

# **ATTACHMENT TO AGENDA ITEM**

Ordinary Meeting

16 June 2020

**Agenda Item 8.2      Riverlinks Westside - Joint Use Agreement with the Department of Education**

**Attachment 1      Westside Joint Use Agreement - Draft April 2020..... 203**

# **Community Joint Use Agreement**

The Minister for Education

The Greater Shepparton Secondary College School  
Council

The Greater Shepparton City Council

Greater Shepparton SC (Mooroopna) CJUA (exe draft clean) as at May 2020

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## PARTIES

The Minister for Education of 2 Treasury Place, East Melbourne, Victoria, 3002 for and on behalf of the State of Victoria and the Department of Education and Training (**Minister**)

The Greater Shepparton Secondary College School Council of 1 – 19 Parkside Drive, Shepparton, Victoria, 3630 (**School Council**)

The Greater Shepparton City Council of 90 Welsford Street, Shepparton, Victoria, 3630 (**Community Partner**)

## OVERVIEW

- A. The School Council and the Community Partner wish to enter into an agreement for the sharing of facilities at the School.
- B. The Community Partner is a local government authority or a not for profit entity.
- C. The completed Facility is located at the School, on land owned by or managed by the Minister.
- D. The parties agree that the Community Partner contributed towards the construction of the Westside Performing Arts Centre part of the Facility.
- E. The School Council and the Minister agree to grant a licence to the Community Partner to use the Facility upon the terms and conditions of this Agreement.

## CLAUSES

### SECTION A: DEFINITIONS AND INTERPRETATION

#### 1 DEFINITIONS

In this Agreement, unless inconsistent with the context or subject matter:

**Act** means the *Education and Training Reform Act 2006* (Vic) as amended.

**Adjustment Event** has the meaning given to it in the GST Legislation.

**Advertising** means the broadcast, exhibition publication or distribution of advertisements for commercial products or services excluding the broadcast, exhibition publication or distribution of advertisements for programs or events run by the Shire Council at the Facility that are consistent with the purpose of the Facility and are not reasonably objected to by the School Council or the Minister.

**Agreement** means this Community Joint Use Agreement including any annexures and schedules.

**Amenities** means the part of the Facility described in **Part A2** of the Schedule and coloured yellow on Plan B.

**Applicable Entity** has the meaning given to it under section 3 of the *Child Wellbeing and Safety Act 2005* (Vic).

**Capital Works** means works that are:

- (a) structural in nature; or
- (b) constitute a non-recurrent upgrade of the Facility; or
- (c) are replacement works which improve the Facility, excluding the Works.

**Capital Expenditure** means expenditure on Capital Works.

**Child-connected work** has the meaning given to it in section 4 of the Ministerial Order.

**Child Safety Laws** means any Laws that in any way relate to child safety, including the *Child Safety and Wellbeing Act 2005* (Vic).

**Common Area** means the part of the Facility described in **Part A2** of the Schedule and coloured in green on Plan B and Plan C.

**Community Hiring Party** means the party responsible for hiring out the Facility (or a part of it) for community use outside School Hours, or any other times that the School Council is entitled to use the Facility as set out in **Part E4** of the Schedule.

**Community Partner's Hours** means the times that the Community Partner is entitled to use the Facility, as set out in **Part E2** of the Schedule.

**Construction Contributions** means the financial contributions of the Community Partner towards the cost of the construction of the PAC, as set out in **Part B2** of the Schedule.

**Contamination** means any solid, a liquid, a gas, an odour or any temperature, sound, vibration, radiation or hazardous material or thing which makes or may make the Land, the Facility, the School or the neighbouring premises:

- (a) polluted as defined in the *Environment Protection Act 1970* (Vic);
- (b) unfit or unsafe for habitation or occupation by humans or animals;
- (c) degraded in any way; or
- (d) non-compliant with any environmental Laws in force from time to time in the State of Victoria.

**Date of Operation** is the date on which operation or use of the Facility commences, as set out in **Part C1** of the Schedule.

**Date of the Agreement** is the date on which the Minister signs this Agreement.

**Department** means the Department of Education and Training of the State of Victoria.

**Facility** means the Facility described in **Part A2** of the Schedule and shown on Plan B, Plan C, Plan D and Plan E.

**Facility Operating Hours** means the hours when the Facility is entitled to operate, as set out in **Part E3** of the Schedule.

**Further Term** is the period up to which the Licence may be extended, from the expiry of the Initial Term, as set out in **Part D2** of the Schedule.

**GST** means the tax payable on taxable supplies under GST Legislation.

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

**Hirer** means the person or entity hiring out the Facility (or a part of it) in accordance with clause 47 and its agents, servants, employees, contractors, invitees and anyone else for whom that person or entity is responsible.

**Initial Term** means the first term of the Licence, as set out in **Part D1** of the Schedule.

**Input Tax Credit** has the meaning given to that term in the GST Legislation.

**Insolvent** has the meaning given to that term under the *Corporations Act 2001* (Cth).

**Land** means the land on which the School is situated, as outlined in red on Plan A.

**Law** means:

- (a) any legislation and includes any subordinate legislation, ordinances, by-laws, regulations, rules, other statutory instruments issued and orders made under that legislation, whether Commonwealth, State or local;
- (b) common law; and
- (c) equity.

**Licence** is the non-exclusive licence to use the Facility granted to the Community Partner under clause 39.1 of this Agreement.

**Licence Fee** means the fee payable by the Community Partner under this Agreement for the use of the Facility, as set out in **Part D3** of the Schedule.

**Licence Term** means the period from the Date of Operation up to:

- (a) the expiry of the Initial Term, if the Licence is not renewed; or
- (b) the expiry of the Further Term or such lesser period as may be agreed by the parties, if the Licence is renewed; or
- (c) if this Agreement is terminated prior to the end of the Initial Term or the Further Term (as the case may be), the period up to and including the date of such termination.

**Minister** means the Minister responsible for the administration of the relevant provisions of the Act.

**Ministerial Order** means Ministerial Order 870 entitled "Child Safe Standards – Managing the risk of child abuse in schools" (as amended from time to time).

**Occasion** means a single continuous event e.g. a School assembly or a single day of a production.

**PAC** means the Westside Performing Arts Centre forming part of the Facility and described in **Part A2** of the Schedule and coloured in blue on Plan B, Plan C, Plan D and outlined in dark blue on Plan E.

**Permitted Use** means the purposes for which the Facility can be used, as set out in **Part E5** of the Schedule or as amended and agreed to by the School Council from time to time and notified in writing to the Community Partner, provided always that all use must be in accordance with the Act.

**Personnel** means a party and its agents, servants, employees, contractors, invitees and anyone else for whom that party is responsible, and does not include a Hirer.

**Plan A** means the plan of the Land annexed to this Agreement.

**Plan B** means the plan of the Facility, ground level, annexed to this Agreement.

**Plan C** means the plan of the Facility, mezzanine level, annexed to this Agreement.

**Plan D** means the plan of the Facility, basement level, annexed to this Agreement.

**Plan E** means the plan of the Facility, and includes the building, the surrounding area and car park, annexed to this Agreement.

**Principal** means the principal of the School or any other person acting from time to time as and with the authority of the principal of the School.

**Proper Person** means a person who is a proper person to be acting in that person's designated capacity in relation to a Facility within a Government School and occupied by school students.

**School** means the School specified in **Part A1** of the Schedule.

**School Council Area** means the part of the Facility described in **Part A2** of the Schedule and coloured in pink on Plan B and Plan C.

**School Council Child Safety Policies** means any relevant School Council policies, codes, guidelines or associated documents that in any way relate to child safety, including any policies, codes, guidelines or associated documents that the School produces for the purpose of meeting its minimum child safety standards pursuant to section 5 of the Ministerial Order.

**School Day** means a day on which the School is open.

**School Hours** means, in respect of a School Day, the times set out in **Part E1** of the Schedule.

**School Staff** has the meaning given to it in section 4 of the Ministerial Order.

**Statutory Charges** means any amount charged against the Facility by any Government Agency.

**Tax** means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on net overall income.

**Taxable Supply** has the meaning given to that term in the GST Legislation.



## 2 INTERPRETATION

- 2.1 In this Agreement, unless inconsistent with the context or subject matter:
- (a) a reference to any legislation or legislative provision:
    - (i) includes any statutory modification or re-enactment of, or legislative provision substituted for that legislation or legislative provision; and
    - (ii) includes any subordinate legislation, ordinances, by laws, regulations, rules, other statutory instruments issued and orders made under that legislation or legislative provision;
  - (b) any marginal notes or headings are included for convenience and do not affect the interpretation of this Agreement;
  - (c) a reference to any party to this Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
  - (d) the singular includes the plural and vice versa;
  - (e) if any day specified by this Agreement falls on a Saturday, Sunday or a day appointed under the *Public Holidays Act 1993 (Vic)* as a holiday for the whole day, that day will be the next day following the specified day which is not a Saturday, Sunday or day appointed under the *Public Holidays Act 1993 (Vic)*;
  - (f) a reference to this Agreement includes all documents attached to it;
  - (g) a reference to this Agreement or to any deed, agreement, document or instrument includes a reference to such documents as amended, novated, supplemented, varied, altered or replaced from time to time;
  - (h) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
  - (i) a reference to **dollars** or **\$** is reference to Australian currency; and
  - (j) the word **include** in any form is not a word of limitation.

## SECTION B: OBJECTIVES

### 3 OBJECTIVES OF THE PARTIES

- 3.1 The parties acknowledge and agree that their objectives in entering into this Agreement are:
- (a) to provide for the operation of the Facility for the benefit of the School and the local community;
  - (b) to create a framework for the effective and mutually beneficial long term operation and use of the Facility by each party;
  - (c) to ensure the Facility is operated safely, and in accordance with the Act and all other relevant Laws; and
  - (d) to achieve these joint objectives through a culture of mutual respect, cooperation and good faith.
- 3.2 The parties must exercise all of their obligations under this Agreement in furtherance of these objectives.

## SECTION C: GENERAL

### 4 APPROVALS TO ENTER INTO THE AGREEMENT

- 4.1 The Community Partner confirms that it has obtained, at its own cost, all necessary approvals and consents required under the *Local Government Act 1989 (Vic)* to enable it to enter into this Agreement and to comply with its obligations under this Agreement.

### 5 ACKNOWLEDGEMENT BY THE COMMUNITY PARTNER

- 5.1 The Community Partner acknowledges that it understands all risks, difficulties, contingencies and other matters relating to its use of the Facility under this Agreement.

### 6 NO GRANT OF PROPRIETARY RIGHTS IN THE LAND

- 6.1 The rights conferred by this Agreement rest in contract only and do not grant to the School Council, the Community Partner or any other person any proprietary interest in the Facility or in the Land.

### 7 ACTING ON BEHALF OF THE MINISTER

- 7.1 Any act, deed, document or thing to be made, done, executed or performed (excluding the execution of this Agreement) and right, duty or power (including the right to issue a notice or give any consent) of the Minister, to be exercised under

this Agreement, may be made or done on behalf of the Minister by any employee of the Department authorised to do so by the Minister.

## 8 ASSIGNMENT

- 8.1 The Community Partner must not assign or transfer any or all of its rights or obligations under this Agreement without the written consent of the Minister. Such consent must not be unreasonably withheld.
- 8.2 The Minister and School Council may in good faith assign or transfer their respective rights or obligations under this Agreement at any time during the Licence Term. The Minister or the School Council, as the case may be, must give written notice to the Community Partner of such assignment.

## 9 DISSOLUTION OF THE SCHOOL COUNCIL

- 9.1 The parties acknowledge and agree that any Law which dissolves the School Council will be deemed to have simultaneously effected a transfer to the Minister of the whole of the School Council's right, title, interest and obligations under this Agreement except where a new school council is to be substituted, in which case the deemed transfer is to the new school council.

## 10 CHANGE OF SCHOOL COUNCIL NAME

- 10.1 If the School Council changes its name, no transfer of its rights, title, interest and obligations occurs but the School Council must provide the Community Partner written notice of the change.

## 11 LEGAL COSTS

- 11.1 The parties agree that the Minister's legal costs in relation to preparation of this Agreement shall be funded as agreed between the School Council and the Community Partner as set out in **Part B2** of the Schedule.

## 12 NOTICES

### Method of giving Notices

- 12.1 Any notice given under this Agreement must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
- (a) hand delivered; or
  - (b) sent by prepaid and registered mail;
- to the address set out in **Part G** of the Schedule, or, if a party gives notice of a change of address, to that changed address .

### Time for Receipt

- 12.2 A notice delivered pursuant to this Agreement shall be deemed to have been received by the addressee:

- (a) in the case of delivery by hand, on the day of delivery; or
- (b) in the case of a posted letter, on the sixth (eleventh, if posted to or from a place outside Australia) day after posting;

unless the delivery is made on a non-business day, or after 4.00pm on a business day, in which case the communication will be deemed to be received on the next business day after that.

## 13 GOVERNING LAW

- 13.1 This Agreement is governed by the law of the State of Victoria.

## 14 VARIATION OF THIS AGREEMENT

- 14.1 No addition to or variation of this Agreement is binding unless in writing signed by or on behalf of all parties.

## 15 WAIVER

- 15.1 A waiver or indulgence of a breach of any term or condition of this Agreement is only binding if given by written notice. A waiver of one breach of any term or condition of this Agreement operates neither as a continuing waiver, unless so expressed, nor as a waiver of another breach of the same or of any other term or condition of this Agreement.

## 16 CONFIDENTIALITY

- 16.1 Except as expressly provided in clause 16.3 below, the parties must treat as confidential the terms and conditions of this Agreement and all other information which comes into their possession as a result of or in the performance of this Agreement.
- 16.2 The School Council and the Community Partner:
- (a) must not without the permission of the Minister disclose such confidential information to an outside party; and
  - (b) must not without the permission of the Minister disclose any details of the terms and conditions of this Agreement to an outside party.
- 16.3 The exceptions to the parties' obligations in clause 16.1 are where:
- (a) the disclosure is required in order for the relevant party to perform its obligations under this Agreement;

- (b) the disclosure is required by Law or government policy, portfolio responsibilities or constitutional duty for the purposes of informing the relevant Minister, the Crown, the Victorian Auditor-General or Parliament;
- (c) the information is already in the public domain (unless it is in the public domain because of a breach of confidence); or
- (d) the disclosure is otherwise consented to by all the parties.

## **17 CONFLICT OF INTEREST**

- 17.1 The Community Partner warrants that, to the best of its knowledge and belief after due inquiry as at the date that the Community Partner signs the Agreement, it has no duties or interests that create or might reasonably be anticipated to create a conflict with its duties and obligations under this Agreement.
- 17.2 The Community Partner must notify the School Council and Minister in writing if at any time after the date that the Community Partner signs the Agreement it becomes aware of any actual or potential conflict of interest and must comply with any reasonable direction of the Minister to manage any risk in connection with such conflict.

## **18 ENTIRE AGREEMENT**

- 18.1 This Agreement contains the entire agreement between the parties and supersedes any other communications or representations or earlier written or verbal agreements made in connection with the subject matter of this Agreement.

## **19 COUNTERPARTS**

- 19.1 This Agreement may be executed in counterparts. If this document is executed in counterparts, each counterpart is an original and all of the counterparts together constitute the same document.

## **20 GST**

- 20.1 Where a party to this Agreement (the Supplier) makes a Taxable Supply under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement to another party to this Agreement (the Recipient) and the consideration otherwise payable for the Taxable Supply does not include GST, the Supplier shall be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Recipient the amount of any GST on the Taxable Supply.
- 20.2 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the

Taxable Supply (taking into account any Adjustment Events that occur in relation to the Taxable Supply), an adjustment will be made. If the amount paid by the Recipient exceeds the GST on the Taxable Supply, the Supplier must refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the Taxable Supply, the Recipient must pay the deficiency to the Supplier.

- 20.3 Where a party to this Agreement is entitled, under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any Input Tax Credits available in respect of those costs.
- 20.4 A party is not obliged to pay any amount in respect of GST to the other party unless and until a valid tax invoice (being an invoice that complies with the GST Legislation) has been issued in respect of that GST.

## **SECTION D: OVERARCHING REQUIREMENTS**

### **21 MUTUAL OBLIGATION TO FACILITATE COMPLIANCE WITH THIS AGREEMENT AND THE LAW**

- 21.1 Each party must do all things reasonably necessary to assist any other party to discharge any obligations that party may have under this Agreement and any relevant Law.

### **22 COMMUNITY PARTNER'S GENERAL OBLIGATIONS AND PROHIBITIONS IN RESPECT OF THE LAND AND THE FACILITY**

- 22.1 The Community Partner must:
- (a) perform all its activities under this Agreement safely so as to protect persons and property;
  - (b) use the Land and the Facility in an appropriate manner;
  - (c) keep the Facility, and the Land tidy and free from rubbish caused by the Community Partner or its Personnel, to the satisfaction of the Principal;
  - (d) at its own cost, comply with all relevant Laws in relation to the Community Partner's rights and obligations under this Agreement;
  - (e) comply with all relevant Department policies or guidelines, as notified by the School Council in writing to the Community Partner;

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- (f) at its cost, comply with any direction given by the Principal in relation to the Community Partner's rights and obligations under this Agreement, if the Principal in his or her absolute discretion considers there is a risk to people or damage to property;
- (g) obey all reasonable rules from time to time made by the School Council with regard to the management of the School and the Facility;
- (h) enter or leave the Facility only by the route and park its motor vehicles in the area nominated by the School Council, unless this Agreement outlines specific arrangements or the School Council has provided its prior written agreement to alternative arrangements;
- (i) observe fire precautions;
- (j) if applicable, ensure that all external doors and windows at the Facility are secured and locked after the Community Partner's use or access of the Facility; and
- (k) at all times exercise due care, skill and judgement and act in good faith.

22.2 The Community Partner must not:

- (a) use or permit the Facility to be used other than for a Permitted Use;
- (b) alter the Facility without the written approval of the School Council, such approval not to be unreasonably withheld, and subject to the Community Partner being responsible for the cost of the alteration unless otherwise agreed between the parties;
- (c) allow the use of Advertising at the Facility or the School without the written approval of the School Council;
- (d) cause or permit any Contamination;
- (e) cause or permit any disturbance or nuisance to people at or entering the Facility or the School or to the owners or occupiers of neighbouring premises, including the School Council, and any person using the grounds of the School, except to the extent reasonably necessary to carry out the Community Partner's obligations under this Agreement; and
- (f) cause or permit any damage, injury or danger to people at or entering the Facility or the School or to the owners or occupiers of neighbouring premises, including the School

Council, and any person using the grounds of the School.

- 22.3 To the extent applicable, the Community Partner must ensure that its Personnel comply with the obligations and prohibitions contained in this clause.
- 22.4 Nothing in this clause 22 shall oblige the Community Partner to carry out Capital Works or otherwise incur Capital Expenditure, unless necessary as a consequence of the Community Partner's use of the Facility or as provided for by clause 49 of this Agreement.

**23 OCCUPATIONAL HEALTH & SAFETY**

23.1 The Community Partner must:

- (a) establish and maintain systems to assess, manage and eliminate risks and hazards at the Facility and the Land, in connection with its rights and obligations under this Agreement, to the standard required by occupational health and safety law; and
- (b) provide appropriate training and supervision for all persons employed or engaged by it in connection with its rights and obligations under this Agreement.

23.2 The Community Partner must ensure that its Personnel comply with the systems and training referred to above.

23.3 The Community Partner must notify the School Council immediately if it breaches any of its obligations under this Agreement with respect to occupational health and safety and provide the School Council with a copy of all relevant information on request.

23.4 The Community Partner must notify the School Council immediately if any notice is issued under occupational health and safety law and provide the School Council with a copy of any documents or other relevant information on request.

**24 AUDIT**

24.1 The Minister may, at any time, conduct an audit and inspection in respect of all matters relating to the operation, use and maintenance of the Facility including:

- (a) the performance by the parties of their obligations under this Agreement, including their financial obligations;
- (b) all payments made in accordance with the terms of this Agreement;

- (c) the current financial position of the Facility including any provision for future maintenance or Capital Expenditure; and
  - (d) matters concerning safety or work health and safety; and
  - (e) any incidents occurring at the Facility, including those resulting in injury or death.
- 24.2 The Minister may appoint a third party to conduct this audit.
- 24.3 The Minister must give the School Council and the Community Partner not less than 24 hours written notice of any proposed audit.
- 24.4 The Community Partner must provide all reasonably requested information to the Department, the Minister, the School Council or the appointed auditor if requested to do so.

#### **25 PERMISSIBLE DEALINGS WITH THE LAND**

- 25.1 Without derogating from clause 35, at any time during the Licence Term the Minister may subdivide, sell or otherwise dispose of or deal with the whole or any part of the Land, where this does not affect the Community Partner's use of the Facility and the Land pursuant to this Agreement and the Minister does not propose to terminate the Agreement under clause 35.

#### **26 RIGHT OF SCHOOL COUNCIL AND MINISTER TO UNDERTAKE WORKS AT THE FACILITY**

- 26.1 The School Council and the Minister reserve the right to undertake any works and take any other steps which are necessary to comply with any Law or to ensure the safe and proper use of the Facility and the Land.
- 26.2 The School Council and the Minister must exercise their rights under clause 26.1 at a reasonable time and in a way which minimises any interference with the Community Partner's use of the Facility. The School Council or the Minister must give the Community Partner reasonable notice if the School Council or the Minister intends to enter the Facility during the Community Partner's Hours or any other times the Community Partner is entitled to use the Facility. If there is an emergency, the School Council or Minister or any person authorised by the School Council or the Minister may enter the Facility at any time without notice.

#### **27 DAMAGE TO THE FACILITY CAUSED BY NEGLIGENCE, GROSS NEGLIGENCE OR WILFUL MISCONDUCT**

- 27.1 Each party is responsible for damage to the Facility to the extent caused or contributed to by the negligent, unlawful act or omission, gross negligence or wilful misconduct of that party or its Personnel.
- 27.2 Subject to clause 27.3, the responsible party must reimburse the other parties for any costs reasonably incurred by those parties in respect of such damage within 28 days of receiving a written notice from the other parties specifying the damage and the costs.
- 27.3 Where the party responsible for the damage is responsible for carrying out maintenance and repair works to the part of the Facility which is damaged, that party must rectify the damage at its own expense without any contribution from the other parties, regardless of any other provision of this Agreement.

#### **28 DAMAGE TO THE FACILITY NOT COVERED BY INSURANCE**

- 28.1 If any part of the Facility or any plant, equipment or property located in the Facility suffers damage which arises from an event or risk that is not covered by any of the insurances required to be obtained by the parties under this Agreement, or under any other applicable insurance (including insurance obtained by a Hirer), and clause 28.2 does not apply, then the party responsible for carrying out maintenance and repair works in respect of the part of the Facility which is damaged must rectify the damage in the first instance with the other party (excluding the Minister) to reimburse 50% of this cost within 30 days of receipt of written notice specifying the damage and the cost incurred. If the cost of rectification is likely to exceed \$5,000 (excluding GST) then the party responsible for rectifying the damage in the first instance must obtain the prior approval of the other party (excluding the Minister) before carrying out the rectification works. If the cost of rectification is greater than \$50,000, the party responsible for rectifying the damage in the first instance must obtain the prior approval of the other party and the Minister.
- 28.2 Clause 28.1 does not apply if the amount is not recoverable under a policy of insurance because:
- (a) The School Council or the Community Partner has failed to meet a condition, requirement or warranty forming part of the policy. In such a

situation, the defaulting party is responsible for the cost of rectifying the damage.

- (b) The Community Hiring Party has failed to ensure that a Hirer obtains the insurance required by clause 47.3(d) of this Agreement. In such a situation, the Community Hiring Party is responsible for the cost of rectifying the damage.
- 28.3 If the amount is not recoverable under a policy of insurance because a Hirer has failed to meet a condition, requirement or warranty forming part of the policy, then the School Council and the Community Partner will be equally responsible for the cost of fixing the damage if this cannot be recovered from the Hirer. Pending any recovery from the Hirer, the party responsible for carrying out maintenance and repair works in respect of the part of the Facility which is damaged must rectify the damage in the first instance and the other party (excluding the Minister) must reimburse 50% of this cost within 30 days of receipt of written notice specifying the damage and the costs incurred.
- 28.4 If a party disputes a notice setting out the cost of and responsibility for the damage issued in accordance with any provision of this clause 28, it may within 14 days of receipt of the notice refer the matter for dispute resolution in accordance with this Agreement. Pending resolution of the dispute, that party must pay the amount stated in the notice to the party that issued the notice.

## 29 INDEMNITY

- 29.1 This clause applies if the Community Partner is not a local government authority.
- 29.2 The Community Partner indemnifies the School Council, the Minister and the State of Victoria against all of their liability, loss, damages, costs (including, without limitation, all legal costs), claims, proceedings and demands (**Loss**) which they suffer or incur in connection with:
- any loss of or damage to any property (real or personal) of the School Council, or its Personnel, the State of Victoria and any staff or students of the School as a result of any action or omission of the Community Partner or its Personnel;
  - personal injury to or the death of any person as a result of any action or omission of the Community Partner or its Personnel; and
  - any breach of this Agreement by the Community Partner or its Personnel.
- 29.3 The liability of the Community Partner under clause 29.2 is reduced to the extent that negligence of the

School Council or its Personnel contributed to the Loss.

- 29.4 Any indemnities given by the Community Partner in this Agreement are continuing obligations, separate and independent from the other obligations of the Community Partner, and survive termination of this Agreement.

## SECTION E: PEOPLE

### 30 ONLY PROPER PERSONS ARE PERMITTED

- 30.1 The Community Partner may only employ or engage Proper Persons in connection with the use, operation and maintenance of the Facility.
- 30.2 If the Principal, acting reasonably, forms the opinion that a person employed or engaged by the Community Partner is not a Proper Person, the Principal may require the Community Partner to remove such person from the Facility and, if appropriate, to replace him or her with someone of appropriate competence and/or experience who is a Proper Person.

### 31 REQUIREMENT FOR WORKING WITH CHILDREN AND POLICE CHECKS

- 31.1 The Community Partner must (and must ensure that all persons engaged or used by it to work at the Facility):
- have undertaken a satisfactory working with children check if required pursuant to the *Working With Children Act* or as otherwise requested by the School Council; and
  - have undertaken a satisfactory police records check if the Principal requires this check; and
  - have met any additional relevant legal requirements and policies of the Department in relation to the suitability of persons to work with school children or within the precinct of the School as advised by the School Council or the Principal to the Community Partner.
- 31.2 The Community Partner must ensure the terms and conditions of employment of any staff or of engagement of any contractor used by it for the purpose of carrying out work at the Facility are consistent with the above obligations.

### 32 CHILD SAFE STANDARDS

- 32.1 The parties acknowledge and agree that Victorian government schools are committed to:
- creating child safe environments;

- (b) protecting students from abuse or harm in the school environment, managing the risk of child abuse, providing support to a child at risk of child abuse and responding to incidents or allegations of child abuse in accordance with their legal obligations, including Child Safety Laws.
- 32.2 This clause only applies to the extent that the Community Partner (and its Personnel) are engaged in Child-connected work.
- 32.3 The Community Partner acknowledges that the School Council, Principal and School Staff are required to comply with Child Safety Laws, the Ministerial Order and School Council Child Safety Policies.
- 32.4 If the Community Partner is an Applicable Entity it warrants to the School Council that it:
- (a) is compliant and will continue to comply with Child Safety Laws; and
  - (b) will immediately provide the School Council with copies of any documents or information in respect to any compliance action taken by any regulatory authority in connection with child safety against the Community Partner (or its Personnel).
- 32.5 The Community Partner (and its Personnel) must:
- (a) if applicable (whether or not the Community Partner must itself comply with Child Safety Laws), comply with any relevant School Council Child Safety Policies; and
  - (b) comply with any reasonable direction by the School Council in respect to compliance by the School Council, Principal and School Staff and/or the Community Partner with any Child Safety Laws or any relevant School Council Child Safety Policies.
- 32.6 The School Council and/or the Minister may terminate this Agreement immediately if, in the School's Council's and/or the Minister's reasonable opinion, it determines at any time that:
- (a) there is a breach of any Child Safety Laws caused by, or in any way connected with, the Community Partner or its Personnel; or
  - (b) the Community Partner or any of its Personnel are not suitable to engage in Child-connected work for the purposes of the School Council, Principal and School Staff's compliance with the Child Safety Laws or relevant School Council Child Safety Policies.

## SECTION F: BREACH, DISPUTES AND TERMINATION

### 33 DEFAULT BY THE COMMUNITY PARTNER

- 33.1 If the Community Partner commits a substantial breach of this Agreement, the School Council or the Minister may give the Community Partner written notice that the Community Partner is in breach and require the Community Partner to rectify the breach within the time specified in the notice, which must be a reasonable time.
- 33.2 If the Community Partner becomes Insolvent or fails to rectify the breach to the reasonable satisfaction of the School Council or the Minister within the time specified, the School Council or the Minister may:
- (a) do anything that the School Council or the Minister reasonably believes is necessary to rectify the breach; or
  - (b) terminate this Agreement by written notice to the Community Partner.
- 33.3 All costs incurred by the School Council or the Minister in rectifying the breach shall be a debt due from the Community Partner to the School Council or the Minister, payable 30 days from receipt by the Community Partner of an invoice provided by the School Council or the Minister to the Community Partner in respect of the costs.
- 33.4 Nothing in this clause 33 affects any of the School Council's or the Minister's other rights under or in connection with this Agreement.
- 33.5 Termination in accordance with this clause will be effective from the date of receipt of the written notice referred to above.
- 33.6 The parties agree that no compensation is payable to the Community Partner if this Agreement is terminated in accordance with this clause.

### 34 DISPUTES

- 34.1 All disputes between any of the parties in connection with this Agreement (except for a dispute under clause 36.6 below) must be resolved in the manner set out in this clause.

#### Notice of Dispute

- 34.2 The parties agree to consult in good faith with each other but if a dispute arises between any of the parties in connection with this Agreement (except for a dispute under clause 36.6 below) any party may serve on the other parties a written notice of the dispute (**Notice of Dispute**). The Notice of Dispute must adequately identify and give reasonable details of the nature of the dispute.

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**Meeting of Senior Representatives**

- 34.3 If the dispute set out in a Notice of Dispute is not settled within 7 days of receipt of the Notice of Dispute, then the parties to the dispute must each nominate a senior representative (**the Senior Representatives**) who must meet within 35 days of receipt of the Notice of Dispute (or such other time as agreed between the parties to the dispute) and use their best endeavours to negotiate a resolution of the dispute.

**Mediation**

- 34.4 If :
- (a) the dispute set out in a Notice of Dispute is not settled by the meeting of Senior Representatives referred to in clause 34.3 above; or
  - (b) the Senior Representatives do not meet,
- within 35 days of receipt of the Notice of Dispute (or such other time as agreed between the parties to the dispute), then the party which issue the Notice of Dispute must refer the dispute to mediation.
- 34.5 The mediation must be conducted by a mediator agreed between the parties to the dispute or, failing agreement within 7 days of the referral to mediation, appointed by the Chair or acting Chair of the Victorian Chapter of the Resolution Institute, who must be requested to appoint an independent person reasonably expert in the matters the subject of the dispute. The mediation must be held within 60 days of receipt of the Notice of Dispute unless all parties to the dispute agree in writing to a longer period.
- 34.6 The parties to the dispute must share the mediator's costs and any other administrative costs associated with the mediation equally.

**Litigation**

- 34.7 If the dispute set out in a Notice of Dispute is not settled at the mediation, then any party to the dispute may issue proceedings in respect of the dispute.

**Performance of obligations pending resolution of a dispute**

- 34.8 Pending the resolution of a dispute in connection with this Agreement:
- (a) the parties must continue to perform their obligations under this Agreement; and
  - (b) each party must pay all amounts under this Agreement when due in accordance with this Agreement without regard to the pending

dispute and regardless of whether the dispute relates to payment of money.

**35 MINISTER'S RIGHTS OF TERMINATION****Minister requires Land**

- 35.1 At any time the Minister may terminate this Agreement on notice in writing to the other parties if the Minister requires the Land or part of it for:
- (a) the construction or redevelopment of school buildings;
  - (b) disposal of the Land or the part of it that includes the Facility;
  - (c) closure of the School; or
  - (d) any other reason.
- 35.2 If the Minister elects to terminate this Agreement pursuant to this clause, the Minister must provide as much notice in writing to the other parties as is practicable in the circumstances but using best endeavours to ensure that at least 3 months' notice is given.

**Destruction of Facility**

- 35.3 If the Facility is damaged or destroyed so as to render it or part of it unfit for use and it is, in the opinion of the Minister, impractical or undesirable to reinstate the Facility or part of the Facility, then the Minister may terminate this Agreement on notice in writing to the parties. Such notice must be given within 6 months after the damage or destruction becoming known to the Minister and termination is effective from the date stated in the notice.

**36 MINISTER'S OPTIONS FOLLOWING MINISTER'S TERMINATION****Options**

- 36.1 If this Agreement is terminated by the Minister under clause 35 then the Minister must promptly consult with the Community Partner and, as soon as practicable but no later than 90 days, unless the parties agree otherwise, after such consultation, offer to the Community Partner in writing one of the following options:

**Option 1:**

- (a) The subdivision of the whole or part of the Land to create a separate saleable parcel of land containing the Facility and, provided the Government Land Monitor or successor has approved the sale, first offer the parcel for sale to the Community Partner at a price to be agreed by the parties or, failing agreement, as determined by the Valuer-General Victoria or

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successor. In relation to this option it is noted that Government policy supports the purchase of the land by the Community Partner for community use at a discounted price, as determined by the Valuer General or successor, with a restriction placed on the title that is reflective of the community use.

**Option 2:**

- (b) The entering into a lease of the whole or part of the Land and the Facility between the Minister and the Community Partner consistent with the terms and conditions of this Agreement, with the rent as agreed by the parties, or failing agreement, as determined by the Valuer-General.

**Option 3:**

- (c) The payment by way of compensation to the Community Partner of such amount as the Minister determines in accordance with clause 36.4 below.

36.2 The Community Partner acknowledges that the choice of an option under clause 36.1 is entirely at the discretion of the Minister and cannot be the subject of a dispute or review.

**Determination of Compensation**

36.3 No compensation shall be paid on termination of this Agreement by the Minister under clause 35 except in accordance with clause 36.4.

36.4 If this Agreement is terminated by the Minister under clause 35 and the Minister chooses Option 3 in clause 36.1, then the amount of any compensation payable to the Community Partner shall be the amount determined by the Minister in his or her discretion but acting in good faith and taking into consideration the following:

- (a) The Construction Contribution made by the Community Partner, adjusted to reflect the present day value as at the date of the determination by the Minister and reduced to reflect the portion of the Licence Term which has then expired; and
- (b) Any amount which the Community Partner has received or is entitled to receive under a contract of insurance entered into by the Community Partner in respect of the Facility as required by this Agreement (or, in the case where the Community Partner has failed to take out or make a claim under such insurance, the amount it would have been entitled to receive) or any amount which the Community Partner has received or is entitled

to receive by way of damages in respect of the loss or destruction of the Facility.

36.5 To avoid doubt, in determining the compensation under clause 36.4 the Minister is not required to take into account any in kind contributions towards the cost of developing, operating or maintaining the Facility made by or on behalf of the Community Partner.

**Dispute in connection with Minister's termination offer under the selected option**

36.6 If the Community Partner disputes:

- (a) the price at which the parcel of the Land is to be offered to the Community Partner under Option 1;
- (b) the basis of the lease and terms and conditions under Option 2; or
- (c) the compensation payable to the Community Partner under Option 3,

**then the dispute must be resolved by expert**

determination in accordance with clauses 36.7 to 36.11 below.

36.7 The Community Partner must give the Minister and the School Council written notice of the dispute referred to in clause 36.6, which must adequately identify and give reasonable details of the dispute.

36.8 If the Community Partner and the Minister cannot agree on an expert within 14 days of receipt of the Notice of Dispute, either the Community Partner or the Minister may ask the Chair (or acting Chair) of the Victorian Chapter of the Resolution Institute to nominate an expert who is reasonably expert in the matters the subject of the dispute.

36.9 A determination made by the expert will be final and binding on the parties to this Agreement.

36.10 The parties agree that they may be represented by a duly qualified legal practitioner in connection with the expert determination.

36.11 The parties must share the expert's costs and any other administrative costs associated with the expert determination equally.

**37 COMMUNITY PARTNER'S RIGHTS OF TERMINATION**

**Dissolution of School Council**

37.1 If the School Council is dissolved in accordance with clause 9 and the Minister has determined that the School Council's right, title, interest and obligations under this Agreement will not be

transferred to a new school council, then the Minister may terminate this Agreement on 3 months' written notice to the Community Partner.

- 37.2 If the Agreement is not terminated by the Minister under clause 37.1, then the Community Partner may give notice to the Minister requesting consultation to vary the Agreement.
- 37.3 If the parties are unable to reach an agreement within 3 months of the date of the notice under clause 37.2, the Community Partner may terminate this Agreement thereafter by giving no less than 3 months' written notice to the Minister.

## SECTION G: CONSTRUCTION

### 38 CONSTRUCTION CONTRIBUTIONS

- 38.1 The Minister contributed towards the development of the Facility by contributing the Land.
- 38.2 The Minister, the School Council and the Community Partner agree that the Community Partner made the Construction Contributions as set out in **Part B1** of the Schedule.

## SECTION H: LICENCE

### 39 LICENCE TERM AND LICENCE FEE

#### Licence

- 39.1 The Minister and the School Council grant a licence to the Community Partner to use the Facility on the terms and conditions of this Agreement.
- 39.2 The parties acknowledge that use of the Facility by the Community Partner and members of the public is not exclusive and is subject to the provisions of this Agreement.

#### Licence Fee

- 39.3 If demanded, the Community Partner must pay to the School Council the Licence Fee as set out in **Part D3** of the Schedule.

#### Initial Term of the Licence

- 39.4 The Initial Term of the Licence is for the period set out in **Part D1** of the Schedule and runs from the Date of Operation.

#### Further Term of the Licence

- 39.5 The Further Term of the Licence is for a period up to the period set out in **Part D2** of the Schedule.

### 40 LICENCE RENEWAL PROCESS

- 40.1 The Community Partner must notify the School Council in writing at least 6 months but not more than 12 months before the expiry of the Initial Term

whether it wishes to renew the Licence for a period up to the Further Term.

- 40.2 If the Community Partner notifies that it wishes to renew the Licence, the School Council must meet with the Community Partner within 21 days of receipt of the notice to discuss whether any adjustments are required to the arrangements set out in **Sections H, I, J and K** of this Agreement to reflect the passage of time or changes to Department policy or Laws. The School Council must ensure that any agreed adjustments are finalised in writing between the School Council and the Community Partner (**Written Adjustments**).

- 40.3 Once the School Council has prepared any Written Adjustments, the School Council must consult with the Minister regarding the request for renewal and, as soon as practicable, the School Council must notify to the Community Partner in writing either that:

- (a) the Minister and the School Council do not agree to renew the Licence, in which case the Licence Term will terminate at the end of the Initial Term; or
- (b) the Minister and the School Council agree to a renewal of the Licence for an agreed period up to the Further Term, in which case the Licence is deemed to be renewed from the expiry of the Initial Term for the agreed period on the terms and conditions of this Agreement as varied by the Written Adjustments, except for clause 39.5 and this clause 40.

### 41 OBTAINING AND COMPLYING WITH PERMITS

- 41.1 The Community Partner must obtain or procure all relevant planning permits and licences or approvals necessary for its use of the Facility and to carry out its obligations under this Agreement before commencement of the Licence and must comply with any conditions contained within each such permit, licence or approval.

### 42 REINSTATEMENT OBLIGATIONS AT THE END OF THE LICENCE TERM

- 42.1 The Community Partner must, at the request of the School Council, at its own cost within one month of the end of the Licence Term:
- (a) remove all materials and equipment brought into the Facility by the Community Partner or its Personnel and make good all damage to the Facility caused by such removal;
  - (b) remove all signs and writing from the Facility, whether permanent or temporary, installed by

- the Community Partner and make good any damage;
- (c) ensure that the Facility is in a condition consistent with the Community Partner having fulfilled all of its maintenance obligations and obligations with regards to Capital Works and Capital Expenditure under this Agreement; and
- (d) do all other acts and things reasonably necessary to enable the School Council or the Minister to use the Facility with minimum disruption or expense.

**43 SUB-LICENSING**

- 43.1 The Community Partner must not sub-license the Facility except as set out in this Agreement or as the School Council and Minister agree in writing. The School Council's and the Minister's consent must not be unreasonably withheld. The Community Partner's obligations under this Agreement will not be affected by any such sub-licence.

**SECTION I: USE**

**44 USE OF THE FACILITY BY THE SCHOOL COUNCIL AND COMMUNITY PARTNER**

**Use of the Facility and the Calendar of Use**

- 44.1 Within 14 days of the Date of the Agreement and thereafter before the end of November of each calendar year after the Date of Operation, the Community Partner and the School Council must prepare a Calendar of Use of the Facility for the following calendar year, which sets out the times during which each party may use the Facility, or parts of it, in accordance with this Agreement. The Community Partner is responsible for keeping and updating the Calendar of Use and must provide the updated copy to the School Council within 7 days **[Parties to confirm]** from the Calendar of Use being updated.
- 44.2 The Calendar of Use must:
  - (a) give the School Council priority use of the School Council Area during School Hours;
  - (b) not permit the Facility to be used outside the Facility Operating Hours;
  - (c) permit the School Council to use the whole or part of the PAC, free of charge, during Facility Operating Hours up to 20 Occasions each year at such times to be agreed with the Community Partner; and

- (d) permit the Community Partner to use the Facilities in accordance with the Community Partner's Hours set out under **Part E2** of the Schedule.

- 44.3 The School Council is entitled to shared use of the Common Area during School Hours and at any other time that the School Council is entitled to use all or a part of the Facility.
- 44.4 The Community Partner is entitled to shared use of the Common Area during the Community Partner Hours and at any other time that the Community Partner is entitled to use all or a part of the Facility.
- 44.5 If the School Council reasonably requires the use of the Community Partner's resources or technical staff for the purposes of its use of the PAC, the parties agree to enter into good faith discussions to agree the provision of these requirements including the payment of any associated costs.
- 44.6 The parties acknowledge that the School Council has exclusive use of the Amenities during School Hours and at any other times the School Council is entitled to use the Facility or parts of the Facility. During these times the Community Partner will not have access to the Amenities, unless otherwise agreed to by the School Council in advance.
- 44.7 The Community Partner shall be entitled to use the Facility (excluding the Classroom) during school holiday periods and on student free days.
- 44.8 The School Council and the Community Partner may amend the Calendar of Use by written agreement.
- 44.9 If the Community Partner or the School Council wishes to use the Facility outside the times allocated to that party under the Calendar of Use, it may do so with the written approval, not to be unreasonably withheld, of the other party, subject to such conditions as agreed between them.
- 44.10 If agreement cannot be reached between the Community Partner and the School Council with regard to the Calendar of Use then:
  - (a) the School Council is entitled to use the Facility during School Hours and any additional times that the Facility is required for ordinary school purposes; and
  - (b) the Community Partner is entitled to use the Facility, excluding the Classroom, at such other times within the Facility Operating Hours.

**Emergency Access**

44.11 Upon request from either the School Council or the Community Partner, the parties will exchange keys relating to the requested area of the Facility for purposes of access during emergencies only.

**[Parties to confirm clause as drafted acceptable]**

#### **45 USE OF THE FACILITY BY COMMUNITY GROUPS**

45.1 The School Council and the Community Partner will encourage use of the Facility by community groups, provided that such use is only permitted when the Facility (or relevant part thereof) is not required by the School Council for ordinary school purposes or by the Community Partner for its use. The Community Hiring Party must ensure that any use by the community is a Permitted Use.

#### **46 APPOINTMENT OF A MANAGER**

46.1 The Community Partner may appoint a manager at any time during the Licence Term, with the prior written approval of the School Council, to:

- (a) manage the use of the Facility, or part of the Facility, during the Community Partner's Hours and any other times the Community Partner is entitled to use the Facility; and
- (b) manage the Community Partner's obligations in respect of the Facility (or some of the obligations), in accordance with this Agreement.

46.2 In order to obtain the School Council's approval to appoint a manager, the Community Partner must:

- (a) inform the School Council of its proposed manager and give the School Council at least 30 days to consider the proposed appointment; and
- (b) give the School Council reasonable details of the proposed arrangement, including a copy of the proposed management agreement between it and the manager which meets the requirements of clause 46.5;
- (c) give the School Council details of any management fees payable to the Manager; and
- (d) provide the School Council with any other information which the School Council may reasonably require.

46.3 The School Council must advise the Community Partner in writing whether it approves the appointment of the manager. Such approval must not be unreasonably withheld.

46.4 The Community Partner must provide the School Council with details of the addresses and telephone numbers of the senior executives and any other key personnel of the manager and provide updated details as required.

46.5 If the Community Partner wishes to appoint a manager, the Community Partner must prepare a management agreement. The Community Partner must ensure that the management agreement between it and the manager contains terms and conditions which:

- (a) are consistent with the Community Partner's obligations under this Agreement;
- (b) require the manager to comply with any direction from the Community Partner;
- (c) stipulate that the Management Agreement will terminate at the end of the Licence Term;
- (d) include the same obligations for employees or contractors of the manager to obtain working with children and police checks as are contained in clause 31 of this Agreement;
- (e) include a clause which provides that, if the Principal forms the reasonable opinion that a person employed or engaged by the manager for the purposes of the Facility is not a Proper Person, the Community Partner may require the manager to remove such person from the Facility and replace him or her with someone of appropriate competence and/or experience who is a Proper Person; and
- (f) stipulate that where an inconsistency exists between the Management Agreement and this Agreement, the terms of this Agreement will prevail.

46.6 The Community Partner must give the School Council a copy of the executed Management Agreement.

46.7 The appointment of a manager does not in any way derogate from or affect the obligations of the Community Partner under this Agreement.

#### **47 HIRING**

##### **Hire by the School Council during School Hours**

47.1 The Community Partner acknowledges that the School Council may:

- (a) hire out the School Council Area or part thereof during the Facility Operating Hours, subject to clause 47.1(c) Any fees charged by the School Council in respect of such hire belong to the School Council unless

- otherwise agreed between the School Council and the Community Partner; and
- (b) permit other government or non-government schools and not for profit users to use the School Council Area or part thereof during the Facility Operating Hours, subject to clause 47.1(c).
  - (c) With the exception of hire or use relating to rehearsals, the School Council must obtain the Community Partner's prior approval to hire or use the School Council Area outside of School Hours if the PAC is being used by the Community Partner.

#### Community hire outside School Hours

- 47.2 The Community Hiring Party must ensure that it:
- (a) only hires the PAC out for use by members of the public during the Community Partner's Hours or any other times the Community Partner is entitled to use the PAC;
  - (b) sets terms and conditions for the use of the PAC provided they meet the requirements of clause 47.3;
  - (c) collects fees for the hire of the PAC; and
  - (d) instructs all Hirers as to what constitutes appropriate behaviour and how to ensure security is maintained during the hire period.
- 47.3 The terms and conditions for the use of the Facility by Hirers must:
- (a) be consistent with the current guidelines of the Department, a copy of which must be provided by the School Council to the Community Partner if the Community Partner is the Community Hiring Party;
  - (b) require that all Hirers leave the Facility in a clean and tidy condition ready for use, unless the Community Hiring Party makes its own arrangements for the Facility to be cleaned following use by a Hirer or Hirers;
  - (c) where applicable, require all Hirers to ensure that all external doors and windows at the Facility are secured and locked following their use of the Facility;
  - (d) require that all Hirers enter into and maintain at all times during the use of the Facility public liability insurance and produce evidence of such insurance unless current Department policy does not require the particular user to obtain public liability insurance; and

- (e) only allow the Facility to be used during the Community Partner's Hours and any other times the Community Partner is entitled to use the Facility.

- 47.4 Any fees charged for such hire of the Facility belong to the Community Hiring Party unless otherwise agreed between the parties.

## SECTION J: OPERATIONAL RESPONSIBILITIES

### 48 MAINTENANCE

#### Obligations of the Community Partner

- 48.1 The Community Partner must arrange and pay for the maintenance, including essential services inspections, repair, cleaning, mowing of any grassed areas and security of the PAC to a standard appropriate for a facility which is similar to the PAC and taking into account the proposed use of the PAC.
- 48.2 The Community Partner must satisfy the School Council, and provide supporting evidence, that all essential services inspections have been carried out in a timely manner and that steps have been taken to rectify all resulting non-compliant items.
- 48.3 The Community Partner must arrange and pay for the cleaning of the Amenities when the Community Partner has access to the Amenities under the Calendar of Use.
- 48.4 The party that arranged and paid for the costs incurred under clause 48.6 must be reimbursed by the other party 50% of the costs within 30 days of the other party receiving an invoice from the party that arranged and paid for the costs, which sets out such amount.

#### Obligations of the School Council

- 48.5 The School Council must arrange and pay for the maintenance, repair, cleaning, mowing of any grassed areas and security of the School Council Area to a standard appropriate for a facility similar to the School Council Area and taking into account the proposed use of the School Council Area.
- 48.6 The School Council must, except where the parties have agreed to in advance in writing that the Community Partner must, arrange and pay for the maintenance, repair and security of the Amenities and the Common Area, to a standard appropriate for a facility which is similar to the Amenities and the Common Area and taking into account the proposed use of the Amenities and the Common Area.
- 48.7 The School Council must arrange and pay for the cleaning of the Amenities during School Hours or

any other times the School has use of the Amenities, subject to clause 48.3.

- 48.8 If the expected cost of the works under clause 48.6 exceeds \$1,000 the School Council must obtain the prior written consent of the Community Partner before carrying out the works, unless the works are urgent or affect the School Council's ability to comply with occupational health and safety law obligations.
- 48.9 The School Council will reimburse the Community Partner for the cost of cleaning the PAC after the School Council's use under clause 44.2(c). Such cleaning costs must be reasonable and in no case exceed the cleaning costs charged by the Community Partner to other community users of the Facility.

## 49 CAPITAL WORKS AND CAPITAL EXPENDITURE

### Capital Works

- 49.1 The Community Partner must arrange all Capital Works in relation to the PAC and ensure they are carried out to a standard appropriate for a facility similar to the PAC and taking into account the proposed use of the PAC.
- 49.2 If the expected cost of the proposed Capital Works exceeds \$50,000 the Community Partner must obtain the prior written consent of the Minister before carrying out the Capital Works.
- 49.3 The School Council must arrange all Capital Works in relation to the School Council Area and ensure they are carried out to a standard appropriate for a facility similar to the School Council Area and taking into account the proposed use of the School Council Area.
- 49.4 The School Council must, except where the parties have agreed to in advance in writing that the Community Partner must, arrange the Capital Works in relation to the Amenities and Common Area and ensure they are carried out to a standard appropriate for amenities and common area similar to the Amenities and Common Area and taking into account the proposed use of the Amenities and Common Area.

### Responsibility for Capital Expenditure

#### School Council must set aside funds

- 49.5 The School Council must ensure that it adequately provides for its obligations in relation to Capital Expenditure as provided for in clause 49 and must, except where the parties have agreed to establish a Capital Reserve, set aside sufficient funds to

meet those Capital Expenditure obligations as and when they fall due.

- 49.6 The School Council must pay for all Capital Expenditure in respect of the following areas of the Facility:
- School Council Area,
  - Amenities, and
  - Common Area.
- 49.7 The Community Partner must pay for all for Capital Expenditure in respect of the PAC.
- 49.8 The School Council and the Community Partner agree to share the cost of Capital Expenditure in respect of the Amenities and the Common Area as follows:
- School Council 50%
  - Community Partner 50%.

- 49.9 Unless the School Council and the Community Partner agree otherwise in relation to clause 49.8, the School Council must pay for Capital Expenditure, in the first instance, and the Community Partner must reimburse School Council for its share of the costs within 30 days of the Community Partner receiving an invoice from the School Council for that amount in relation to the costs incurred.

- 49.10 The School Council and the Community Partner agree to share any Capital Expenditure which is not covered by the above clauses 49.6 and 49.7 equally, unless otherwise agreed in writing between them. This includes any Capital Expenditure which relates to Capital Works to the Facility as a whole rather than to a specific area of the Facility. Unless the parties agree in writing otherwise, the School Council must pay for the Capital Expenditure, and the Community Partner must reimburse the School Council for its share within 30 days of the Community Partner receiving an invoice from the School Council for the amount.

## 50 CAPITAL WORKS PLAN

- 50.1 Within 3 months of the Date of Operation the Community Partner and the School Council must together prepare a 5 year rolling Capital Works plan for the Facility and update it annually.

## 51 UTILITIES

### Metering

- 51.1 The parties agree that electricity and gas supplied to the Facility are not separately metered from the other buildings or facilities located on the Land.

- 51.2 The School Council and the Community Partner acknowledge that mains water supplied to the Facility cannot be separately metered from the other buildings or facilities located on the Land.
- 51.3 Any changes to the metering or payment arrangements contained in clause 51 which occur after this Agreement is executed must be recorded in a document signed by the Community Partner and the School Council and a copy of this document must be sent to the Department.

#### Water

- 51.4 The School Council must pay for the cost of mains water supplied to the Facility.

#### Electricity

- 51.5 The School Council must pay for the cost of electricity supplied to the Facility and the Community Partner must reimburse the School Council on a quarterly basis for 100% of the cost relating to the Facility, within 30 days of receipt of an invoice from the School Council for the relevant amount.

#### Gas

- 51.6 The School Council must pay for the cost of gas supplied to the Facility and the Community Partner must reimburse the School Council for 100% of the cost relating to the Facility, within 30 days of receipt of an invoice from the School Council for the relevant amount.

### 52 ADDITIONAL FINANCIAL OBLIGATIONS OF THE COMMUNITY PARTNER AND THE SCHOOL COUNCIL

#### Additional financial obligations of the Community Partner

- 52.1 The Community Partner must pay:
- the cost of employing staff and engaging contractors and any other costs or expenses in relation to its use of the Facility and the performance of its obligations in respect of the Facility;
  - any Statutory Charges payable in respect of the Community Partner's use or occupation of the Facility;
  - telephone, internet and any other telecommunication charges for the Facility as agreed with the School Council; and
  - the cost of any service call outs in relation to the security or fire safety of the Facility, if the call out was required due to an act or

omission of the Community Partner or its Personnel.

#### Additional financial obligations of the School Council

- 52.2 The School Council must pay:
- the cost of employing staff and engaging contractors in relation to its use of the Facility and the performance of its obligations in respect of the Facility;
  - telephone, internet and any other telecommunication charges for the Facility as agreed with the Community Partner; and
  - the cost of any service call outs in relation to the security or fire safety of the Facility, if the call out was required due to an act or omission of the School Council or its Personnel.

### 53 INSURANCE

#### Public liability insurance

- 53.1 The Community Partner must enter into and maintain at all times during the Licence Term a public liability insurance policy as described in **Part F1** of the Schedule.
- 53.2 Unless the Community Partner is a local government authority, the Community Partner must promptly produce this policy of insurance for inspection by the School Council within 28 days from the Date of Practical Completion of the Facility and annually thereafter.
- 53.3 If the Community Partner is not a local government authority, this insurance must be with an insurer approved by the School Council. Such approval must not be unreasonably withheld.
- 53.4 If the Community Partner does not meet any of its obligations under clauses 53.1 or 53.2, the School Council may suspend the Licence until such obligations have been met.

#### Property damage insurance

- 53.5 The parties have agreed to insure the Facility in respect of property damage as set out in **Part F3** of the Schedule.
- 53.6 The party responsible for obtaining property damage insurance, as specified in **Part F2** of the Schedule, must provide the other parties with a copy of the policy of insurance for inspection if requested to do so.
- 53.7 The parties have agreed to share the cost of such insurance as set out in **Part F4** of the Schedule.

- 53.8 If the property damage insurance selected and specified in **Part F3** of the Schedule does not include cover for equipment and apparatus belonging to or used by the Community Partner and the School Council which is kept in or on the Facility, then each of the School Council and the Community Partner is responsible for separately insuring the equipment and apparatus belonging to or used by it.
- 53.9 If the Community Partner is not a local government authority and is responsible for obtaining property damage insurance in respect of the Facility, the insurance must be with an insurer approved by the School Council. Such approval must not be unreasonably withheld.
- 53.10 If the Community Partner does not meet its obligations under clauses 53.6 or 53.7 (if applicable), the School Council may suspend the Licence until such obligations have been met.

**Workers' compensation insurance**

- 53.11 The Community Partner must enter into and maintain at all times during the Licence Term workers' compensation insurance or similar insurance as required by State or Federal Law, including in respect of any volunteer workers.

**Not to void insurance**

- 53.12 The Community Partner must not do or permit any act, matter or thing to be done which may invalidate, make void or voidable any insurance in relation to the Facility or which increases the premium of any insurance which is payable by the School Council.

- (a) the Principal or nominee;
- (b) a representative of the School Council;
- (c) a representative of the Community Partner; and
- (d) a single representative of any other key user or community groups which the School Council and the Community Partner agree should be represented on the Advisory Group.

- 55.2 The Principal must ensure that any changes to the membership of the Advisory Group or the appointed representatives of the members of the Advisory Group are notified in writing to all members of the Advisory Group.
- 55.3 The first chair of the Advisory Group shall be the Principal and thereafter shall rotate to each member of the Advisory Group.
- 55.4 The Advisory Group shall meet at least quarterly, as convened by the chair, unless the School Council and the Community Partner agree otherwise.
- 55.5 The Advisory Group must not conduct any business unless at least 3 members are present including the Principal and the Community Partner representative.
- 55.6 The function of the Advisory Group is to provide advice and recommendations to the School Council and the Community Partner in relation to the operation and use of the Facility. The Advisory Group cannot bind any of the parties to the Agreement.

**SECTION K: CONSULTATION**

**54 MEETINGS OF REPRESENTATIVES OF SCHOOL COUNCIL AND COMMUNITY PARTNER**

- 54.1 Throughout the Licence Term, an authorised representative of the School Council must meet with an authorised representative of the Community Partner, at such places and such times as the School Council's representative may reasonably determine following consultation with the Community Partner's representative, but at least once every six months, to discuss issues relating to the Facility and its use and to recommend actions and resolutions where necessary.

**55 ADVISORY GROUP**

- 55.1 The School Council must, within 14 days of the Date of Operation, establish an Advisory Group in respect of the Facility which consists of:



## SCHEDULE

<b>A THE SCHOOL AND THE FACILITY</b>			
<b>A1</b>	<b>The School – Clause 1</b>	Greater Shepparton Secondary College, Mooroopna campus	
<b>A2</b>	<b>The Facility – Clause 1</b>	<p>The Facility as shown on Plan B, Plan C, Plan D and Plan E comprises:</p> <p>A. The PAC as shown on Plan B (ground level), Plan C (mezzanine level), Plan D (basement level) coloured blue and Plan E outlined in dark blue and includes:–</p> <ul style="list-style-type: none"> <li>a) auditorium</li> <li>b) foyer</li> <li>c) rotary rooms W1 and W2</li> <li>d) dressing rooms</li> <li>e) stage area</li> <li>f) loading dock</li> <li>g) car park and surrounding outdoor area [hatched dark blue on Plan E]</li> </ul> <p>B. The School Council Area as shown on Plan B and C coloured pink and includes:-</p> <ul style="list-style-type: none"> <li>a) Coulson Centre (basketball court &amp; gymnasium on mezzanine level)</li> <li>b) classroom W3</li> </ul> <p>C. Amenities as shown on Plan B coloured yellow</p> <p>D. Common Area as shown on Plan B and Plan C coloured green</p>	
<b>B CONSTRUCTION</b>			
<b>B1</b>	<b>Construction Contributions (ex GST) - Clauses 1 and 38.2</b>	Community Partner	Total contribution of \$ 500,000 which was provided in the following three financial years: 1994/95 \$ 167,000 1995/96 \$ 167,000 1996/97 \$ 166,000
<b>B2</b>	<b>Legal Costs (ex GST) Clause 11</b>	<b>Party</b>	<b>Percentage (%)</b>
		School Council	Not Applicable
		Community Partner	Not Applicable
<b>C DATE OF OPERATION</b>			
<b>C1</b>	<b>Date of Operation – Clauses 1 and 39.4</b>	1 July 2020 <b>[Parties to confirm]</b>	
<b>D LICENCE</b>			
<b>D1</b>	<b>Initial Term – Clauses 1 and 39.4</b>	10 years	
<b>D2</b>	<b>Further Term – Clauses 1 and 39.5</b>	5 years	
<b>D3</b>	<b>Licence Fee – Clauses 1 and 39.3</b>	\$1.00 per annum if demanded	

<b>E USE OF THE FACILITY</b>			
E1	School Hours – Clause 1 and 44	<b>School Council Area:</b> Monday to Friday 8.00am to 4.30pm	
E2	Community Partner's Hours – Clauses 1 and 44	<b>PAC:</b> Monday to Sunday 6:00 am to 2:00am on the following day  <b>School Council Area:</b> Monday to Friday 4:30pm to 11:00pm Saturday to Sunday 6:00am to 11:00pm  <b>Amenities:</b> To be determined in accordance with clause 44	
E3	Facility Operating Hours – Clauses 1 and 44	Monday to Sunday 12:00am to 12:00am the following day unless the Planning Scheme or Planning Permit authorises reduced hours	
E4	Community Hiring Party – Clauses 1 and 47	<b>PAC:</b> Community Partner <b>School Council Area:</b> School Council	
E5	Permitted Use – Clauses 1 and 22.2	The playing, performing or conducting of educational, performing arts, sporting or recreational activities that would normally be played, performed or conducted in Victoria at a facility similar to the Facility and which by law is capable of being played, performed or conducted at the Facility.	
<b>F PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE</b>			
F1	Public liability insurance – Clause 53.1	<b>Scope of policy</b>	Insurance which provides the Community Partner, including its employees while acting in the course of their employment, with at least \$20 million cover per event against any liability resulting from death or personal injury or the destruction of or damage to property occurring in or on the Facility or arising out of or in relation to the use of the Facility.
F2	Property Damage Insurance for the Facility – Clause 53.5	<b>Party responsible for obtaining</b>	School Council
F3		<b>Scope of policy</b>	Insurance which provides cover for the reinstatement or replacement value of the Facility and against the destruction of or damage to the Facility plus any plant, equipment or property belonging to or used by the State of Victoria, the School Council or the Community Partner which is housed, stored, kept or used in or on the Facility. If the policy is obtained by the Community Partner then the School Council and the State of Victoria must also be named as insureds in the policy.

<b>F4</b>		<b>Reimbursement arrangements</b>	<p>Community Partner to reimburse the School Council on an annual basis for 90% of the cost, payable within 30 days of receipt of an invoice from the School Council.</p> <p>In relation to any excess payable upon a claim the following will apply:</p> <ul style="list-style-type: none"> <li>• in the event that the School Council's use is responsible for the insurance claim, the School Council will be responsible for 100% of the excess payable;</li> <li>• in the event that the Community Partner's use is responsible for the insurance claim, the Community Partner will be responsible for 100% of the excess payable;</li> <li>• in the event that neither party is at fault (for example caused by an electrical or natural disaster) or there is an agreed joint responsibility, then the School Council will make this payment and the Community Partner will reimburse the School Council 50% of this cost, payable within 30 days of receipt of an invoice from the School Council.</li> </ul>
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**G ADDRESSES FOR NOTICES – Clause 12.1**

<b>Minister</b>	<b>Addressee</b>	Chief Executive Officer Victorian School Building Authority Department of Education and Training
	<b>Street Address</b>	2 Treasury Place East Melbourne Victoria 3002
	<b>Postal Address</b>	GPO Box 4367 Melbourne Victoria 3001
<b>School Council</b>	<b>Addressee</b>	Executive Officer Greater Shepparton Secondary College School Council
	<b>Street Address</b>	1-19 Parkside Drive Shepparton Victoria 3630
	<b>Postal Address</b>	1-19 Parkside Drive Shepparton Victoria 3630

<b>Community Partner</b>	<b>Addressee</b>	Chief Executive Officer Greater Shepparton City Council
	<b>Street Address</b>	90 Welsford Street Shepparton Victoria 3630
	<b>Postal Address</b>	Locked Bag 1000 Shepparton Victoria 3632

DRAFT

## EXECUTION

### EXECUTED AS AN AGREEMENT

Signed by .....  
Senior Manager, Property Unit  
this ..... day of .....  
20..... for and on behalf of **James Merlino, MP** in  
his capacity as Minister for Education, in the presence  
of:

.....  
Signature

.....  
Signature of witness

.....  
Name of witness in full (print)

Signed by the President of the School Council on behalf  
of **Greater Shepparton Secondary College School  
Council** in the presence of:

.....  
Signature of witness

.....  
Signature of President of School Council

.....  
Name of witness in full (print)

.....  
Name of President of School Council in full  
(print)

Signed for and on behalf of the **Greater Shepparton  
City Council**:

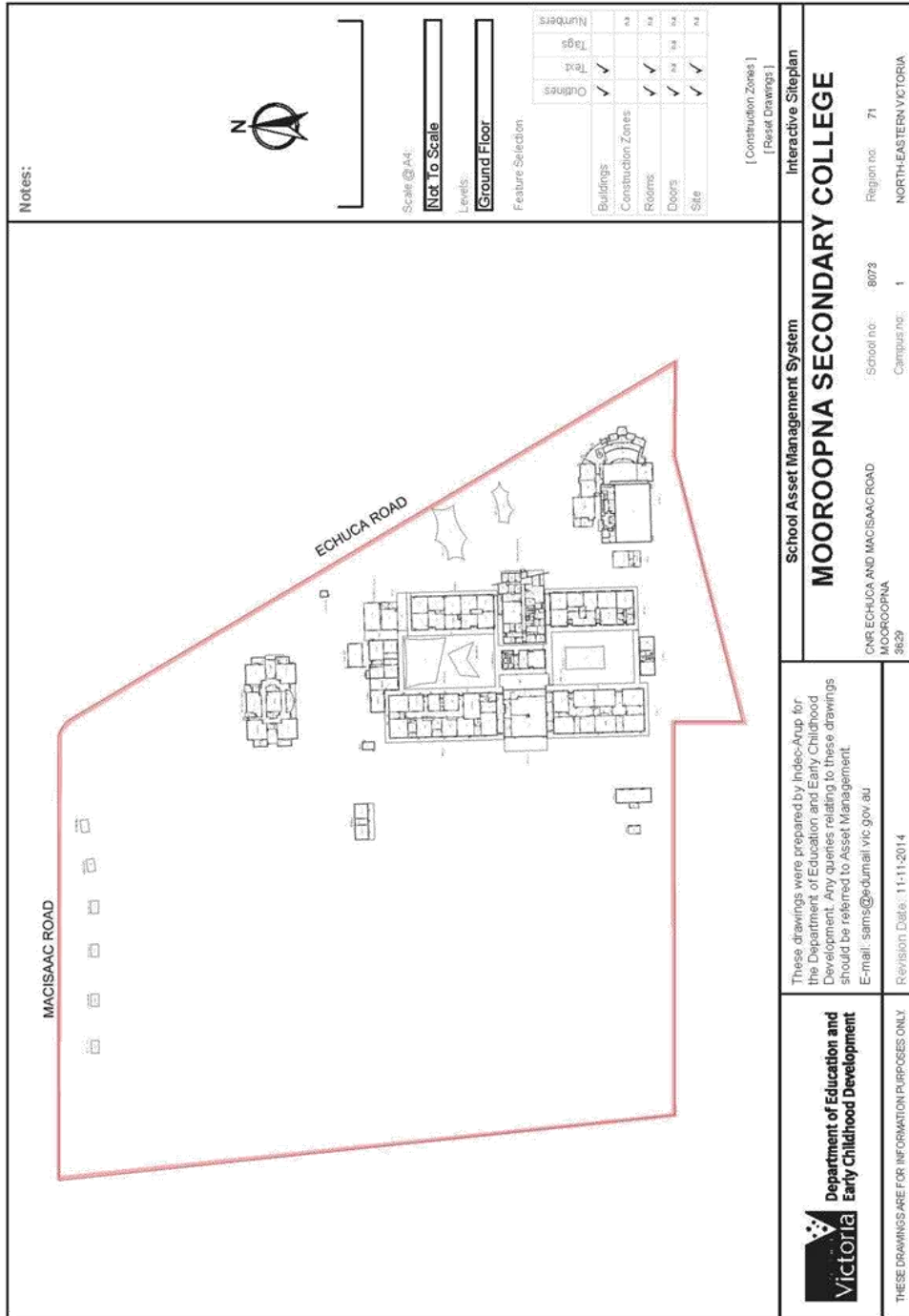
.....  
Signature of Chief Executive Officer

.....  
Name of Chief Executive Officer in full (print)

Date: .....

# ANNEXURE A – PLAN A

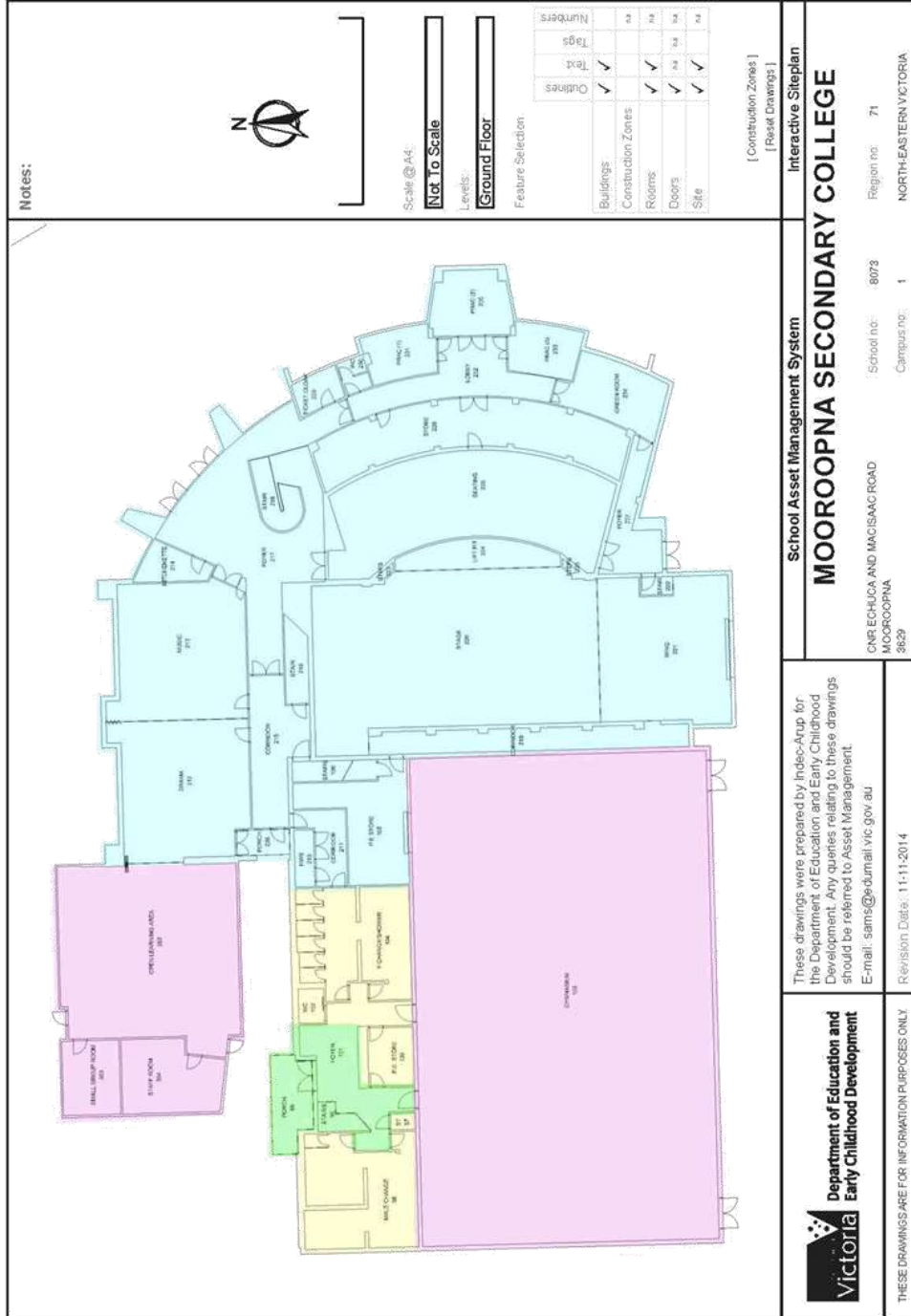
## PLAN OF THE LAND



Greater Shepparton SC (Mooroopna) CJUA (exe draft clean) as at May 2020

# ANNEXURE B – PLAN B

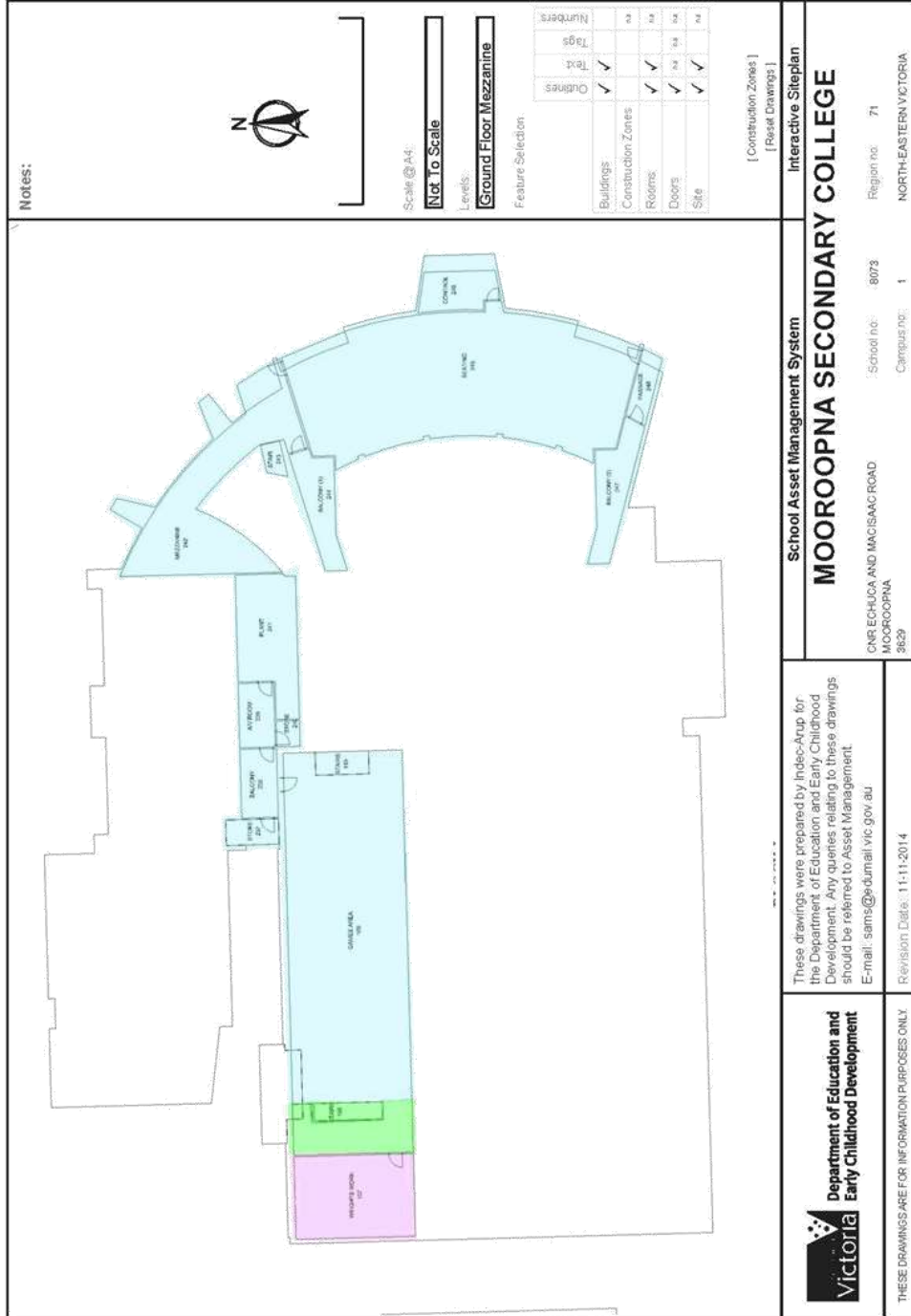
## PLAN OF THE FACILITY - GROUND LEVEL



Greater Shepparton SC (Mooroopna) CJUA (exe draft clean) as at May 2020

# ANNEXURE C – PLAN C

## PLAN OF THE FACILITY - MEZZANINE LEVEL



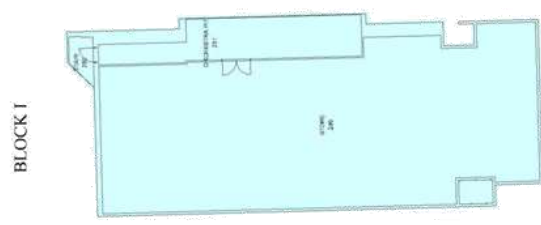
Greater Shepparton SC (Mooroopna) CJUA (exe draft clean) as at May 2020



# ANNEXURE D – PLAN D

## PLAN OF THE FACILITY - BASEMENT LEVEL

**Notes:**



**BLOCK 1**

Scale @ A4:  
**Not To Scale**

Levels:  
**Basement 1**

Feature Selection:

	Outlines	Text	Tags	Numbers
Buildings	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Construction Zones	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rooms	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Doors	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Site	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[ Construction Zones ]  
[ Reset Drawings ]

**School Asset Management System**

**MOOROOPNA SECONDARY COLLEGE**

CNR ECHUCA AND MACISAAC ROAD  
MOOROOPNA  
3829

These drawings were prepared by Indec-Arup for the Department of Education and Early Childhood Development. Any queries relating to these drawings should be referred to Asset Management.  
E-mail: [sams@edumail.vic.gov.au](mailto:sams@edumail.vic.gov.au)

Revision Date: 11/11/2014


[ Interactive Steplan ]

Region no: 71

School no: -8073

Campus no: 1

NORTH-EASTERN VICTORIA



**Department of Education and Early Childhood Development**

THESE DRAWINGS ARE FOR INFORMATION PURPOSES ONLY

Greater Shepparton SC (Mooroopna) CJUA (exe draft clean) as at May 2020

## ANNEXURE E – PLAN E

PLAN OF THE FACILITY INC CAR PARK AREA & SURROUNDING AREA



32

Greater Shepparton SC (Mooroopna) CJUA (exe draft clean) as at May 2020