

Council

ASSIGNMENT OF LICENCE AGREEMENT –
RESERVE 1790 MCDONALD AVENUE, MOUNT
BARKER

Licence – Frost Park Reserve 1790

Meeting Date: 25 November 2025

Number of Pages: 21

**Licence Agreement for
use of
Frost Park, Mount Barker,
Western Australia,
Shire of Plantagenet
Class 'A' Reserve 1790**



Mount Barker Legal Pty Ltd
PO Box 45, Mount Barker WA 6324
Ref: 18071

Index

<i>Clause</i>	<i>Page</i>
Particulars:	1
1. Definitions	2
2. Interpretation	2
3. Term	3
4. Payment of Licence Fee	3
5. Goods and Services Tax	3
6. Reticulation and Water Use	4
7. Use of the Licensed Premises	4
8. Maintenance and Repair	6
9. No Assignment or Sublicensing	7
10. Insurances and Indemnities	7
11. Workplace Health and Safety	8
12. Default and Termination	9
13. Termination of Term	10
14. Notices	11
15. Costs	11
16. Shire's Consent	11
17. General	11
Plan – Licensed Premises	13

This **Licence Agreement** is made by:

Shire of Plantagenet

of 22-24 Lowood Road, Mount Barker, Western Australia
(‘Shire’)

and

Mount Barker Turf Club Inc

of PO Box 287, Mount Barker, Western Australia
(‘MBTC’)

on the date shown on the last page of this Agreement.

Particulars:

Item 1: Land

Shire of Plantagenet Class ‘A’ Reserve 1790, known as Frost Park, Mount Barker, Western Australia.

Item 2: Licensed Premises

Subject to clause 7, the Exclusive Use Infrastructure as marked on the Plan.

Expressly excluded from this Licence are Ram Pavilion (subject to clause 7.7), Frost Pavilion, Frost Park Oval and Taylor Dennis Pavilion.

Item 3: Exclusive Use Infrastructure

The Race Track (subject to clause 7), Track Towers, Stables and Mounting Area, Skinner Pavilion, Tote Room, Sea Container, Kitchen Storeroom, Roller Door Storeroom, Taylor Dennis Storeroom and Kitchen Crockery Cabinet (including contents) as marked on the Plan.

Item 4: Improvements

Any property owned by the Shire or third parties on the Land whether or not they form part of the Licensed Premises.

Item 5: Commencement Date

Item 6: Term

5 years.

Item 7: Licence Fee

\$10 per annum.

Item 8: Permitted Use

Subject to clause 7, equine racing and training including associated special events.

Grant of Licence:

The Shire grants a licence for MBTC to use the Licensed Premises during the Licence Period and subject to the provisions of this Licence Agreement. The Shire and MBTC agree:

1. Definitions

In this Licence Agreement:

- 1.1. Items described in the Particulars have a corresponding definition in this Agreement;
- 1.2. **Business Day** means a day not being a Saturday, Sunday or a public holiday in Perth, Western Australia;
- 1.3. **Claim** means any claim, notice, demand, action, suit, proceeding, litigation, investigation, judgement, cost, loss and expense of any nature whatsoever whether present or future and whether based in contract, tort or statute;
- 1.4. **Plan** means the plan of the Licensed Premises annexed to this Licence;
- 1.5. **Services** means all utilities and services to the Licensed Premises;
- 1.6. **MBTC's Employees** means each of MBTC's employees, contractors, agents, customers, sublicensees, licensees or others (with or without invitation) who may be on Licensed Premises; and
- 1.7. **MBTC's Property** includes all fixtures, chattels and other property on the Licensed Premises which are not the Shire's.

2. Interpretation

In this Licence unless the context otherwise requires:

- 2.1. headings and boldings do not affect the interpretation;
- 2.2. a person includes a body corporate;
- 2.3. a reference to any document or instrument refers to that document or instrument as amended;
- 2.4. words meaning the singular include the plural and vice versa;
- 2.5. if any party comprises two or more persons, they are bound and liable jointly and severally;
- 2.6. the term 'including' means including but not limited to;
- 2.7. a reference to any party includes that party's legal personal representatives, administrators, successors and assigns;
- 2.8. words which are defined in the Corporation Act and used in this Licence have the meaning given to them in the Corporation Act; and
- 2.9. the provisions of the Particulars and any Schedule or Plan form part of this Licence.

3. Term

Term

- 3.1. The Shire licences the Licensed Premises to MBTC for the Term commencing on the Commencement Date.

Monthly Tenancy

- 3.2. If MBTC continues to occupy the Licensed Premises after the Term with the Shire's consent then:
- a) MBTC does so as a monthly licensee on the same basis as at the last day of the Term; and
 - b) either party may terminate the monthly tenancy by giving to the other 1 month's notice expiring on any day.

4. Payment of Licence Fee

- 4.1. MBTC must:

- a) pay the Licence Fee by annual instalments upon demand of the Shire as the Shire directs; and
- b) pay the first instalment on the date this Licence commences.

- 4.2. Each payment of the Licence Fee must be made with an additional amount equal to any goods and services, consumption, value added tax applying to that payment.

5. Goods and Services Tax

Definitions in this clause

- 5.1. In this clause the following terms have the meanings ascribed to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth): **Adjustment Note**, **GST**; **GST Group**; **Input Tax Credit**; **Member**; **Recipient**; **Representative Member**; **Supply**; and **Tax Invoice**.

Consideration is exclusive of GST

- 5.2. The consideration for a Supply under this Licence is exclusive of any GST imposed on the Supply.

Recovery of GST

- 5.3. If a Supply under this Licence is subject to GST:

- a) the Recipient of the Supply must pay, in addition to the other consideration payable or to be provided for the Supply, an additional amount equal to the GST; and
- b) the Recipient must pay the additional amount to the supplier at the same time as the other consideration;

however, the Recipient need not pay the additional amount until the supplier gives the Recipient a Tax Invoice.

Adjustment of additional amount

- 5.4. If the additional amount differs from the amount of GST payable by the supplier on the Supply:
- a) the supplier must promptly issue an Adjustment Note to the Recipient; and
 - b) an amount equal to the difference must be paid by the supplier to the Recipient, or by the Recipient to the supplier, as appropriate.

Reimbursement

- 5.5. If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the payment must exclude any part of that cost or expense which is attributable to GST for which that party or the Representative Member of any GST Group of which that party is a member is entitled to an Input Tax Credit.

6. Reticulation and Water Use

- 6.1. The Shire and MBTC acknowledge that:
- a) MBTC owns the reticulation installed on the Race Track. MBTC must maintain the reticulation installed on the Track at all times during the Term;
 - b) MBTC owns the Reticulation Controller located in the Shire Irrigation / Pump Shed in the centre of the Race Track and the Shire will ensure MBTC has access at all times to that Reticulation Controller;
 - c) ownership of the reticulation installed on the Race Track reverts to the Shire upon termination or expiration of this Licence; and
 - d) MBTC acknowledges that the Shire owns the reticulation installed on the oval located on the Land and the Shire is responsible for its maintenance; and
 - e) the water main from MBTC's dam at Lot 81 McDonald Avenue, Mount Barker, Western Australia is the only supply MBTC may use to irrigate the Race Track.

7. Use of the Licensed Premises

Permitted Use

- 7.1. MBTC must only use the Licensed Premises for the Permitted Use.

Exclusivity

- 7.2. Subject to clause 7.3, the Shire grants an exclusive licence for MBTC to use the Exclusive Use Infrastructure.

Use of Race Track Accessways and Track Cross Over

- 7.3. MBTC may temporarily restrict access to the Race Track during racing and training events.
- 7.4. MBTC must allow access to the Track Cross Over to the Shire, all authorised users (including people participating in authorised user events) and pedestrian access to the public.

Shared Use

- 7.5. MBTC acknowledges that, other than the Exclusive Use Infrastructure, MBTC must allow the public and other users right of access to the whole of the Land that does not form part of the Licenced Premises for the purposes of recreation at all times.

Notice of Intention to Use

- 7.6. Prior to MBTC using the Licence Premises, MBTC must provide to the Shire reasonable written notice in such manner as prescribed by the Shire from time to time of the dates and times that it intends to use the Licensed Premises for the Permitted Use. MBTC's use of the Licensed Premises, but excluding the Exclusive Use Infrastructure, at all times is subject to prior bookings of the Licensed Premises and approval by the Shire, which approval will not be unreasonably withheld.

Use of Ram Pavilion

- 7.7. The Shire permits MBTC to use the Ram Pavilion to store racing gates. Such use must not interfere with other users of the Ram Pavilion. The Ram Pavilion is otherwise excluded from this Licence. MBTC must immediately remove all equipment that it has stored in the Ram Pavilion upon the request of the Shire.

Express Exclusions

- 7.8. MBTC acknowledges that the campdraft equipment, horse yards and large agricultural shed are owned by third parties and expressly excluded from the Licence. MBTC must not interfere with those facilities or the use of them.

Restrictions on Use

- 7.9. MBTC must not:
- a) excavate or otherwise disturb the area on the Plan marked as the Underground pipework and services area without the Shire's express written permission;
 - b) disturb any other licensees, the public or permitted users of the Licensed Premises;
 - c) overload any Services;
 - d) without prior written permission from the Shire, install locks or other security devices, additional to any that the Shire has installed, that inhibit access to the public or Shire, including to the Exclusive Use Infrastructure;
 - e) damage the Improvements;
 - f) alter the Licensed Premises, or do any building work or other works without the Shire's prior consent; or
 - g) do anything that may invalidate the Shire's insurance or increase the Shire's premiums.

No warranty as to Use

- 7.10. The Shire does not warrant that the Licensed Premises:
- a) is suitable for any purpose; or
 - b) may be used for the Permitted Use.

Official Requirements and rules

- 7.11. At its expense, MBTC must comply with any requirement, notice, order or direction of any statutory authority and includes the provisions of any statute, ordinance or by-law concerning the Licensed Premises, MBTC's Property or MBTC's use or occupation of the Licensed Premises or the sex, number, health and safety of persons on the Licensed Premises.

Caveats

- 7.12. MBTC must not lodge or register any caveat against the certificate of title to the land of which the Licensed Premises forms part to protect its interests under this Licence.

8. Maintenance and Repair

Repair

- 8.1. MBTC must:
- a) keep the Licensed Premises in good repair and condition except for fair wear and tear, inevitable accident and inherent structural defects;
 - b) promptly, and if immediate action cannot be taken, as soon as is practicable, repair all damage to roads, fences and MBTC's Property on the Licensed Premises which results from use of the Licensed Premises by MBTC; and
 - c) fix any damage caused by MBTC or MBTC's Employees.
- 8.2. the Shire may enter on to the Licensed Premises (including areas in which Exclusive Use Infrastructure is located) at any to time to carry out any repairs or maintenance required to the Licensed Premises without notice. The Shire must cause as little disruption to MBTC's business as is reasonably possible in the circumstances.
- 8.3. MBTC is not liable for damage caused by public use of the Licensed Premises provided such damage is not caused by or in connection with the use by MBTC's Employees, agents, invitees, customers, clients or patrons during MBTC's use of the Licence Premises.

Cleaning and Maintenance

- 8.4. MBTC must:
- a) at all times and at its own cost, maintain the Race Track, Stalls and Mounting Area, including ensuring all:
 - i) reticulation in the Leased Area is operating and in reasonable repair;
 - ii) grassed areas are reasonably watered; and
 - iii) fences and gates are in reasonable repair.
 - b) do such things as reasonably required to eradicate, exterminate and keep the Exclusive Use Infrastructure free from rodents, vermin and other pests of any kind, and will engage pest exterminators from time to time for that purpose;
 - c) keep the Licensed Premises clean and tidy and free of infectious diseases; and
 - d) keep MBTC's Property and Improvements clean and maintained in good order and condition.

Not to pollute

8.5. MBTC must:

- a) not cause pollution in or contamination of the Licensed Premises or any adjoining land by garbage, waste matter, oil and other pollutants whether by stormwater or other run-off or arising from use of the Licensed Premises; and
- b) collect and dispose of all garbage, waste matter, oil and other pollutants produced by MBTC from the Licensed Premises at a place and in a manner required or approved by the Shire and all relevant authorities having control over the disposal of waste matter and the protection of the environment.

Shire's right to inspect and repair

8.6. The Shire may:

- a) enter the Licensed Premises for inspection or to carry out maintenance, repairs or building work at any reasonable time after giving notice to MBTC. In an emergency, the Shire may enter at any time without giving MBTC notice; and
- b) carry out any of MBTC's obligations on MBTC's behalf if MBTC does not carry them out on time. If the Shire does so, MBTC must promptly pay the Shire's costs.

Notice of damage or defect in Services

8.7. MBTC must promptly give the Shire notice of:

- a) any damage to, defect or disrepair in the Services or the Improvements; and
- b) any circumstances likely to cause any risk to the Licensed Premises or any person.

9. No Assignment or Sublicensing

9.1. MBTC must not assign the Licence or sublicense the Licensed Premises.

9.2. Sections 80 and 82 of the *Property Law Act 1969* (WA) do not apply to this Licence.

10. Insurances and Indemnities

MBTC's insurance

10.1. MBTC must maintain at its own cost insurance on usual terms with an insurer authorised under the *Insurance Act 1973* for:

- a) public risk for at least \$20,000,000;
- b) damage to and loss of MBTC's Property that is on or in the Licensed Premises for the full replacement cost;
- c) employer's liability in respect of MBTC's Employees (including worker's compensation insurance); and
- d) all other risks as the Shire may reasonably from time to time determine.

Shire's insurance

- 10.2. The Shire will maintain insurance for the Shire's buildings and fittings on the Licensed Premises, including the Exclusive Use Infrastructure. MBTC will be responsible for any loss or cost suffered by the Shire:
- a) by making any claim against such insurance policy, including any policy excess; or
 - b) carrying out any repairs (other than structural repairs not caused by MBTC) where the Shire determines that the cost of such repairs is less than the Shire's excess associated with those insurance policies.

MBTC's policies

- 10.3. All policies under this clause must be acceptable to the Shire and with an insurer approved by the Shire and endorsed to note the interest of the Shire as licensor of the Licensed Premises.

Proof of insurance policies

- 10.4. MBTC must give the Shire evidence of its insurance if the Shire asks for it.

MBTC's release and indemnity

- 10.5. MBTC:
- a) occupies and uses the Licensed Premises at its own risk;
 - b) carries out any building work (with the consent of the Shire) on the Licensed Premises at its risk;
 - c) releases the Shire and the Minister for Lands from and indemnifies them against all Claims for damages, loss, injury or death relating to MBTC's use of the Licensed Premises:
 - i) whether or not it is caused by MBTC's negligence or default if it:
 - A. occurs on the Licensed Premises;
 - B. arises from the use of the Services on the Licensed Premises; or
 - C. arises from the overflow or leakage of water from the Licensed Premises,except to the extent that it is caused by the Shire's deliberate act or negligence; and
 - ii) if it arises from the negligence or default of MBTC or MBTC's Employees, except to the extent that it is caused by the Shire's deliberate act or wilful negligence.
- 10.6. MBTC releases the Shire from and indemnifies the Shire against any Claim or costs arising from anything the Shire is permitted to do under this Licence.

11. Workplace Health and Safety

MBTC:

- 11.1. acknowledges and agrees that for the purpose of the *Work Health and Safety Act 2020* (WA) or any other workplace or occupational health and safety legislation or regulations (**Workplace Regulations**) MBTC has the control of the Exclusive Use Infrastructure at all times and the Licenced Premises during racing and associated events and all plant and substances on those respective areas during those respective periods; and
- 11.2. releases and indemnifies the Shire from and against any Claim or obligation or liability of the Shire under any Workplace Regulations, except to the extent that any breach of the Workplace Regulations is contributed to by the Shire's deliberate act or negligence.

12. Default and Termination

Default

- 12.1. MBTC defaults under this Licence if:
- a) the Licence Fee or any money payable by MBTC is unpaid for 7 days;
 - b) MBTC breaches any other term of this Licence and such breach is unremedied within 10 Business Days of notice of breach having been served on MBTC;
 - c) MBTC assigns its property for the benefit of creditors; or
 - d) MBTC becomes an externally-administered body corporate within the meaning of the *Corporations Act 2001* (Cth).

Forfeiture of Licence

- 12.2. If MBTC defaults and does not remedy the default when the Shire requires it to do so, the Shire may do any one or more of the following:
- a) re-enter and take possession of the Licensed Premises and by notice to MBTC, terminate this Licence;
 - b) by notice to MBTC, convert the unexpired portion of the Term into a tenancy from month to month;
 - c) exercise any of its other legal rights; or
 - d) recover from MBTC or the Guarantor (if any) any loss suffered by the Shire due to MBTC's default.

Repudiation

- 12.3. If MBTC repudiates this Licence or breaches an essential term of this Licence the Shire may recover all money payable by MBTC under this Licence up to the end of the Term. However, the Shire must minimise its loss.
- 12.4. The essential terms are:
- a) to pay the Licence Fee (clause 4);
 - b) to use the Licensed Premises for only the Permitted Use (clause 7.1);
 - c) to comply with Official Requirements (clause 7.11);
 - d) to maintain and repair (clause 8.1); and
 - e) not to assign or sublicense the Licence (clause 9).

Shire's Entitlement to Damages

- 12.5. The Shire's entitlement to damages is not limited or affected if:
- a) MBTC abandons the Licensed Premises;
 - b) the Shire elects to re-enter the Licensed Premises or terminate this Licence;
 - c) the Shire accepts MBTC's repudiation; or
 - d) the parties' conduct constitutes or may constitute a surrender by operation of law.

Liquidated Debt

- 12.6. The Shire may remedy any default by MBTC and recover its costs of doing so from MBTC as a liquidated debt.

Waiver

- 12.7. No waiver by the Shire is effective unless it is in writing.
- 12.8. Despite the Shire's knowledge at the time, a demand for the Licence Fee or other money owing by MBTC or the subsequent acceptance of the Licence Fee or other money does not constitute a waiver of any earlier default by MBTC.

Interest on Overdue Money

- 12.9. The Shire may charge daily interest to MBTC on any late payment by MBTC at a rate of 3% above the Cash Rate published by the Reserve Bank of Australia from time to time.

13. Termination of Term

MBTC's obligations

- 13.1. On termination MBTC must:
- a) vacate the Licensed Premises and give it back to the Shire in good repair and condition in accordance with MBTC's obligations in this Licence;
 - b) remove all MBTC's Property from the Licensed Premises;
 - c) repair any damage caused by removal of MBTC's Property and leave the Licensed Premises in good repair and condition; and
 - d) return all keys, security passes and cards held by it or MBTC's Employees.

Failure to Remove MBTC's Property

- 13.2. If MBTC does not remove MBTC's Property at the end of the Term, the Shire may:
- a) remove and store MBTC's Property at MBTC's risk and expense; or
 - b) treat MBTC's Property as abandoned, in which case title in MBTC's Property passes to the Shire who may deal with it as it thinks fit without being liable to account to MBTC.

14. Notices

In Writing

- 14.1. Any notice given under this Licence must be in writing. A notice by the Shire is valid if signed by an officer or solicitor of the Shire or any other person nominated by the Shire.

Notice of Address

- 14.2. MBTC must promptly notify the Shire of its address, facsimile number or email address and the address and facsimile number or email address of any Guarantor and update the notice if any changes occur.

Service of Notice on MBTC

- 14.3. The Shire may serve a notice on MBTC by:
- a) giving it to MBTC personally;
 - b) sending it to MBTC's facsimile number or email address; or
 - c) posting it to MBTC's last known registered office, place of business or residence.

Service of Notice on Shire

- 14.4. MBTC may serve a notice on the Shire by leaving it at, or posting, emailing or faxing it to the address or number of the Shire as described in this Licence or as the Shire may provide by written notice to MBTC.

15. Costs

- 15.1. The Shire will pay the costs of preparation of the Licence.
- 15.2. MBTC must pay the Landlord's reasonable legal fees and outlays from any breach of this Licence by MBTC.

16. Shire's Consent

Unless otherwise stated, if the Shire's consent or approval is required:

- 16.1. the Shire must consider the request promptly and be reasonable in giving or refusing its consent or approval;
- 16.2. the Shire may require MBTC to comply with any reasonable conditions before giving its consent; and
- 16.3. it is not effective unless in writing.

17. General

Severability

- 17.1. Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down so as to be valid and enforceable and severed to the extent of the invalidity or unenforceability in that jurisdiction, without affecting the validity or enforceability of that provision in any other jurisdiction.

Whole Agreement

- 17.2. This Licence comprises the whole agreement between the parties and subject only to any provision expressly to the contrary supersedes all prior agreements and understandings between the Shire and MBTC in relation to the Licensed Premises.

Counterparts

- 17.3. This Licence may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

Governing Law

- 17.4. This Licence is governed by the laws of Western Australia and where applicable the Commonwealth of Australia.

WAPC consent

- 17.5. If for any reason this Licence requires the consent of the Western Australian Planning Commission, then this Licence is made expressly subject to and conditional upon the granting of consent of the Western Australian Planning Commission.

No right to set off by MBTC

- 17.6. MBTC is not entitled to set off any amount the Shire owes it whether under this Licence or not against any amount MBTC owes the Shire under this Licence.

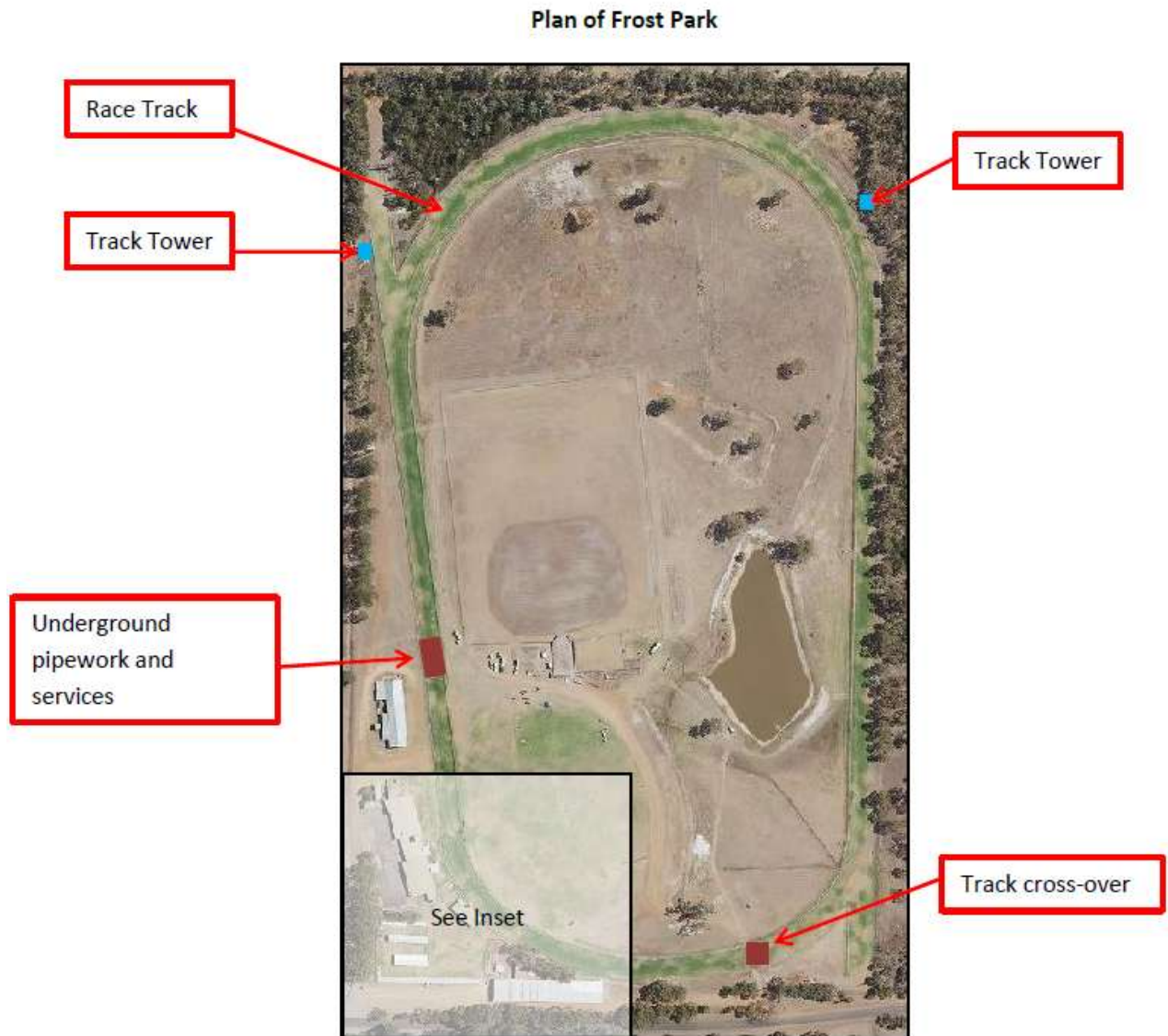
Adverse Construction

- 17.7. The terms of this Agreement must not be construed adversely against a Party merely because that party was responsible for drafting it.

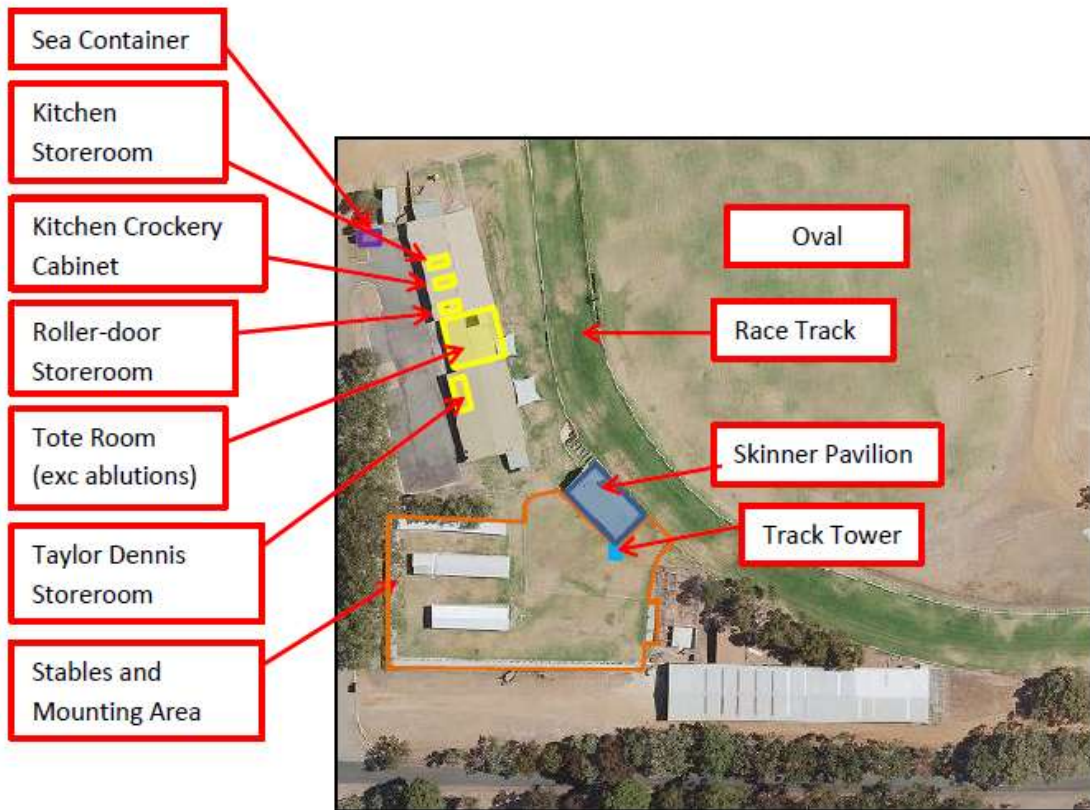
Managing Agents and Shire's Agents

- 17.8. The Shire may delegate any of its powers rights and authorities under this Licence to the Managing Agents or any officer thereof or to any Shire's Agent.

Plan – Licensed Premises



Inset



Kitchen Storeroom



Kitchen Crockery Store (cabinet and cabinet contents – excludes items stored on top of the cabinet)



Roller Door Storeroom



Tote Room (excludes toilet facilities)



Taylor Dennis Storeroom



Executed as a Deed dated

The Common Seal of **Shire of Plantagenet** }
was hereunto affixed pursuant to a }
resolution of the Council in the presence of: }

.....
Cr Len Handasyde
Shire President

.....
Julian Murphy
Chief Executive Officer

Executed in accordance with the }
Constitution of **Mount Barker Turf Club Inc:** }

.....
Signed

.....
Signed

.....
Print Name and Authority to Sign

.....
Print Name and Authority to Sign