

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED OR
RELEASED, AND OF PROFITS À PRENDRE, RESTRICTIONS ON THE USE OF LAND AND
POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B,
CONVEYANCING ACT, 1919**

Plan:

(Sheet 1 of 11 sheets)
Plan of Subdivision of Lot 151 DP 1281496
and covered by Council's Certificate No.
dated 2024

**Full name and address
of the owner of the land
Lot 151 DP 1281496**

**The Trustees of the Roman Catholic Church
for the Diocese of Wagga Wagga**
205 Tarcutta Street
Wagga Wagga NSW 2650

PART 1 (CREATION)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement to drain sewage 2.5 wide (shown as D1 on the plan)	272	Wagga Wagga City Council
2	Easement to drain sewage variable width (shown as D2 on the plan)	275 & 276	Wagga Wagga City Council
3	Easement to drain water 2.5 wide (shown as D3 on the plan)	206, 208, 216 to 223 (inclusive), and 229	Wagga Wagga City Council
4	Easement to drain water 2.5 wide and easement to drain sewage 2.5 wide (shown as D4 on the plan)	223 to 228 (inclusive), and 268 to 274 (inclusive)	Wagga Wagga City Council
5	Easement to drain sewage 2 wide (shown as D5 on the plan)	216 to 223 (inclusive), and 281	Wagga Wagga City Council
6	Easement to drain water 3.3 wide and easement drain sewage 3.3 wide (shown as D6 on the plan)	212 to 216 (inclusive)	Wagga Wagga City Council
7	Positive Covenant	Each and every lot excluding lot 281	Wagga Wagga City Council
8	Restriction on the use of land variable width (Development Envelope) (shown as Z on the plan)	212 to 229 (inclusive)	Wagga Wagga City Council
9	Restriction on the use of land	Each and every lot excluding lot 281	Each and every other lot excluding lot 281
10	Positive Covenant	281	Wagga Wagga City Council

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Plan:

(Sheet 2 of 11 sheets)
Plan of Subdivision of Lot 151 DP 1281496
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dated 2024

PART 1A (RELEASE)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement for underground powerline 2 wide	151 in DP 1281496	Essential Energy

PART 2

1. Terms of Positive Covenant seventhly referred to in the Plan:

(1) Pervious to Impervious Ratio

- (a) The lot must be developed and maintained at all times after an Occupation Certificate is issued for any dwelling on the lot so that a pervious to impervious ratio of the surface area treatments of 20:80 is achieved in accordance with the plan entitled *Lloyd West Stage 1 Impervious/Pervious Calculation Plan* approved and held by Council.
- (b) The land area to be included in the calculation of 20:80 ratio shall be:-
 - (i) the entire lot for all lots save lots 212 to 229; or
 - (ii) the Development Envelope identified on the plan for lots 212 to 229, together with the area of the road reserve immediately adjacent to the lot.
- (c) The area of the road reserve adjacent to the lot to be included shall be measured as follows: between a line drawn as a continuation of the side boundaries of the lot (where they meet the front boundary) to the centre line of the road (being a line along the centre of the road equidistant from the front boundaries of the lots adjacent to it); noting that:-
 - (i) no area of any road reserve shall be apportioned to more than one lot for the purposes of this calculation;
 - (ii) for corner lots, the road reserve to be included in calculations will extend around the corner; and
 - (iii) lots that are further subdivided under community title or strata subdivision shall be calculated on the underlying Torrens title allotment.

(2) Road Reserve

The owner of the lot must retain the existing impervious nature of the finished surface of the road reserve immediately adjacent to the lot from the property boundary to the kerb of the road (being the area defined by the lateral extent of a line drawn as a

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POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B,
CONVEYANCING ACT, 1919**

Plan:

(Sheet 3 of 11 sheets)
Plan of Subdivision of Lot 151 DP 1281496
and covered by Council's Certificate No.
dated 2024

continuation of the side boundaries of the lot where they meet the front boundary) unless the road reserve is done in accordance with the standards set out in the *Landscaping of Nature Strips – Guidelines and Applications* and the *Street Tree Master Plan (as amended)* as approved by Council and it complies with Council's policy 008 *Road Reserve Policy* as amended from time to time. All establishment and maintenance works shall be at the cost of the lot owner.

(3) Gardens and landscaping

All gardens and landscaping on every lot shall be constructed and maintained in accordance with the *Lloyd Landscaping and Garden Design Guideline* prepared by MJM Consulting and approved of by Council.

(4) Cats

Any cats (*Felis Catus*) living on a lot and under the ownership or control of a resident of that lot shall be controlled in such a way so as to prevent such cat roaming freely outdoors between sunset and sunrise.

(5) Fixed irrigation systems and grey water

The owner of a lot must not install:-

- (a) fixed irrigation systems between the lot boundary and the adjacent kerb alignment; and
- (b) grey water re-use systems in any dwelling.

(6) Fire Protection

Each lot shall be managed as an inner protection area in accordance with the requirements of Appendix 4 of *Planning for Bushfire Protection 2019*.

(7) Rain and Stormwater

- (a) all single dwellings shall, as a minimum, have the larger of a 5,000 litre rainwater tank and the rainwater tank volume as set out in the relevant BASIX certificate;
- (b) all dual occupancies or multi-dwelling developments shall, as a minimum, have the larger of a 2,000 rainwater tank and the rain water volume as set out in the relevant BASIX certificate;
- (c) all excess rainwater shall be disposed of by a council stormwater system.

2. **Name of Person or Authority Empowered to Release, Vary or Modify Positive Covenant seventhly referred to in the Plan:**

Wagga Wagga City Council.

3. **Terms of Restriction on the Use of the Land eighthly referred to in the Plan:**

- (a) No buildings shall be erected outside the 80:20 non-pervious to pervious development envelope identified on the plan ("the Development Envelope"), except non-habitable buildings with any roof having gutters and associated pipes designed to collect and

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POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B,
CONVEYANCING ACT, 1919**

Plan:

(Sheet 4 of 11 sheets)
Plan of Subdivision of Lot 151 DP 1281496
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dated 2024

distribute all rainwater falling on the roof of the building to the Wagga Wagga City Council stormwater drainage system servicing the lot.

- (b) No vegetation shall be planted or allow to remain outside the Development Envelope other than native vegetation that:-
 - (i) accords with any applicable guidelines under the *Planting for Bushfire Protection 2019* publication of the NSW Rural Fire Service (or any other superseding document); and that
 - (ii) does not require watering other than from rain events.
- (c) Further to the terms of positive covenant seventhly referred to in the plan, no fixed irrigation system shall be installed outside the Development Envelope.
- (d) No part of a dwelling constructed within 80 metres of the centre line of the main southern railway line shall be constructed unless consistent with the standard mitigation set out in "*Road Noise Control Treatment Category 2*" of the Department of Planning document "*Development Near Rail Corridors and Busy Roads – Interim Guideline*" dated 2008 or any superseding document. No alternative construction methods inconsistent with the standard mitigation can be used unless supported by documentation submitted with the construction certificate application from a suitably qualified person that demonstrates that the proposed constructions meets the intent of the standard mitigation.
- (e) Any dwelling constructed shall not be used unless maintained to ensure that the following LAeq levels are not exceeded:-
 - (i) in any bedroom in the residential accommodation – 35dB(A) at any time between 10:00pm and 7:00am; and
 - (ii) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom, or hallway) – 40dB(A) at any time.
- (f) No gate or opening (other than a gate capable of servicing pedestrians only) shall be placed in the fence to the RE1 zone land to the rear, noting that any action required to be taken by council to enforce this restriction will be entirely payable by the owner;
- (g) Vehicular access to the lot from the RE1 zone land to the rear is prohibited, noting that all costs arising as a result of any action required to be taken by council to enforce this restriction will be entirely payable by the owner.
- (h) No fence on the rear boundary of the lot with the adjoining RE1 zone land shall be constructed unless:-
 - (i) consistent in character (including, but not limited to, colour, style, material, and height) including with previous stages with fencing to the RE1 zone land; and
 - (ii) erected so that any fence, frame, or support structures are not visible from outside the lots; and
 - (iii) compliant with the requirements of the *State Environmental Planning Policy (Exempt and Comply Development Codes) 2008*.

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POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B,
CONVEYANCING ACT, 1919**

Plan:

(Sheet 5 of 11 sheets)
Plan of Subdivision of Lot 151 DP 1281496
and covered by Council's Certificate No.
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4. Name of Person or Authority Empowered to Release, Vary or Modify Restriction on Use of Land eighthly referred to in the Plan:

The Council of the City of Wagga Wagga.

5. Terms of Restrictions on the Use of the Land ninthly referred to in the Plan:

(1) Buildings and structures

- (a) No more than one Main Building shall be erected or allowed to remain on any lot except for a Unit Lot upon which multiple units may be erected.
- (b) No Main Building shall have a floor area of less than 140 square metres under the main roof exclusive of any verandahs, carports or garages noting that this restriction shall not apply to a Unit Lot if multiple units are erected on such lot.
- (c) No Main Building or garage shall:-
 - (i) have external walls consisting of material other than brick, brick veneer, stone, hebel blocks or panels, cement block or concrete construction, or 'weathertex' (or its equivalent) noting that panels of glass shall be permitted provided that at least 90% of the walls consists of the aforementioned materials; and/or
 - (ii) have roofing other than of slate, tile or Steel Sheet materials.
- (d) No Main Building, garage or other out building may be erected on any lot which is not constructed entirely of new materials or which has been wholly or substantially assembled off the lot whether as a previously occupied building or otherwise.
- (e) No building or improvements including, but not limited to, any swimming pool shall be constructed without the proprietor of the lot obtaining a soil test for such lot and the registered proprietor of such lot agrees to comply with any conditions emanating from such report and further agrees to release the Trustees from any claim arising from the use of fill
- (f) No building (other than a Main Building or garage) shall:-
 - (i) Be or be allowed to remain constructed of material other than brick, brick veneer or Steel Sheet;
 - (ii) Have a roof constructed or allowed to remain constructed of material other than tile, slate or Steel Sheet;
 - (iii) Have or allowed remaining with a floor area greater than 65 square metres; and/or
 - (iv) Exceed at any point or allow any point to remain in excess of 3 metres in height above ground floor level.
- (g) No carport shall be permitted to be erected or to remain and no garage shall be permitted to be erected or to remain unless it is constructed with a pitched roof.

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Plan:

(Sheet 6 of 11 sheets)
Plan of Subdivision of Lot 151 DP 1281496
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dated 2024

- (h) No advertising signs or awnings shall be erected or be displayed or be allowed to remain other than street numbers and house names which shall not exceed 60 centimetres x 30 centimetres in size.
- (2) Use
- (a) No Main Building shall be used or allowed to be used for any purpose other than as a private dwelling house and shall not nor shall any part thereof be used or allowed to be used for a residential unit, strata unit or flat save for a Unit Lot upon which multiple units have been erected.
- (b) No lot or building thereon shall be used for any noxious, noisome or offensive trade or calling.
- (3) Fencing and retaining walls
- (a) No fence (other than brick, rock, stone or picket fence not exceeding 900 millimetres in height) shall be erected between the front street alignment and the building line, provided that this shall not apply to any corner lot.
- (b) In the case of a corner lot no fence (other than brick, rock, stone or picket fence not exceeding 900 millimetres in height) shall be erected any closer to the front street alignment than the dwelling house erected on the lot.
- (c) No fencing other than steel sheet fencing:-
- (i) the colour of the coating of which is the "colorbond" colour known as "sandstone", "riverstone" or equivalent colour; and
- (ii) not exceeding 2 metres in height relative to the highest level of the land within 1 metre of either side of the fence,
- shall be erected along the remaining boundaries provided that:-
- (iii) in the case of a corner lot this restriction shall apply to one frontage only; and
- (iv) these restrictions do not prevent the continuation and re-erection (if necessary) of any retaining wall referred to in paragraph (e) below; and
- (v) this restriction is subject to any restriction imposed by the Wagga Wagga City Council with respect to the rear boundary of the lot with the adjoining RE1 zone land noting the Terms of Restriction on the Use of the Land eighthly referred to in the Plan.
- (d) During the ownership of any adjoining land by The Trustees, no fence shall be:-
- (i) erected on any lot to divide it from any such adjoining lot; or
- (ii) once erected - repaired, maintained or replaced,

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POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B,
CONVEYANCING ACT, 1919**

Plan:

(Sheet 7 of 11 sheets)
Plan of Subdivision of Lot 151 DP 1281496
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dated 2024

without the consent of the Trustees but such consent shall not be withheld if such fence is erected, repaired, maintained or replaced without expense to the Trustees.

- (e) In the event that a retaining wall is constructed as part of the subdivision on a boundary dividing 2 or more lots within the subdivision, such retaining wall (in its entirety – i.e. including all footings, foundations and supports) shall be regarded as part of the dividing fence for the purpose of both:-
- (i) the *Dividing Fences Act 1991* notwithstanding that it also supports land and not just the dividing fence; and
 - (ii) paragraph (d) above,

and the adjoining lot owners shall share all costs associated with any requisite repairs or maintenance to or the replacement of such retaining wall noting and subject to paragraph (d).

(4) Interpretation

In these restrictions on the use of the land, the following terms have the corresponding meanings:-

- (a) "Main Building" means the dwelling and any structures sharing the same roof or attached thereto such as a garage;
- (b) "the Trustees" means the Trustees of the Roman Catholic Church for the Diocese of Wagga Wagga or any entity to which the benefit of a restriction in favour of the former is assigned;
- (c) "Steel Sheet" when herein used shall mean aluminium/zinc coated or galvanised steel sheet with one of the following finishes:-
 - (i) silicone polyester pre-finished baked onto one or both sides;
 - (ii) 0.215 millimetres thick vinyl film laminated onto one or both sides; or
 - (iii) acrylic film pre-finished to one or both sides; and
- (d) "Unit Lot" means Lots 204, 240, 245, and 274.

6. **Name of Person or Authority Empowered to Release, Vary or Modify Restrictions on Use of Land ninthly referred to in the Plan:**

The Trustees of the Roman Catholic Church for the Diocese of Wagga Wagga until the expiry of ten (10) years from the date on which the abovementioned plan is registered is a deposited plan thereafter by the person or person in whom the legal estate is for the time being vested in the land in the said deposited plan (other than street or public areas) having a common boundary with the land burdened provided that any such release, variation or modification shall, if approved, be made and done in all respects of the cost and expense of the person requesting such release, variation or modification.

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POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B,
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Plan:

(Sheet 8 of 11 sheets)
Plan of Subdivision of Lot 151 DP 1281496
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7. Terms of Positive Covenant tenthly referred to in the Plan:

The owner shall provide and maintain a temporary asset protection zone in accordance with Planning for Bushfire Protection 2019 and the NSW Rural Fire Service publication ("Standards for Asset Protection Zones" or any superseding documents):-

- (a) of a distance of 50 metres from any residential allotments adjoining the lot or to the nearest lot boundary, if closer than 50 metres; and
- (b) until such time as the relevant part of the lot is developed and any bushfire hazard removed.

8. Name of Person or Authority Empowered to Release, Vary or Modify Positive Covenant tenthly referred to in the Plan:

Wagga Wagga City Council.

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Plan:

(Sheet 9 of 11 sheets)
Plan of Subdivision of Lot 151 DP 1281496
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**EXECUTED by
THE TRUSTEES OF THE
ROMAN CATHOLIC CHURCH FOR
THE DIOCESE OF WAGGA WAGGA**
by its duly appointed under power of
attorneys under power of attorney
Book 4718 No 963 in the presence of:-

Signature of Witness

Signature of attorney

Name of Witness

Full Name of attorney

Address of Witness

Signature of Witness

Signature of attorney

Name of Witness

Full Name of attorney

Address of Witness

Signature of Witness

Signature of attorney

Name of Witness

Full Name of attorney

Address of Witness

APPROVED BY THE
WAGGA WAGGA CITY COUNCIL

Authorised Officer

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POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B,
CONVEYANCING ACT, 1919**

Plan:

(Sheet 10 of 11 sheets)
Plan of Subdivision of Lot 151 DP 1281496
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WAGGA WAGGA CITY COUNCIL by its
authorised delegate pursuant to Section 377
of the *Local Government Act, 1919*:

Signature of witness

Signature of delegate

Name of witness

Name of delegate

Address of witness

APPROVED BY THE
WAGGA WAGGA CITY COUNCIL

Authorised Officer

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POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B,
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Plan:

(Sheet 11 of 11 sheets)
Plan of Subdivision of Lot 151 DP 1281496
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**EXECUTED by
ESSENTIAL ENERGY**

by its duly appointed attorney under
Power of Attorney Book 4677 No. 684
in the presence of:-

Signature of attorney

Signature of Witness

Name and Title of attorney

Name of Witness

Signature of attorney

Name and Title of attorney

APPROVED BY THE
WAGGA WAGGA CITY COUNCIL

Authorised Officer