordance with a )  
resolution of the Council on [insert date]: )

.....  
Signature of [insert position]

.....  
Signature of [insert position]

.....  
Print name

.....  
Print name

**Executed by BaptistCare NSW & ACT** )  
by its directors pursuant to s127 of the )  
*Corporations Act 2001*: )

.....  
Signature of Director/Secretary

.....  
Signature of Director

.....  
Print name

.....  
Print name

# Annexure A Plan



Figure 17 Site Reference Plan by AJ+C Architects