

RENEWAL OF LICENCE AGREEMENT – MOUNT BARKER COMMUNITY RECREATION CENTRE

Licence Agreement

Meeting Date: 20 December 2022

Number of Pages: 28

2022

MINISTER FOR EDUCATION

AND

SHIRE OF OF PLANTAGENET

LICENCE AGREEMENT
School Community Recreation Centre
Mt Barker Community College

State Solicitor's Office
Commercial and Conveyancing
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THIS AGREEMENT is made the day of 202

BETWEEN:

MINISTER FOR EDUCATION a body corporate pursuant to the provisions of the *School Education Act 1999* of 151 Royal Street, East Perth Western Australia (**Minister**).

AND

SHIRE OF OF PLANTAGENET a local government and body corporate under the *Local Government Act 1995* of Lowood Road Mount Barker Western Australia (**Local Government**)

RECITALS

- A. The Facilities are situated on the Land.
- B. The Minister has care, control and management of the Land.
- C. The parties acknowledge that the Minister constructed the Facilities on the Land. The Local Government contributed the sum of \$1,200,000 towards construction of the Facilities and the Minister contributed \$1,300,000 towards construction of the Facilities.
- D. The Minister has agreed to grant to the Local Government a licence to use the Facilities on the terms and conditions contained in this Agreement.

OPERATIVE PART

IT IS HEREBY AGREED:

1. Definitions and Interpretation

- 1.1 In this Agreement unless the contrary intention appears:

Annual Contribution means the amount specified in item 10 of the Schedule.

Authorisation means any approval, agreement, certificate, authorisation, notification, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver, compliance report or environmental consent by any Government Agency required under any Laws, and includes any renewal of, or variation to, any of them but does not include any act or omission by the Minister under this Agreement.

Business Day means any day other than a Saturday, Sunday or public holiday in Perth Western Australia.

Commencement Date means the date specified in item 6 of the Schedule.

Commonwealth means Commonwealth of Australia;

contractor means contractor or subcontractor at any tier.

Decommission means to decommission and remove the Facilities and leave that part of the Land on which the Facilities are constructed in a clean tidy, level and vacant condition with all rubbish and debris removed.

Department means the department assisting the Minister with administration of the School Education Act 1999 currently being the Department of Education.

Dispute means any real or perceived conflict, difference of opinion, or unresolved issue arising in connection with the Licence or the parties' rights or obligations under the Licence, or the Facilities.

Dispute Notice means a notice given under clause 25.2.

Facilities means the Shire Facilities and the Shared Facilities.

Government Agency means any government or any governmental, semi governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, agency, entity or Parliament and includes any part of, or entity comprising, the State.

GST has the same meaning and usage as that contained in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given in section 195-1 of the GST Act.

Land means the land specified in item 1 of the Schedule.

Law means all applicable present and future laws including:

- (a) all acts, ordinances, regulations, by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth of Australia;
- (b) Authorisations;
- (c) principles of the common law or equity;
- (d) standards, codes, policies and guidelines;
- (e) the Australian Securities Exchange listing rules; and
- (f) fees, rates, taxes, levies and charges payable in respect of those things referred to in paragraphs (a), (b), (c) and (d) of this definition,

whether or not existing at the date of execution of this Agreement.

Licence means the licence referred to in clause 2.

Local Government's Authorised Times of Use means the times of use of the Shared Facilities by the Local Government specified in item 7(b) of the Schedule.

Local Government's Visitors means all officers, employees, agents, contractors, licensees, invitees or representatives of the Local Government.

Loss means any loss, cost (including legal costs), expense, liability (whether arising in negligence or otherwise) or damage whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual prospective or contingent or any fine or penalty.

Minister's Authorised Times of Use means the times of use of the Shared Facilities by the Minister specified in item 7(a) of the Schedule.

Party depending on the context means the Local Government or the Minister and

Parties means both of them.

Primary Payment means any payment by the Minister to the Local Government under this Agreement.

Principal means the principal or acting principal of the School.

Schedule means the schedule annexed to this Agreement.

School means the School specified in item 4 of the Schedule.

School days means all days on which students are required to attend the School for instruction in accordance with the provisions of *the School Education Act 1999*.

Shared Facilities means the facilities described in item 2 of the Schedule and includes all improvements to and natural features on or comprising the land which the Facilities are on or part of.

Shire Facilities means the facilities described in item 3 of the Schedule and includes all improvements to and natural features on or comprising the land which the Facilities are on or part of.

State means the State of Western Australia and includes any department, agency or instrumentality of the State of Western Australia, the Parliament and any Minister (including the State), whether body corporate or otherwise and their respective employees, agents, contractors and consultants.

Taxable Supply has the meaning given in section 195-1 of the GST Act.

Tax Invoice has the meaning given in section 195-1 of the GST Act and in the *A New Tax System (Goods and Services Tax) Regulations 1999*.

Term means the term specified in item 5 of the Schedule and where the context so permits includes any extended or renewed term.

1.2 In this Agreement unless a contrary intention appears:

- (a) **(person)**: references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) **(includes)**: the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) **(or)**: the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;
- (d) **(Party)**: a reference to a "Party" is to a Party to this Agreement;
- (e) **(other persons)**: a reference to any Party or person includes their and each of their legal representatives, executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) **(authority)**: a reference to any authority, institute, association or body is:
 - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that authority, institute, association or body;
- (g) **(this Agreement)**: a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (h) **(legislation)**: a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision;
- (i) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (j) **(obligations)**: a reference to an obligation includes a warranty and a reference to a failure to observe or perform an obligation includes a breach of warranty;

- (k) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (l) **(headings)**: headings are for convenience only and do not affect the interpretation of this Agreement;
- (m) **(clauses)**: a reference to:
 - (i) a clause, schedule or attachment is a reference to a clause, schedule or attachment of this Agreement; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (n) **(inclusive)**: a reference to this Agreement includes all schedules and attachments to this Agreement, including the Schedule;
- (o) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (p) **(\$)**: a reference to "\$" is to Australian currency and any amounts in this Licence are exclusive of GST, unless otherwise specified;
- (q) **(time)**: a reference to time is a reference to Western Australian Standard Time;
- (r) **(language)**: all information and documentation prepared or delivered by the parties under this Agreement will be in English;
- (s) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (t) **(construction)**: no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward or drafted this Agreement or any part;
- (u) **(information)**: any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, designs, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (v) **(policies)**: any reference to a State of Western Australia policy or scheme is deemed to include a reference to such policy or scheme as amended, varied or replaced by the State from time to time;
- (w) **(thing)**: a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them but this is not to be taken as implying that performance of part of an obligation is the performance of the whole;

- (x) **(consortium)**: if a Party consists of a consortium of two or more persons whether by way of partnership or joint venture or otherwise, then:
 - (i) an obligation imposed on a Party under this Agreement binds each person who comprises that Party jointly and severally;
 - (ii) each person who comprises a Party agrees to do all things necessary to enable the obligations imposed on that Party under this Agreement to be undertaken; and
 - (iii) the act of one person who comprises a Party binds the other person or persons who comprise that Party;
- (y) **(jointly and severally)**: an agreement, representation or warranty on the part of or in favour of two or more persons binds, or is for the benefit of, them jointly and severally;
- (z) **(electronic address)**: a reference to a document published at an electronic address is to the document as published at that electronic address on the date of execution of this Agreement;
- (aa) **(liability)** a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind; and
- (bb) **(month)** a reference to a month is to a calendar month.
- (cc) **(year)** a reference to a year is to a calendar year.
- (dd) **(use of Facilities)** reference to the Local Government using the Facilities means and includes use of the Facilities by the Local Government or any of its employees agents contractors licensees invitees or members of the general public.

1.3 Time

- (a) **(Business Day)**: Where the day on or by which an act is required to be done under this Agreement is not a Business Day, the time for doing that act will be taken to be the next Business Day.
- (b) **(day of event)**: Where time is to be reckoned by reference to a day or event, that day or the day of the event is excluded.
- (c) **(month)**: Where time is to be counted in months and the period commences on the 29th, 30th or 31st day of a month and the month at the end of the period does not have a 29th, 30th or 31st day (as applicable), then the period will end on the last day of that month (for example, a period of 2 months which begins on 31 July will end on 30 September; and a period of 2 months which begins 30 July will end on 30 September).

1.4 State's interests and Statutory Functions

- (a) **(State's rights)**: Any right of the Minister may be exercised for the benefit of any other part of the State and any reference in this Agreement to the Loss of, or costs incurred by, the Minister includes direct Losses of, and direct costs incurred by, any other part of the State.
- (b) **(State's interests)**: Except where this Agreement expressly provides otherwise, to the extent permitted by Law nothing in this Agreement gives rise to any duty on the part of the Minister to consider interests other than the Minister's interests (including the public interest) when exercising any of its rights or performing any of its obligations.
- (c) **(fetter)**: Nothing contained in this Agreement or contemplated by this Agreement has the effect of constraining the Minister or any other part of the State or placing any fetter on the Minister's or any other part of the State's statutory rights, duties, powers or functions including any statutory rights, duties, powers or functions conferred or imposed upon the Minister for Education under the *School Education Act 1999* (WA).
- (d) **(Minister's powers, functions and duties)**: Notwithstanding anything contained or implied in this Agreement to the contrary, the parties agree that the Minister is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any Government Agency, or to influence, over-ride or direct any Government Agency in the proper exercise and performance of its legal duties and functions.
- (e) **(no Claim)**: The Local Government is not entitled to make any Claim against the Minister for any Loss relating to any exercise or failure by the Minister to exercise its statutory rights or duties.

1.5 Standards

- (a) **(provisions limiting or excluding liability)**: Any provision of this Agreement which seeks either expressly or by implication to limit or exclude any liability of a Party is to be construed as doing so only to the extent permitted by Law.
- (b) **(standards)**: Unless agreed or notified in writing by the Minister, a reference to Standards Australia standards, overseas standards or other similar reference documents in this Agreement is a reference to the edition last published prior to the preparation of the relevant documentation.

2. Grant of Licence

- 2.1 The Minister hereby grants to the Local Government a licence to use the Shared Facilities for sporting and recreational purposes during the Local Government's Authorised Times of Use for the Term or until such time as the Minister divests itself or is divested of its rights over or in the Land (whichever occurs sooner). Nothing expressed or implied in this Agreement shall confer a right of exclusive occupation of the Shared Facilities to the Local Government and the Minister may at any time and at all times and from time to time exercise all of its rights in respect of the Shared Facilities except where such rights shall:
- (a) prevent the operation of the Licence granted in respect of the Shared Facilities and rights with respect to the Shared Facilities granted pursuant to this Agreement; or
 - (b) be inconsistent with the express provisions of this Agreement.
- 2.2 The Minister hereby grants to the Local Government a licence to use the Shire Facilities for sporting and recreational purposes for the Term or until such time as the Minister divests itself or is divested of its rights over or in the Land (whichever occurs sooner). Nothing expressed or implied in this Agreement shall confer a right of exclusive possession of the Facilities to the Local Government and the Minister may at any time and at all times and from time to time exercise all of its rights in respect of the Shire Facilities except where such rights shall:
- (a) prevent the operation of the Licence granted in respect of the Facilities and rights with respect to the Facilities granted pursuant to this Agreement; or
 - (b) be inconsistent with the express provisions of this Agreement.
- 2.3 The Minister will not allow any third parties to use the Shire Facilities for the Term.
- 2.4 The Local Government acknowledges and agrees that in the case of an emergency (as reasonably determined by the Minister) the Local Government's rights under this Agreement may be temporarily suspended during that emergency.

3. Facilities' Maintenance

- 3.1 The Local Government shall at all times during the Term in all things keep and maintain -
- (a) the Facilities well cleansed and drained and in good sanitary condition;

- (b) the Facilities safe from foreseeable risks, which are not insignificant and which in the circumstances a reasonable person would take precautions to remove;
 - (c) all buildings fences gates and other improvements now or hereafter comprising the Facilities in good tenable repair order and condition; and
- 3.2 The Local Government will ensure that all its employees, agents, workmen and contractors contact the Principal prior to carrying out any maintenance to the Facilities during the Minister's Authorised Time of Use;
- 3.3 On expiration of a period of use of the Facilities by a Party or any of that Party's employees agents or invitees (whichever the case may be) that Party shall leave the Facilities in a clean sanitary and tidy condition free from litter waste and rubbish and ready for immediate use by the other Party and other persons duly permitted to use the Facilities.
- 3.4 Notwithstanding anything expressed or implied to the contrary in this Agreement, if the Local Government or any agent, employee, contractor, invitee or licensee of the Local Government, through its, his or her negligence or other default, damages or destroys or contributes to the damage or destruction of the Facilities or any part thereof, then, to the extent that such damage or destruction was caused or contributed to by the negligence or other default of any of the aforesaid persons, the Local Government shall itself be responsible for all or part (as the case may be) of the cost of the repair or replacement of the said damaged or destroyed Facilities.
- 4. Records and Audited Accounts**
 - 4.1 The Local Government shall keep true, accurate and up-to-date records of its receipts and expenditure in respect of the Facilities and shall allow the Minister to inspect and/or take copies of those records at any time and from time to time provided that reasonable notice is first given by the Minister on each occasion.
 - 4.2 If a Party requests information, relating to any aspect of this Agreement, from the other Party, the second mentioned Party will use all reasonable endeavours:
 - (a) promptly to provide that information; and
 - (b) to ensure that any information so provided is accurate, complete, up-to-date, and sufficiently detailed, and in no way misleading or deceptive.
- 5. Booking of Facilities**

The Minister is not responsible for the supervision and management of bookings for groups using the Shared Facilities during the Local Government's Authorised Times of Use.

6. Assignment

The Local Government shall not without the prior written consent of the Minister (which consent may be arbitrarily withheld) assign, transfer, encumber or otherwise dispose of the Facilities or any part thereof or the rights, liberties or authorities granted under this Agreement.

7. Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any Law or under this Agreement by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this Agreement.
- (b) A waiver given by a Party under this Agreement is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (c) No course of dealings between the Parties removes the requirement under clause 7(b) that a waiver must be in writing to be effective and binding upon the Parties.
- (d) No waiver of a breach of a term of this Agreement operates as a waiver of any other breach of that term or of a breach of any other term of this Agreement.

8. Variation

Any variation of any term of this Agreement must be in writing and signed by the Parties.

9. Termination

- 9.1 Notwithstanding anything expressed or implied in this Agreement to the contrary, either Party may, by giving 6 months notice in writing to the other Party, terminate this Agreement for any reason whatsoever and upon the expiration of that 6 month period, this Agreement shall terminate but any rights of action or claims which accrued or arose to either Party prior to such termination are hereby preserved.
- 9.2 If the Local Government breaches or fails to comply with any term of this Agreement, and after having been served with a written notice:
 - (a) specifying the breach or failure; and
 - (b) requiring that breach or failure to be rectified within a reasonable period specified in the notice (being not less than 14 days),

fails or refuses to so rectify that breach or failure within that period, then the Minister shall be entitled to terminate this Agreement and such termination shall take effect immediately upon the Local Government being served with notice of termination.

- 9.3 A Party may also terminate this Agreement if the other Party persistently breaches this Agreement.
- 9.4 Each Party's rights to terminate this Agreement under the common law are hereby preserved.
- 9.5 If the Facilities are destroyed or are damaged to an extent that they are not able to be used by the Local Government, then the Parties rights and obligations under this Agreement are suspended until such time as the Facilities are able to be used by the Local Government.
- 9.6 If the Facilities are destroyed or are damaged to an extent that they are not able to be used by the Local Government, and the Minister is unwilling or unable to repair or replace the Facilities, the Minister may terminate this Agreement by notice to the Local Government.
- 9.7 On termination of this Agreement the Local Government agrees to pay to the Minister within 28 days after demand, 50% of the cost incurred by the Minister to Decommission the Facilities, if the Minister chooses to Decommission the Facilities following such termination. The Local Government will only be required to pay a maximum of \$200,000.00 pursuant to this clause.
- 9.8 Clause 9.7 will not apply if this Agreement is terminated by the Minister pursuant to clause 9.1 without the agreement of the Local Government.

10. Notices

- 10.1 Notices that may or must be sent under or in connection with this Agreement shall be in writing, signed by the Party or representative of the Party giving notice, and may be delivered by pre-paid post or by hand to the other Party at the relevant address or facsimile number set out in item 8 of the Schedule.
- 10.2 Notices shall be deemed to be received:
 - (a) (in the case of delivery by pre-paid post) six Business Days after deposit in the mail; or
 - (b) immediately upon delivery by hand.
- 10.3 The Local Government must promptly notify the Minister whenever a person is injured (excluding minor injuries) or dies on the Facilities.
- 10.4 The Local Government will ensure that no publication or promotional material it produces referring to the Minister or the School shall injure, bring into disrepute, ridicule or lessen the public image of the Minister or the School.

11. School Education Act 1999 remains unaffected

Nothing in this Agreement shall affect or be deemed to affect any right power authority or duty conferred or imposed upon the Minister under any Law including the *School Education Act 1999*.

12. Not to obstruct or cause nuisance

The Local Government shall not do or leave undone or allow or suffer to be done or left undone any act matter or thing whereby a nuisance or anything in the nature of or which may be deemed to be a nuisance by any Government Agency or within the meaning of any Law (State or Commonwealth) now or hereafter in force may exist arise or continue upon or in connection with the Facilities or any business carried on upon the same or the use thereof and shall forthwith abate any such nuisance or alleged nuisance and shall carry out and comply with all the provisions of every such Law and of every requisition and order of any Government Agency in reference thereto.

13. Comply with Laws

The Local Government shall and shall ensure that its employees agents contractors licensees and invitees shall at all times duly and punctually comply with observe and carry out and conform with the provisions of any Law now or hereafter in force and all requirements and orders of any Government Agency which effect the Facilities or the use thereof.

14. Report Damage etc

The Local Government shall promptly report any theft of, damage to, deficiency in, destruction of, or other fault in relation to the Facilities to the Minister upon the happening of the same and do all things and take all steps that are reasonable so as to minimise and mitigate any loss caused or occasioned thereby.

15. Local Government Responsible

The Local Government will be responsible for any Loss incurred or suffered by the Minister or any officer, employee, agent, contractor, licensee, student, invitee or representative of the Minister during the Minister's Authorised Times of Use of the Shared Facilities as set out in this Agreement to the extent caused or contributed to by the Local Government not carrying out any necessary repairs to or maintenance (including upgrades and replacements) of the Facilities or otherwise not complying with this Agreement.

16. Debts

If under this Agreement a Party is claiming monies owing as a debt from the other Party, the claiming Party will provide the other Party with an invoice and true copies of all documentation in support of the debt being claimed.

17. Signs

The Local Government shall not affix or cause or permit to be affixed or exhibited anywhere in or on the Facilities any poster signboard neon sign or advertisement except as shall be first approved in writing by the Minister.

18. Alcohol

Except as provided under the provisions of the *School Education Act 1999* and the *School Education Regulations 2000* and in accordance with the provisions of the *Liquor Control Act 1988* and the *Liquor Control Regulations 1989*, the Local Government shall not permit the consumption of alcoholic beverages on the Facilities unless it has written authorisation from the Principal or an authorised officer of the Department.

19. Local Government to Promote Community Awareness

The Local Government shall, at its own cost and expense, be responsible for advertising the Facilities and otherwise promoting community awareness of and interest in the same from time to time.

20. Insurance

20.1 Each Party must at its own expense during the Term effect, maintain and keep current the following insurances with its self insurance fund or an insurer authorised by the Australian Prudential Regulation Authority to conduct insurance business in Australia to the reasonable satisfaction of the other Party:

- (a) public liability insurance in an amount of not less than TWENTY MILLION DOLLARS (\$20,000,000.00) in respect of any one occurrence, unlimited in the aggregate or such amount as shall be determined at the reasonable discretion of the other Party from time to time to reflect prudent commercial practices;
- (b) property insurance covering loss of or damage to any equipment that a Party provides for use on the Facilities for its full replacement value; and
- (c) workers compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* including cover for common law liability for an amount of not less than FIFTY MILLION DOLLARS (\$50,000,000.00) for any one event in respect of that Party's workers.

20.2 As and when requested either Party must give to the other Party sufficient evidence of the existence of the insurances set out in clause 20.1 or provide certificates of currency in respect of those insurances.

21. Indemnity

21.1 Each Party shall indemnify and keep indemnified the other Party (including its officers, employees, agents, contractors, licensees, invitees or representatives) and the Local Government must indemnify and keep indemnified the Minister for Lands from and against all Loss incurred or suffered by or brought against any of those indemnified to the extent that the same was caused or contributed to by any negligent or wrongful act or omission (including breach of a contractual term, condition or warranty) by the first mentioned Party or any of its officers, employees, agents, contractors, licensees, invitees or representatives.

21.2 In clause 21.1 **Loss** means any Loss arising from or in connection with:

- (a) any aspect of this Agreement (including the Licence and the Facilities); or
- (b) any damage to the Facilities or other property of any person whosoever; or
- (c) the death of, or injury or illness to, any person whosoever.

21.3 For the purposes of clause 21.1, neither the Local Government nor any of the Local Government's Visitors is, or shall be considered or deemed to be, a licensee or invitee of the Minister.

21.4 The indemnity contained in this clause 21 is a continuing obligation and remains in force and effect notwithstanding the expiry of the Term or the early termination of this Agreement irrespective of how it is terminated or which Party terminated it.

22. Costs

22.1 The costs of operating the Facilities shall be shared by the Parties as set out in item 9 of the Schedule.

22.2 The Minister shall reimburse the Local Government 50% of all costs and expenses reasonably incurred by the Local Government in performing its obligations under clause 3.1.

22.3 The Local Government shall, in respect of clause 22.2, invoice the Minister quarterly in arrears and the Minister shall pay such invoice within 28 days of having received the same.

22.4 Each Party shall pay its own legal costs in connection with the negotiation and preparation of this Agreement.

22.5 The Local Government shall pay on demand 100% of all costs charges and expenses which the Minister incurs in consequence of or in connection with any default by the Local Government in performing or observing any covenants conditions or stipulations herein contained or implied and on the part of the

Local Government to be performed or observed except to the extent that the same was caused or contributed to by any negligent or wrongful act or omission (including breach of a contractual term, condition or warranty) by the Minister.

- 22.6 The Local Government will pay the Annual Contribution to the Minister on the Commencement Date and thereafter on each anniversary of the Commencement Date being the Local Government's contribution to routine maintenance.

23. GST

- 23.1 The amount of all Primary Payments specified in this Agreement are exclusive of GST except where expressly stated otherwise.

- 23.2 If GST is payable by a Party in respect of a Primary Payment or any part in connection with a Taxable Supply provided under this Agreement:

- (a) the Primary Payment is increased by an amount equal to the applicable GST; and
- (b) the other Party must pay the amount of the increase in the same manner and on the same date as that Party is required to pay the Primary Payment.

- 23.3 If the Primary Payment consists (wholly or partly) of the recovery by a Party of all or a portion of that Party's costs, the Primary Payment is to be reduced by the amount (or corresponding proportion) of the Input Tax Credits available to that Party in respect of these costs and then increased by any applicable GST payable under clause 23.2.

- 23.4 If a Primary Payment is to be increased to account for GST under clause 23.2 the Party making the Taxable Supply must, at least one month before the date on which the increased Primary Payment is to be paid, issue a Tax Invoice to the other Party.

24. Approvals

- (a) If the approval of the Western Australian Planning Commission to this Agreement is required pursuant to section 136 of the *Planning and Development Act 2005*, then this Agreement is subject to and conditional upon that approval being obtained by the Local Government within 6 months after execution of this Agreement by the Parties.
- (b) If the approval of the Minister for Lands to this Agreement is required pursuant to section 18 of the *Land Administration Act 1997*, then this Agreement is subject to and conditional upon that approval being obtained by the Local Government prior to the Commencement Date and a copy of that approval will be attached to this Agreement as Annexure A.

25. Dispute Resolution

25.1 The Parties agree that unless and until a Party has complied with the formal requirements of this clause 25, a Party may not commence any court proceedings in respect of any Dispute except if the Party seeks urgent interlocutory injunctive or urgent interlocutory declaratory relief.

25.2 (a) If a Dispute arises then a Party may, by notice (**Dispute Notice**) to the other Party, refer that Dispute for resolution to the Principal or an officer from the Capital Works and Maintenance division of the Department and a nominated senior representative of the Local Government.

(b) A Dispute Notice under this clause 25.2 must:

- (i) state that it is a Dispute Notice under this clause 25; and
- (ii) include or be accompanied by detailed particulars of the Dispute.

(c) If a Dispute is referred to the persons set out in clause 25.2(a), then these persons must meet within 10 Business Days after the date on which the Dispute Notice is received (or such later date as the Parties may agree) and endeavour in good faith to resolve (in whole or in part) and negotiate a settlement of the Dispute.

(d) A Party in compliance with this clause 25.2 may (unless the parties agree to submit the Dispute to mediation under clause 25.3) terminate the Dispute resolution process by notice to the other Party at any time after 30 Business Days following reference of the Dispute to the persons specified in paragraph (a) above, and following such termination either Party may commence court proceedings in relation to the Dispute in accordance with clause 30.8 of this Agreement.

25.3 (a) The Parties may, if mutually agreed following the meeting required by clause 25.2(c), submit the Dispute to mediation in accordance with the Mediation Rules of the Institute of Arbitrators and Mediators Australia as applicable at the date of the Dispute.

(b) The mediator will be a dispute resolution practitioner with legal qualifications and at least 10 years' experience in the legal profession, as agreed between the Parties or, failing agreement, a mediator satisfying the requirements of this clause 25.3(b) will be appointed by the President of the Institute of Arbitrators and Mediators Australia.

(c) Any mediation meetings and proceedings under this clause 25.3 must be held in Perth, Western Australia.

- (f) The costs of any mediation meetings and proceedings under this clause 25.3 will be shared equally between the Parties.

25.4 If the Dispute is submitted to mediation and 20 Business Days (or any other period agreed to in writing between the Parties) after the appointment of a mediator under clause 25.3 the Dispute remains unresolved (whether in whole or in part), either Party may commence court proceedings in relation to the Dispute in accordance with clause 29.8 of this Agreement.

25.5 The Parties must continue to perform their obligations under this Agreement despite the existence of any Dispute between the Parties. The Parties may exercise any rights under this Agreement, including any rights under clause 9, notwithstanding the existence of any Dispute between the Parties.

26. Liaison Group

26.1 The Parties shall appoint a liaison group to comprise the following persons:

- 1 Department representative
- 1 Local Government representative

26.2 The role of the liaison group will be to discuss:

- (a) how disputes in connection with the Facilities could be dealt with;
- (b) how this Agreement can be improved or varied; and
- (c) access and efficient operations between the Parties.

26.3 The liaison group shall meet on a bi-annual basis and liaise more frequently if required.

27. Fees

A Party may charge members of the public fees to use the Facilities during that Party's permitted times of use of the Facilities.

28. Equipment

Each Party shall for the duration of the Licence let the other Party have use of its equipment situated in the Facilities by prior arrangement from time to time.

29. Miscellaneous

29.1 Whenever the consent of the Minister is required under this Agreement:

- (a) that consent may be given or withheld by the Minister in the Minister's absolute discretion and may be given subject to such conditions as the Minister may determine;

- (b) the Minister is not required to provide a reason or reasons for giving or refusing its consent; and
 - (c) the Local Government agrees that any failure by it to comply with or perform a condition imposed under clause 29.1(a) will constitute a breach of this Agreement by the Local Government.
- 29.2 The Parties must do all things and execute all further documents necessary to give full effect to this Agreement.
- 29.3 Nothing in this Agreement may be construed to make the Local Government a partner, agent, employee or joint venturer of the Minister.
- 29.4 The Local Government must not represent that the Local Government or any of its employees, agents, contractors, licensees or representatives are the employees, agents, partners or joint venturers of the Minister.
- 29.5 The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.
- 29.6 This Agreement states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.
- 29.7 The Parties agree that Part IF of the *Civil Liability Act 2002* (WA) is excluded and does not apply to the Parties' liabilities under this Agreement.
- 29.8
 - (a) This Agreement is governed by the Law in force in Western Australia.
 - (b) Each Party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising in connection with this Agreement. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- 29.9 Each Party represents and warrants to the other that it has full power to enter into and perform its obligations under this Agreement and that when executed this Agreement will constitute legal, valid, and binding obligations under its terms.
- 29.10 The Local Government must immediately notify the Minister in writing if it forms the opinion that it will be unable to, or be unlikely to be able to, satisfy any of its obligations in relation to this Agreement from the financial resources available, or likely to be available, to it, at the time the obligation is due.
- 29.11 The provisions of the Schedule are terms of this Agreement and therefore are enforceable in accordance with their terms.

SCHEDULE

Item 1 (Clause 1.1) Land

Lot 8124 on Deposited Plan 27044 and being the whole of the land in Qualified Certificate of Crown Land Title Volume LR3163 Folio 981 also known as part of Reserve 26279

Item 2 (Clause 1.1) Shared Facilities

The Community Recreation Centre (excluding the Shire Facilities), car park and accessways constructed on the Land and as are all delineated and bordered in blue on the plans marked A and B annexed hereto

Item 3 (Clause 1.1) Shire Facilities

The squash courts, gymnasium, creche and additional former storage area used for recreation classes contained in the Community Recreation Centre constructed on the Land and as are all delineated and bordered in pink on the plan marked C annexed hereto

Item 4 (Clause 1.1) School

Mt Barker Community College 364 Woogenellup Road Mount Barker

Item 5 (Clause 1.1) Term

21 years commencing on the Commencement Date

Item 6 (Clause 1.1) Commencement Date

The date of execution of this Agreement

Item 7 (Clause 1.1) Minister's Authorised Times of Use

- (a) The Minister shall be entitled to exclusive use of the Shared Facilities
 - (i) (in respect to the 2 indoor multi-use courts component of the Shared Facilities) between the hours of 12.30 p.m. and 1.30 p.m. on any School Day and/or such other times as first agreed to by the Parties in writing;
 - (ii) where the School requires the Shared Facilities for a school function and has first given the Local Government no less than 90 days' written notice of such requirement; and
 - (iii) where the School has notified the Local Government 10 weeks in advance of its requirements for the next School Term (for the period 8.30 am - 3 pm).
- (b) The Local Government shall be entitled to use the Shared Facilities at all times other than the times specified in item 7(a) of the Schedule and/or such other times as are first agreed to by the Parties in writing.

Item 8 (Clause 10.1) Notices

Minister: Capital Works and Maintenance Branch,
Department of Education
151 Royal Street
EAST PERTH WA 6004

Local Government: Chief Executive Officer
Local Government of Plantagenet
Lowood Road
MOUNT BARKER WA 6324

Item 9 (Clause 22.1) Costs Sharing of Operating Costs

	Minister	Local Government
Electricity, gas and water consumption costs	50%	50%
Telephone costs	-	100%
Garden maintenance costs	100%	-
Rubbish removal costs	-	100%
Maintenance (structural and operational)	50%	50%
Cleaning on School days	50%	50%
Cleaning on days that are not School days	-	100%

Cleaning is comprised of:

(a) ½ hour sweep and spot mop as required 5 days per week (45 minutes per day);

and

(b) 3 hours buffer/scrubber 1 day per fortnight.

The cleaning costs at the Commencement Date are:

(a) General sweeping and spot mopping – 3.25 hours per week x \$45 = \$146.25

(b) Buffer/scrubbing – 1.5 hours per week (cleaned fortnightly) x \$45 = \$67.50

Total Cost = \$213.75 per week

Item 10 (Clause 1.1) Annual Contribution to Routine Maintenance

\$500.00 per annum

EXECUTED by the Parties.

SIGNED for and on behalf of the)
MINISTER FOR EDUCATION by)
JAY TIMOTHY PECKITT)
Deputy Director General of the)
Department of Education,)
the officer delegated this authority)
pursuant to section 230 of the)
of the *School Education Act 1999 (WA)*)
in the presence of)

____/____/____

Witness signature

Witness Full Name (Please print)

Witness address (Please print)

Witness occupation (Please print)

THE COMMON SEAL of the)
SHIRE OF PLANTAGENET)
was hereunto affixed)
in the presence of)

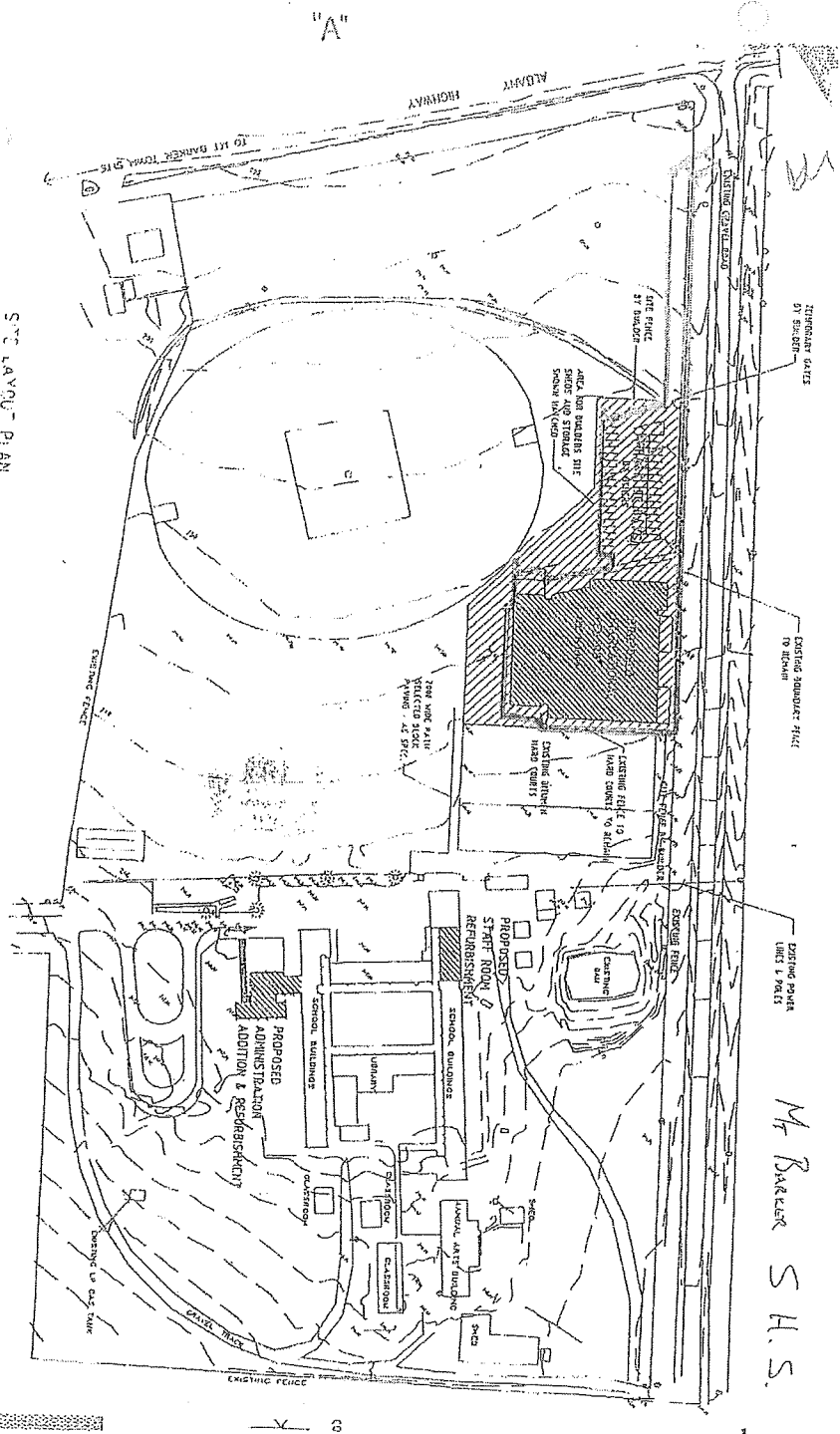
Shire President

Chief Executive Officer

Print full name

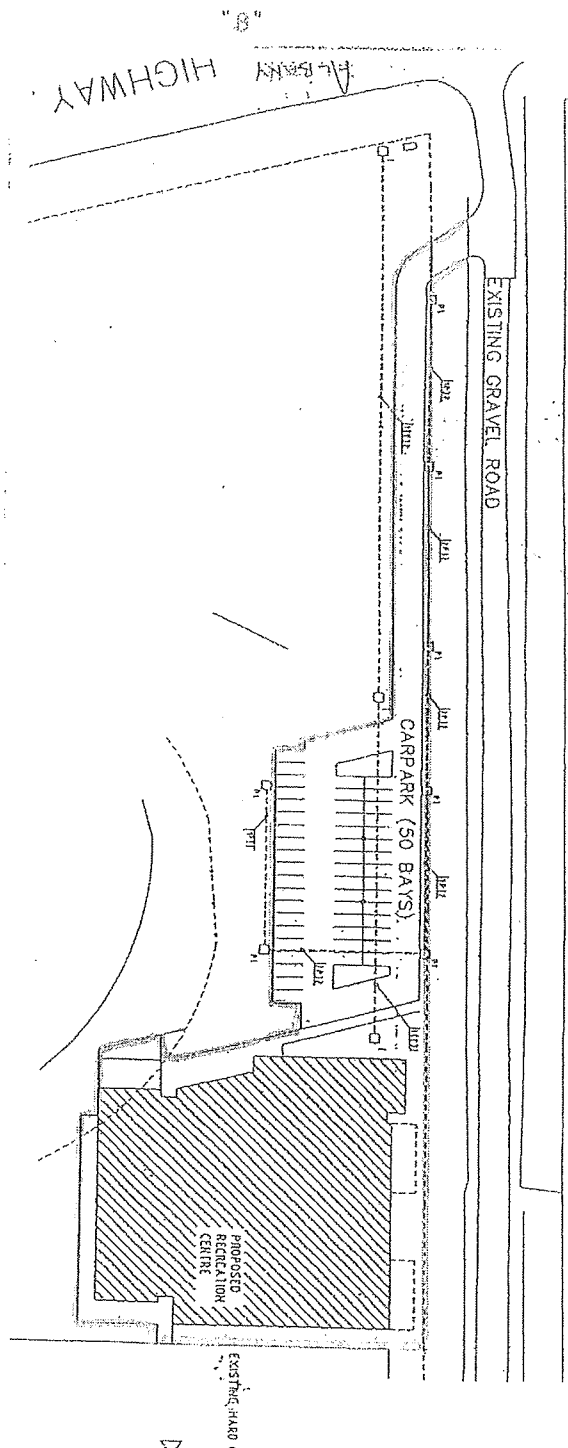
Print full name

SITE LAYOUT PLAN
SCALE 1/8" = 1'-0"



Mt. Barker S.H.S.

Mr. Baker S.H.S.



MT
Borker

