



AGENDA

CULTURE AND COMMUNITY COMMITTEE

13 OCTOBER 2022

MEMBERSHIP: Councillors J Black, L Burns, S Chowdhury, M Dickerson, V Etheridge, J Gough, R Ivey, D Mahon, P Wells and M Wright.

The meeting is scheduled to commence at pm.

	Page
CCC22/48 LEAVE OF ABSENCE (ID22/2082)	
CCC22/49 CONFLICTS OF INTEREST (ID22/2085) In accordance with their Oath/Affirmation under the Act, and Council's Code of Conduct, Councillors must disclose the nature of any pecuniary or non-pecuniary interest which may arise during the meeting, and manage such interests accordingly.	
CCC22/50 REPORT OF THE SPARC COMMITTEE - MEETING 15 AUGUST 2022 (ID22/2002) The Committee had before it the report of the SPARC Committee meeting held 15 August 2022.	3
CCC22/51 REPORT OF THE AQUATICS WORKING PARTY - MEETING 19 SEPTEMBER 2022 (ID22/2003) The Committee had before it the report of the Aquatics Working Party meeting held 19 September 2022.	7
CCC22/52 REPORT OF THE RECONCILIATION ACTION PLAN WORKING GROUP - MEETING 27 SEPTEMBER 2022 (ID22/2078) The Committee had before it the report of the Reconciliation Action Plan Working Group meeting held 27 September 2022.	10
CCC22/53 REPORT OF THE SOCIAL JUSTICE ADVISORY COMMITTEE - MEETING 27 SEPTEMBER 2022 (ID22/2079) The Committee had before it the report of the Social Justice Advisory Committee meeting held 27 September 2022.	13

- CCC22/54** **SOUTHLAKES MAINTENANCE AGREEMENT WITH MAAS GROUP PROPERTIES SOUTHLAKES PTY LTD. (ID22/1906)** 17
- The Committee had before it the report dated 8 September 2022 from the Manager Recreation and Open Space regarding Southlakes Maintenance Agreement with Maas Group Properties Southlakes Pty Ltd.



DUBBO REGIONAL
COUNCIL

Report of the SPARC Committee - meeting 15 August 2022

AUTHOR: Governance Team Leader
REPORT DATE: 26 September 2022

The Council had before it the report of the SPARC Committee meeting held 15 August 2022.

RECOMMENDATION

That the report of the SPARC Committee meeting held on 15 August 2022, be noted.



**REPORT
SPARC COMMITTEE
15 AUGUST 2022**

PRESENT: Councillor M Wright, the Director Community, Culture and Places, the Manager Regional Experiences, K Jennar (Community Representative), D Sidoti (Community Representative), L Judd (Community Representative), K Goldsmith (Community Representative), J Coote (Community Representative), J Randell (Community Representative) and F Randell (Community Representative).

ALSO IN ATTENDANCE:

The Chief Executive Officer, the Cultural Development Coordinator and the Administration Officer Regional Experiences.

The Chief Executive Officer assumed the Chair of the meeting.

The proceedings of the meeting commenced at 5.05 pm.

SPARC22/1 ACKNOWLEDGEMENT OF COUNTRY (ID22/1490)

The Chief Executive Officer delivered an Acknowledgement of Country.

SPARC22/2 APOLOGIES (ID22/1494)

Apologies were received from Councillors J Black and L Burns, Community Representatives V Clark, T Lawry, L Thomas and C Ward who were absent from the meeting due to personal reasons.

SPARC22/3 CONFLICTS OF INTEREST (ID22/1498)

There were no conflicts of interest declared.

SPARC22/4 ELECTION OF CHAIRPERSON (ID22/1510)

At this juncture, the CEO called for nominations for Chairperson of the SPARC Committee.

Councillor M Wright was nominated by K Goldsmith.

Councillor Wright accepted his nomination and was elected Chairperson of the SPARC Committee for the Mayoral term.

SPARC22/5 WELCOME AND INTRODUCTION (ID22/1502)

Councillor Wright invited members of the committee to introduce themselves.

The CEO thanked members for their interest in joining this committee and their involvement in the meeting.

SPARC22/6 TERMS OF REFERENCE AND CODE OF MEETING PRACTICE (ID22/1506)

The Committee had before it the report dated 28 July 2022 from the Administration Officer - Governance and Internal Control regarding Terms of Reference and Code of Meeting Practice.

Councillor Wright reminded committee members that as per the Terms of Reference, if they would like to speak about something at the next meeting, they are required to submit their request to the Administration Officer at least 7 days before the next scheduled meeting.

OUTCOME

That the Terms of Reference (Appendix 1) and Code of Meeting Practice for Community Committees and Working Parties (Appendix 2) be noted.

SPARC22/7 FUTURE MEETING DATES (ID22/1514)

The committee discussed potential future meeting dates.

Quarterly meetings to be held on the third Monday at 6.00pm. Scheduled months for the SPARC Committee meetings are as follows:

- November 2022
- February 2023
- May 2023

OUTCOME

1. **That future meetings of the committee be held quarterly on the third Monday of the scheduled months as follows:**
 - **Monday, 21 November 2022 at 6.00pm**
 - **Monday, 20 February 2023 at 6.00pm**
 - **Monday, 15 May 2023 at 6.00pm**
2. **That calendar invitations be sent out to all members of the SPARC Committee for above dates.**

SPARC22/8 SPARC - SHAPING PLANS TO ADVANCE REGIONAL CULTURE (ID22/1628)

The Committee had before it the report dated 8 August 2022 from the Cultural Development Coordinator regarding SPARC - Shaping Plans to Advance Regional Culture.

OUTCOME

1. That the report of the Cultural Development Coordinator, dated 8 August 2022, be noted.
2. That a review of the SPARC Plan be presented to this committee at its meeting to be held in November 2022 for comment.
3. That the SPARC Plan be presented to Council in early 2023 for adoption.

SPARC22/9 PUBLIC ARTS STRATEGY UPDATE (ID22/1629)

The committee was addressed by the Cultural Development Coordinator regarding this item.

Items of note:

- A brief update was provided to the committee of the Public Arts Strategy and its current status. Council has engaged an external company to undertake consultation for the creation of this strategy. Stage 1 is almost complete, stage 2 to start by end of August. Will present completed strategy to Council by end of 2022.
- Feedback provided by a committee member regarding their involvement in stage 1 of consultation for this strategy, had been a positive experience.
- Suggestion made that more could be done to reach individuals in the community who may not be aware of facilities or arts for stage 2. Strategy will be targeted at a wide audience through social media, radio, print communication, commercial spaces, sporting fields, shopping centres, schools, as well as engaging sporting community through the Sports council.

OUTCOME

1. That the report of the Cultural Development Coordinator, dated 8 August 2022, be noted.
2. That a report be presented to Council at the end of 2022 with the completed strategy for adoption.

The meeting closed at 6.00pm.

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CHAIRPERSON



DUBBO REGIONAL
COUNCIL

Report of the Aquatics Working Party - meeting 19 September 2022

AUTHOR: Governance Team Leader
REPORT DATE: 26 September 2022

The Council had before it the report of the Aquatics Working Party meeting held 19 September 2022.

RECOMMENDATION

That the report of the Aquatics Working Party meeting held on 19 September 2022, be noted.



DUBBO REGIONAL
COUNCIL

REPORT
AQUATICS WORKING PARTY
19 SEPTEMBER 2022

PRESENT: Councillors J Black, S Chowdhury, the Director Community, Culture and Places (I McAlister), the Manager Aquatic Leisure Centres, R Mutton (Community Representative), J McKechnie (Community Representative), A Lavelle (Community Representative), Y McDonald (Community Representative) and C Gain (Community Representative).

ALSO IN ATTENDANCE: Nil

Councillor J Black assumed the Chair of the meeting.

The proceedings of the meeting commenced at 5.35pm.

AWP22/10 ACKNOWLEDGEMENT OF COUNTRY (ID22/1531)

The Manager Aquatic Leisure Centres delivered an Acknowledgement of Country.

AWP22/11 APOLOGIES (ID22/1532)

Apologies were received from panel members Councillor S Chowdhury and the Director Community Culture and Places.

A Lavelle (Community Representative) attended via audio visual link.

AWP22/12 CONFLICTS OF INTEREST (ID22/1533)

There were no conflicts of interest declared.

AWP22/13 REPORT OF THE AQUATICS WORKING PARTY - MEETING 25 JULY 2022 (ID22/1534)

The Working Party had before it the report of the Aquatics Working Party meeting held 25 July 2022.

RECOMMENDATION

That the report of the Aquatics Working Party meeting held on 25 July 2022, be adopted.

AWP22/14 AQUATICS UPDATE (ID22/1967)

The Working Party was addressed by the Manager Aquatic Leisure Centres regarding this item.

OUTCOME

1. That the early season data presented by Manager Aquatic Leisure Centres be noted.
2. That A. Lavelle's commendation of the Aquatics Team in regards to the work carried out over the closed season – especially in regards to the installation and operation of a new heater and the subsequent comfortable water temperatures – be noted.

AWP22/15 PROCESS FOR QUESTIONS AND COMMENTS ON NOTICE (ID22/1968)

The Working Party was addressed by the Manager Aquatic Leisure Centres regarding this item.

OUTCOME

That the Aquatics Working Party implement a standing Agenda item for Questions and Comments on Notice with submissions emailed to Council, council@dubbo.nsw.gov.au no later than 2 weeks prior to the upcoming meeting.

The meeting closed at 5.47pm.

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CHAIRPERSON



DUBBO REGIONAL
COUNCIL

Report of the Reconciliation Action Plan Working Group - meeting 27 September 2022

AUTHOR: Governance Team Leader
REPORT DATE: 6 October 2022

The Council had before it the report of the Reconciliation Action Plan Working Group meeting held 27 September 2022.

RECOMMENDATION

That the report of the Reconciliation Action Plan Working Group meeting held on 27 September 2022, be noted.



**REPORT
RECONCILIATION ACTION PLAN WORKING
GROUP
27 SEPTEMBER 2022**

PRESENT: Councillors L Burns and P Wells, the Director Community, Culture and Places, the Customer Experience Coordinator, the Library Assistant, the Building and Development Certifier, the Senior Planner, the Manager Governance and Internal Control, the Reticulation Team Member, the Library Assistant, the Caves Officer, the Communities for Children Officer, D Stewart (Dubbo Aboriginal Community Working Party), G Ganguly (Community Representative), M Graham (Community Representative), S Kelly (Community Representative) and K Guihot (Alternate - Wellington Aboriginal Advisory Panel).

ALSO IN ATTENDANCE:

The Chief Executive Officer and the Executive Officer Community, Culture and Places.

Councillor L Burns assumed the Chair of the meeting.

The proceedings of the meeting commenced at 4.05pm.

WELCOME TO COUNTRY

Councillor L Burns delivered a Welcome to Country.

RAP22/13 APOLOGIES (ID22/1995)

Apologies were received from J Toomey-White (Wellington Aboriginal Advisory Panel), R Riley (Alternate - Dubbo Aboriginal Community Working Party), S Wilson (Dubbo Aboriginal Community Working Party), A Parker (Community Representative), the Manager Macquarie Regional Library and the Aboriginal Liaison Officer who were absent from this meeting due to personal reasons.

S Kelly attended via-audio visual link and joined the meeting.

RAP22/14 CONFLICT OF INTEREST (ID22/1996)

There were no conflicts of interest declared.

**RAP22/15 REPORT OF THE RECONCILIATION ACTION PLAN WORKING GROUP -
MEETING 29 AUGUST 2022 (ID22/1997)**

The Committee had before it the report of the Reconciliation Action Plan Working Group meeting held 29 August 2022.

RECOMMENDATION

That the report of the Reconciliation Action Plan Working Group meeting held on 29 August 2022, be adopted.

**RAP22/16 REPORT OF THE RECONCILIATION ACTION PLAN WORKING PARTY –
WORKSHOP MEETING 13 SEPTEMBER 2022 (ID22/1998)**

The Committee had before it the report of the Reconciliation Action Plan Working Group Workshop meeting held 13 September 2022.

RECOMMENDATION

That the report of the Reconciliation Action Plan Working Group Workshop meeting held on 13 September 2022, be adopted.

**RAP22/17 WORKSHOP AMMENDMENTS - REFLECT RECONCILIATION ACTION PLAN
(ID22/2001)**

The Committee had before it the report dated 26 September 2022 from the Manager Community Services regarding Workshop amendments - Reflect Reconciliation Action Plan.

The Working Party discussed timeline of plan creation and date of lodgement to Reconciliation Australia. Then worked through the draft Reflect Reconciliation Action Plan and made amendments as required.

RECOMMENDATION

- 1. That the draft Reflect Reconciliation Action Plan be completed by December 2022 and the working party aim for February 2023 as final lodgement date.**
- 2. That a Workshop be held on 11 October from 4:00pm to 6:00pm to further workshop action items on the draft Reflect Reconciliation Action Plan.**

The meeting closed at 5.00pm.

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CHAIRPERSON



DUBBO REGIONAL
COUNCIL

Report of the Social Justice Advisory Committee - meeting 27 September 2022

AUTHOR: Governance Team Leader
REPORT DATE: 6 October 2022

The Council had before it the report of the Social Justice Advisory Committee meeting held 27 September 2022.

RECOMMENDATION

That the report of the Social Justice Advisory Committee meeting held on 27 September 2022, be noted.



REPORT
SOCIAL JUSTICE ADVISORY COMMITTEE
27 SEPTEMBER 2022

PRESENT: Councillors J Gough, P Wells, V Etheridge, the Chief Executive Officer Dubbo Regional Council, the Director Community, Culture and Places, the Manager Community Services, J Forrester (Community Representative), S Talbot (Community Representative), E Davis (Community Representative), C Mansour (Community Representative), R Petheram (Community Representative), N Bramble (Community Representative) and F Schubert (Community Representative).

ALSO IN ATTENDANCE:

The Administration Officer Community, Culture and Places and Ms C Vesey (Western NSW LHD).

Director Community Culture and Places assumed the Chair of the meeting.

The proceedings of the meeting commenced at 5.10pm.

SJAC22/1 ACKNOWLEDGEMENT OF COUNTRY (ID22/1887)

Councillor P Wells delivered an Acknowledgement of Country.

SJAC22/2 APOLOGIES (ID22/1888)

There were no apologies received for this meeting.

Councillor J Gough and E Davis (Community Representative) attended via audio visual link.

SJAC22/3 CONFLICTS OF INTEREST (ID22/1889)

The Following Conflicts of Interests were declared:

- Councillor P Wells – Non Pecuniary less than significant interest as she is chair of the Dubbo and Surrounding Community Consultation Group (supported by Aboriginal Drug and Alcohol Residential Rehabilitation Network) for the Drug and Alcohol Rehabilitation Centre.
- J Forrester (Community Representative)– Pecuniary significant interest as his employer may submit tender for the Drug and Alcohol Rehabilitation Centre.

SJAC22/4 ELECTION OF CHAIRPERSON (ID22/1890)

At this juncture, the Director Community, Culture and Places called for nominations for Chairperson of the Social Justice Advisory Committee.

Councillor P Wells was nominated by Councillor V Etheridge this was seconded by Councillor J Gough.

Councillor P Wells accepted the nomination and was elected Chairperson of the Social Justice Advisory Committee for the Mayoral term.

SJAC22/5 WELCOME AND INTRODUCTION (ID22/1891)

Director Community Culture and Places provided a welcome and introduction to the Committee.

SJAC22/6 TERMS OF REFERENCE AND CODE OF MEETING PRACTICE (ID22/1892)

The Committee had before it the report dated 5 September 2022 from the Governance Team Leader regarding Terms of Reference and Code of Meeting Practice.

OUTCOMES

1. That the Terms of Reference (Appendix 1) and Code of Meeting Practice for Community Committees and Working Parties (Appendix 2) be noted.
2. That the meeting be held in an informal manner.
3. That agenda Items be submitted to Council at council@dubbo.nsw.gov.au no later than two weeks prior to scheduled meeting.

SJAC22/7 DRUG AND ALCOHOL REHABILITATION CENTRE - UPDATE (ID22/1999)

The Committee were provided with an update on this item from Ms C Vesey, Western NSW Local Health District.

OUTCOMES

1. That a clinical representative from NSW health be invited to the next social justice committee meeting to address the committee concerns regarding the endorsed model of care.
2. That the business case, *A Case for Residential Alcohol and Drug Rehabilitation in Dubbo prepared by Patrick Shepherdson 8 August 2018*, be distributed to Committee members.

SJAC22/8 FUTURE MEETING DATES (ID22/1893)

The Working Party gave consideration to Future Meeting Dates.

- **OUTCOMES**

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1. **That future meetings of the Social Justice Advisory Committee be held at 5pm on the third Tuesday of the scheduled months as follows:**
 - **18 October 2022**
 - **15 November 2022**
2. **That meeting dates for 2023 be set at the November 2022 meeting of the committee.**
3. **That calendar invitations be sent out to all members of the Social Justice Advisory Committee for the above dates.**

The meeting closed at 6.17pm.

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CHAIRPERSON



REPORT: Southlakes Maintenance Agreement with Maas Group Properties Southlakes Pty Ltd.

DIVISION: Community, Culture and Places
REPORT DATE: 8 September 2022
TRIM REFERENCE: ID22/1906

EXECUTIVE SUMMARY

Purpose	Seek endorsement	
Issue	It is proposed to enter into an agreement with the Developer (Maas Group Properties Southlakes Pty Ltd.) for the ongoing maintenance of the new public open space associated with their new development at Southlakes. Under the agreement Maas Group Properties Southlakes Pty Ltd. will continue to maintain the public open space for a period of 10 years from the sale of the last block for each subdivision.	
Reasoning	<ul style="list-style-type: none"> Under this agreement the ownership of the parkland associated with the Southlakes development is transferred to Council, however the cost of maintaining the new public open space for 10 years from the sale of the last block remains with the Developer. Prior to Dubbo Regional Council taking over the maintenance costs of the parkland an inspection is carried out and any identified defects are repaired. The 10 year maintenance agreement activates the parkland to enable use by the community without an immediate financial burden being transferred to Council. This allows Dubbo Regional Council the time to identify the required resources to maintain the new areas and build the ensuing costs into forward budgets. 	
Financial Implications	Budget Area	Recreation and Open Space
	Funding Source	General Fund – Recreation and Open Space - Operations
	Proposed Cost	\$6,000
	Ongoing Costs	No further costs for a period of 10 years. After this time has elapsed the cost of maintenance of these areas will come under the Infrastructure Division (Greenspace Operations)
Policy Implications	Policy Title	No policy.
	Impact on Policy	No impact to policy.

Consultation	Maas Group Properties Southlakes Pty Ltd.	Consultation has occurred over an 18 month period with Maas Group Properties Southlakes Pty Ltd through solicitors from both parties.
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STRATEGIC DIRECTION

The Towards 2040 Community Strategic Plan is a vision for the development of the region out to the year 2040. The Plan includes six principle themes and a number of objectives and strategies. This report is aligned to:

- Theme: 4 Leadership
- CSP Objective: 4.2 The resources of Council are sustainably managed
- Delivery Program Strategy: 4.2.4 The business activities of Council are financially sustainable and provide financial returns to the community
-
- Theme: 5 Liveability
- CSP Objective: 5.5 Our community has access to a diverse range of recreational opportunities
- Delivery Program Strategy: 5.5.1 Passive and active open space is located to maximise access and use by the community

RECOMMENDATION

That the Open Space Maintenance Deed, Southlakes Development, Boundary Road Dubbo be executed under the Common Seal of the Council.

Jane Bassingthwaite
Director Community, Culture and Places

IM
Manager Recreation and
Open Space

REPORT

Maas Group Properties Southlakes Pty Ltd. are continuing to develop the subdivision of Southlakes, located in the South-east quadrant of Dubbo. As part of their development, the land either side of the eastern drainage corridor is being embellished as public open space. In total this public open space is approximately 10.4 hectares, however this figure includes the creek line itself that does not fall under the control and management of Community Culture and Places / Recreation and Open Space.

The creek line and its functionality as part of the City's storm water drainage system falls under the management of the Infrastructure Division. As these drainage channels are not identified in the Defined Asset Management Policy under the Park category of the Asset Classification System and associated Maintenance Service Levels, they are not covered under the proposed Open Space Maintenance Deed, Southlakes Development, Boundary Road, Dubbo.

It should be noted that the Defined Asset Management Policy has since been rescinded. However as this development was assessed prior to its rescission with a Condition referencing it – it is appropriate for this Condition to be retained and enforced.

Due to the difficulties in predicting the increase of the public open space estate through Developer contributed parkland, a process has been implemented which provides Council the time to prepare for the increased resourcing and financial costs of maintaining these area. This process includes the addition of a Condition within the Development Application process that reads:

“That the Developer is responsible for all costs associated with the ongoing maintenance of the public open space, under Management Agreement, within the subdivision for a period of 10 years from the point of sale of the last block of land within the subdivision.

{Reason: To enable the Developer to maintain the parkland at a level that assists in the sale of land, and defer the cost of maintenance to Council}”

Effectively this arrangement enables the public to have full access to the new parkland with the Developer retaining the cost and responsibility of maintaining the area for a period of 10 years.

The approved landscape as shown in figures 1 – 3, has been designed to minimise the future demand on the potable water supply whilst still improving the aesthetics and connectivity of the parkland. To accommodate this a strong focus on endemic plantings, reduced lawn areas are major design elements of this landscape.



Figure 1. Landscape plan from Sheraton Road (top) to Azure Avenue.



Figure 2. Azure Avenue to Argyle Avenue.



Figure 3. Argyle Avenue to Hennessy Drive.

Dubbo Regional Council and Maas Group Properties Southlakes Pty Ltd have been in negotiations to develop the Open Space Maintenance Deed for the ongoing maintenance of the new parkland associated with their subdivision. To date the landscape for Zones 1 and 2 (figure 3) have been completed and signed off by Council. The Open Space Maintenance Deed initially covers these portion of the open space, but has been written in a manner that allows future zones to be added as they are approved and signed off. As new areas of the subdivision are completed the associated landscape component can be added to the Deed, with its 10 year maintenance timeframe commencing from the date of the sale of the last block of land within that area.

Consultation

- External consultation with the Developer (Maas Group Properties Southlakes Pty Ltd.) has been ongoing for the past 20 months. These discussions have been facilitated by solicitors from both parties (Marsdens Law Group representing Dubbo Regional Council and Duffy Elliott Lawyers representing Maas Group Properties Southlakes Pty Ltd.)
- As a result of ongoing and positive dialogue between the two parties a Deed of Agreement that benefits both Dubbo Regional Council, Maas Group Properties Southlakes Pty Ltd., and the community has been prepared for consideration by Council.
- Internal consultation has occurred with the Infrastructure Division (Greenspace Operations and Fleet Services) to work through the final draft of the document.
- A concern that was raised was how to ensure that at the appropriate time that the cost of maintenance, including resources, was identified.
- This issue has been addressed by the inclusion of additional plant item/s coming into the four year budget in 2028/2029. This will provide a trigger for the development of a

resourcing budget for Infrastructure (Greenspace Operations) for inclusion in their Year 10 budget.

Resourcing Implications

- For the term of the Deed of Agreement, for each section, there is minimal resourcing requirements required.
- At Year 6 of the Deed of Agreement resourcing requirements (staffing, plant and material) need to be calculated and included in Year 10 for consideration.

Total Financial Implications	Current year (\$)	Current year + 1 (\$)	Current year + 2 (\$)	Current year + 3 (\$)	Current year + 4 (\$)	Ongoing (\$)
a. Operating revenue	0	0	0	0	0	0
b. Operating expenses	-\$6,000	0	0	0	0	0
c. Operating budget impact (a – b)	-\$6,000	0	0	0	0	0
d. Capital Expenditure	0	0	0	0	0	0
e. Total net impact (c – d)	-\$6,000	0	0	0	0	0
Does the proposal require ongoing funding?	Yes – from Year 10 (2032/2033)					
What is the source of this funding?	General fund					

Table 1. Ongoing Financial Implications

By entering into the Open Space Maintenance Agreement the cost savings of maintaining the public open space will accumulate as new sections are approved and are added to the agreement. Following the completion of the full 10 hectares of public open space it been estimated, through Greenspace Operations, that the entering into the Open Space Maintenance Agreement with Maas Group Properties Southlakes Pty Ltd. will provide Council with a potential saving of \$243,000/year in current figures.

Next Steps

Following the Common Seal of Council being affixed to the Open Space Maintenance Deed Southlakes Development, Boundary Road, Dubbo a copy of the document will be provided to Maas Group Properties Southlakes Pty Ltd.

APPENDICES:

- [1](#) Open Space Maintenance Deed - Southlakes Development Boundary Road Dubbo
- [2](#) Appendix 1 - Landscape Plans - Open Space Maintenance Deed

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Open Space Maintenance Deed

Southlakes Development, Boundary Road, Dubbo

Dubbo Regional Council (ABN 53 539 070 928) (**Council**)

Maas Group Properties Southlakes Pty Limited (ABN 13 632 459 628) (**Developer**)

Marsdens Law Group

Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560

Tel: 02 4626 5077

Fax: 02 4626 4826

DX: 5107 Campbelltown

Ref: 65 43 0354



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Open Space Maintenance Deed

Southlakes Development, Boundary Road, Dubbo

Parties

Council	Name	Dubbo Regional Council
	Address	Corner Church and Darling Streets, Dubbo NSW 2830
	ABN	53 539 070 928
Developer	Name	Maas Group Properties Southlakes Pty Limited
	Address	20L Sheraton Road, Dubbo NSW 2830 P.O. Box 404 Dubbo NSW 2830
	ABN	13 632 459 628

Background

- A** Council is the owner of the Reserve.
- B** The Developer was the owner of the Land and the Stage 33 Land
- C** The Developer obtained the Development Consent.
- D** The Developer completed the Works pursuant to the Development Consent and Council has issued Subdivision Certificates for the Stage 33 Land.
- E** The Stage 33 Land has been subdivided in accordance with the Subdivision Certificates.
- F** As a condition of the Development Consent, the Developer is responsible for all costs associated with the ongoing maintenance of the Reserve
- G** This deed records the terms upon which the Developer will maintain the Reserve.

Operative Provisions

1 Definitions and interpretation

1.1 Defined terms

In this deed, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** have the meaning ascribed to them in that schedule.

1.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 1** apply in the interpretation of this deed.

2 Licence of the Reserve

2.1 Grant of the Licence

Council grants to the Developer (including any Contractor engaged by the Developer in accordance with clause 4) a licence (**Licence**) to use and occupy the Reserve for the purpose of allowing the Developer to undertake the Maintenance Works.

2.2 Leasehold interest

- (1) This deed does not grant to the Developer (or any Contractor engaged by the Developer in accordance with clause 4) a leasehold interest in the Reserve.
- (2) The Developer will not at any time seek to enforce an interest in the Reserve in competition with the interest held by Council.

2.3 Risk

The Developer uses and occupies the Reserve at its own risk.

3 Works

3.1 Maintenance of Works

For the Maintenance Period and at its cost, the Developer must:

- (1) ensure that the Reserve is clean and free of rubbish or any hazardous material to Council's reasonable satisfaction; and
- (2) maintain the Works and the Reserve in accordance with the Development Consent, the Approvals, the Maintenance Schedule, and otherwise:
 - (a) to the standard required for 'Parks - Local High' as defined in the DAMP; and
 - (b) in accordance with any reasonable direction issued by Council from time to time.

(collectively referred to as the **Maintenance Works**).

3.2 Ownership

The Developer acknowledges and agrees that any equipment and infrastructure installed in the Reserve as part of the Works become the property of the Council upon that installation being effected.

3.3 End of this deed

This deed ends on the expiration of the Maintenance Period.

4 Engagement of Contractor

4.1 Engagement of contractor

With the prior written consent of Council, which will not be unreasonably withheld, the Developer may appoint a contractor to carry out the Maintenance Works (**Contractor**). Contracting

The Developer must ensure that:

- (1) the Contractor:
 - (a) possesses the necessary technical skills and expertise to perform the work which it has been contracted to perform;
 - (b) complies with the terms of this deed;
 - (c) performs its work in a proper and workmanlike manner; and
 - (d) holds any licences or authorities necessary to carry out the Maintenance Works.
- (2) all employees engaged in the conduct of the Maintenance Works are protected by a policy of workers' compensation in an amount necessary to discharge the Contractor's obligations under any Laws relating to workers compensation.

4.2 Work Health & Safety

The Developer must ensure that both it and the Contractor complies with all WH&S Laws in relation to the conduct of the Maintenance Works.

5 Step in Rights

5.1 Failure Notice

- (1) If the Developer fails to ensure that the Maintenance Works are carried out in accordance with this deed (**Failure**), then Council may serve a notice on the Developer concerning that failure (**Failure Notice**).
- (2) A Failure Notice must contain the following information:
 - (a) the nature and extent of the Failure;
 - (b) the work Council requires the Developer to be carried out in order to remedy the Failure; and
 - (c) the time, being a period of not less than 15 business days, within which the Failure must be remedied.

5.2 Developer to remedy Failure

The Developer must procure that the Failure is remedied in accordance with a Failure Notice.

5.3 Right of Council to Step-In

If the Developer fails to ensure that a Failure Notice is complied with then Council, at its absolute discretion and in addition to any other right available to it, may carry out the works set out in the relevant Failure Notice.

5.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 5.3 then the Developer must:

- (1) do all things reasonably necessary to allow Council to remedy the relevant Failure, including allowing Council to use any plans, specifications or other

material in their possession, or in the possession of the Contractor, which is required by Council to remedy the Failure, and

- (2) not impede or interfere with Council in undertaking that work.

5.5 Costs of Council

Where Council exercises its step-in rights under this clause 5, all reasonable costs incurred by Council in remedying the relevant Failure will be a liquidated debt owed to Council by the Developer.

6 Insurances and indemnities

6.1 Public liability insurance

- (1) The Developer must effect and afterwards maintain a policy of public liability insurance in respect of all Claims for personal injury or damage to property arising from the execution of the Maintenance Works for an amount of \$20 million for any single event.
- (2) Council, acting reasonably, reserves the right to require the Developer to increase the amount of cover provided for by a policy of public liability insurance referred to in paragraph (1) above to an amount it deems to be satisfactory.
- (3) The public liability policy effected by the Developer must note the interest of Council as owner of the Reserve.

6.2 Evidence of Insurance

The Developer must provide Council with a certificate of currency issued by the insurer in respect of the insurances required under this deed under this clause within fourteen (14) days of being requested to do so by Council.

6.3 Indemnities

The Developer indemnifies Council against any Claim arising as a result of:

- (1) the conduct of the Maintenance Works, including where those works are carried out by the Contractor;
- (2) any breach of the obligations imposed on the Developer pursuant to this deed.

except to the extent that any such Claim is caused by a negligent act or omission of Council.

7 Termination

7.1 Termination

Council may terminate this deed immediately where:

- (1) the Developer commits a Failure or other breach of this deed which is not rectified within fifteen (15) days of written request from Council to rectify the default; or
- (2) the Developer becomes subject to an Insolvency Event.

7.2 Consequence of termination

Upon this deed ending:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

8 Costs and taxes

The Developer is liable for all costs incurred by Council as a result of this deed including but not limited to:

- (1) any legal costs (including disbursements) incurred by Council as a result of the preparation, negotiation and execution of this deed;
- (2) any other costs incurred by Council as a result of any variation requested to this deed by the Developer after execution by the parties including (but not limited to) legal costs and disbursements in considering the request and preparing, negotiating and executing the variation to this deed; and
- (3) any Taxes liable to be paid by Council as a result of this deed, or the variation (if any) referred to in paragraph (2).

9 Position of Council

9.1 Consent authority

The Developer acknowledges that Council is a consent authority with statutory rights and obligations pursuant to the terms of the *Environmental Planning and Assessment Act 1979* (NSW), *Local Government Act 1993* (NSW) and *Roads Act 1993* (NSW) (**Planning Legislation**).

9.2 Deed does not fetter discretion

This deed is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,
(Discretion).

9.3 Severance of provisions

- (1) No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed 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 9 is substantially satisfied;
 - (b) in the event that paragraph (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 deed has full force and effect; and

(c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this deed which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

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

9.4 No Obligations

Nothing in this deed will be deemed to impose any obligation on Council to exercise any of its functions under the Planning Legislation in relation to Approvals, the Reserve, or the Maintenance Works.

10 Administrative provisions

10.1 Notices

(1) Any notice, consent or other communication under this deed 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 mail to that person's address; or
- (c) transmitted by facsimile to that person's address.

(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 the day of delivery if a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the third Business Day after posting; and
- (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.

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

10.2 Entire agreement

This deed 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 deed.

10.3 Waiver

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.

10.4 Cooperation

Each party must sign, execute and deliver all deeds, documents, instruments and act reasonably and effectively to carry out and give full effect to this deed and the rights and obligations of the parties under it.

10.5 Counterparts

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

10.6 Amendment

This deed may only be amended or supplemented in writing signed by the parties.

10.7 Unenforceability

Any provision of this deed 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 deed or affecting the validity or enforceability of that provision in any other jurisdiction.

10.8 Power of Attorney

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

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

10.9 Governing law

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

- (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 deed; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

10.10 Dispute Resolution

- (1) Any dispute or difference (including any dispute as to the validity, breach or termination of this deed, or as to any claim in tort, in equity or pursuant to any statute) arising between the parties out of or in connection with this deed must be resolved in accordance with the procedures outlined in this clause.
- (2) Nothing in this clause prevents a party from seeking urgent interlocutory relief.
- (3) This clause survives termination of this deed.
- (4) Notice must be given by the party claiming that a dispute or difference has arisen to the other party (**Notice of dispute**), specifying any matters which sufficiently particularise the dispute or difference (including the nature of the dispute or difference, the clauses of this deed relevant to the dispute or

difference, the circumstances giving rise to the dispute and the proposed resolution of the dispute).

- (5) The parties must meet, on a without prejudice basis, within five (5) business days of the date that a Notice of Dispute is given (**Dispute Meeting**).
 - (6) At the Dispute Meeting, the parties must use all reasonable endeavours to resolve the dispute or difference.
 - (7) If the dispute or difference is not resolved as a result of the Dispute Meeting, then the party who issued the Notice of Dispute may refer the dispute or difference to Resolution Institute (ACN 008 651 232; Level 2, 13-15 Bridge Street, Sydney NSW 2000; email: infoaus@resolution.institute; telephone: (61-2) 9251 3366), for facilitation of a mediation in accordance with Resolution Institute's Mediation Rules.
 - (8) The parties must co-operate with Resolution Institute as facilitator.
 - (9) If within 10 Business Days after the referral of the dispute or difference to Resolution Institute the parties have not agreed upon the mediator or other relevant particular, the mediator and any other relevant particular will be determined in accordance with Resolution Institute's Facilitation Rules.
 - (10) If the dispute or difference has not been resolved as a result of the referral to Resolution Institute, then either party may exercise any rights available to them at law with respect the dispute or difference.
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Schedule 1: Defined Terms And Interpretation

Part 1 – Definitions

Approvals	means all approvals, consents, permits and authorisations required from any Authority in order to carry out the Maintenance Works.
Authorities or Authority	means (as appropriate) any: <ol style="list-style-type: none"> (1) federal, state or local government; (2) department of any federal, state or local government; (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
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.
Construction Certificate	has the meaning ascribed to it in the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Contractor	has the meaning ascribed to that term in clause 4.1.
DAMP	means Council's Defined Asset Management Policy attached as Annexure 3 .
Development	means the subdivision of the Stage 33 Land into: <ol style="list-style-type: none"> (1) fifty-eight (58) residential lots; and (2) one (1) drainage lot; and (3) one (1) residual lot.
Development Consent	means Development Consent No. D2018-561 granted with respect to the Development.
Failure	has the meaning ascribed to it in clause 5.1(1).
Land	means the land formerly contained in Certificate of Title Folio Identifier 403/1244669.
Landscape Plan	means the landscape plan attached as Annexure 1 .
Laws	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

Maintenance Period	means the period commencing on the date of this deed and ending ten (10) years after the sale of the last residential allotment within the Development.
Maintenance Schedule	means the maintenance schedule attached as Annexure 2 (as amended by Council from time to time).
Maintenance Works	has the meaning ascribed to it in clause 3.10.
Reserve	means that part of the Land comprising a drainage reserve (specifically zones 1, 2 and 3) as identified in the Landscape Plan and associated public open space developed by AREA environmental Consultants developed in accordance with Conditions 8 (a) – (c) of the Development Consent.
Stage 33 Land	means the land formerly contained in Certificates of Title Folio Identifiers 401/1244669 and 402/1244669.
Subdivision Certificate	means Subdivision Certificate number SC18-561 issued by Council pursuant to the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Taxes	means any tax, duty, impost, fee, levy or other charge imposed by any Authority.
Term	means the period commencing on the date of this deed and ending (10) years after the sale of the last residential allotment within the Development.
WH&S Laws	means the <i>Work Health & Safety Act 2011</i> (NSW) as well as any other relevant Law relating to work health and safety.
Works	means the landscaping, embellishment and associated infrastructure works completed by the Developer under the Development Consent and approved by Council .

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed.
variations or replacements	a document (including this deed) includes any variation or replacement of it.
reference to statutes	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.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.

executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
Dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	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.
next day	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.
next Business Day	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.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

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Annexure 1:
Landscape Plan

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Annexure 2: Maintenance Schedule

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Annexure 3:
Defined Asset Management Policy

Execution page

Executed as a deed

Dated:

Signed, sealed and delivered by Dubbo Regional Council by its Chief Executive Officer and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

Chief Executive Officer (Signature)

Mayor (Signature)

Name of Chief Executive Officer (Print Name)

Name of Mayor (Print Name)

Signed, sealed and delivered by Maas Group Properties Southlakes Pty Limited by being signed by Louise Margaret Sullivan pursuant to General Power of Attorney dated 30 May 2019 which is in the form authorised by legislation and of which the attorney has no notices of revocation

Signature of Witness

Signature of Attorney

Name of Witness (Print Name)

Power of Attorney registration number 5749 No 233

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