

DRAFT SHARED USE AGREEMENT

To enable public access to district open space facilities located on Salvado Catholic College, Lot 102(No. 115) Abernethy Road, Byford to enable the College to benefit from the concessional development contribution rate

Original drafting Shire in-house; reviewed by McLeods; reviewed by CEWA; negotiations to cl. 13 between Shire and CEWA; further review McLeods 28.07.21

BETWEEN

Shire of Serpentine Jarrahdale

Of 6 Paterson Street, Mundijong, Western Australia 6123

('the Shire')

AND

**The Roman Catholic Archbishop of Perth representing
Salvado Catholic College**

Of 115 Abernethy Road, Byford WA 6122

('the College')

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SIGNING PAGE 23

SCHEDULE

- ITEM 1 **LAND**
 Lot 102 on Deposited Plan 407075 being the whole of the land in Certificate of Land Title Volume 2898 Folio 711
- ITEM 2 **FACILITIES**
 The College oval and a basic toilet and storage facilities (subject to clause 4.1) on that part of the Land as is delineated and coloured red on the plan annexed hereto as "Annexure A - Plan". The Facilities may be fenced to a height of 1.8m with locked gated openings, which are managed in accordance with this Shared Use Agreement. For the avoidance of doubt, the Agreement provides for the College to lock and unlock gates to enable Permitted Use as defined in Item 4 and Clause 14.2 of the Agreement.
- ITEM 3 **COLLEGE**
 Salvado Catholic College, 115 Abernethy Rd, Byford WA 6122
- ITEM 4 **PERMITTED USE**
 This includes:
- district level sport and recreational use by junior sporting clubs;
 - use by the general public for activities such as walking, jogging, informal play and sitting for relaxation, typically termed passive recreation.
- This does not include:
- use by senior sporting clubs;
 - any use by dogs, irrespective of whether on or off leash;
 - any golfing use whatsoever.
- ITEM 5 **SHARE PERIOD**
- The period of ten (10) years commencing on the date the Facilities are constructed and available for the Permitted Use.
- EXTENSION PERIOD**
- The Shire has the exclusive option to extend this Agreement for two consecutive periods of five (5) years. This provides for a total Share Period of twenty (20) years.
- ITEM 6 **AUTHORISED TIMES OF USE**
- The College and the Shire agree to work in good faith towards seasonal use arrangements that reflect the needs of both parties. The Shire recognises the College's exclusive use times between the hours of 7.30am and 4pm on all school days, and till 5pm on school days where after-school sport occurs in accordance with pre-arranged seasonal agreements. The Shire and general public can use the Facilities outside these times, in accordance with Permitted Use as defined by this agreement.
- ITEM 7 **PUBLIC LIABILITY**

Both parties to hold current Public Liability Insurance of \$20,000,000 (or such other amount as reasonably required by either party from time to time).

- ITEM 8 PARTIES
There are two parties to this agreement: the Roman Catholic Archbishop of Perth representing Salvado Catholic College and the Shire of Serpentine Jarrahdale. There are no other parties, implied or otherwise, involved in this agreement.

BACKGROUND

- A. The Roman Catholic Archbishop of Perth is the registered proprietor of the Land upon which the Facilities are situated.

- B. The Shire and the Roman Catholic Archbishop of Perth were parties to the 2011 Deed under which the Archbishop acknowledged that development contributions would become payable in respect of the Land under a then-proposed Development Contribution Plan to be introduced into TPS 2.

- C. The Byford Development Contribution Area – Scheme Development Contribution Plan was introduced into TPS 2 by gazettal of 21 January 2014, under which development contributions would become payable by the owner of the Land in certain circumstances associated with development of the Land.

- D. The Parties entered into the 2020 Deed under which, among other things, the Parties committed to attempt to arrive at a Shared Use Agreement for the Facilities. The 2020 Deed made provision, on an interim basis, for development contributions to be paid to the Shire on a Concessional Development Contribution Rate, pending resolution of a Shared Use Agreement.

- E. In order to continue to qualify for the concessional development contribution rate pursuant to TPS 2, the College has sought to enter into a Shared Use Agreement with the Shire, to enable public access to District Open Space Facilities to be developed by the College, on the College's Land.

- F. The Shire has agreed to this Agreement, subject to the terms and conditions set out in this Agreement.

- G. The College will grant the Shire and the general public access to the Facilities during the Authorised Times of Use for the Share Period as set out in this Agreement, in accordance with the defined Permitted Use term.

OPERATIVE PART

It is hereby agreed:

1. GRANT OF USE

- 1.1. The College grants the Shire and general public non-exclusive access to use and occupy the Facilities during the Authorised Times of Use for the Share Period, with such use being for that defined as Permitted Use.
- 1.2. The Shire must not use the Facilities for any purpose except for the Permitted Use.
- 1.3. The general public will be advised to comply with the Permitted Use purpose, through signage provided for the Facilities consistent with this Agreement.
- 1.4. The Shire has the right to extend the Share Period for the Extension Periods.
- 1.5. To exercise the right of extension, the Shire will provide written confirmation of its decision to extend the Share Period for the Extension Period at least six (6) months' before this Agreement is due to end. The extension of this Agreement will be for the relevant Extension Period and on the same conditions as this Agreement.
- 1.6. Both Parties will review this Agreement every five years during the Share Period from the completion date of the Facilities. The review will consider:
 - (a) the level of maintenance being performed;
 - (b) operational considerations including children and public safety;
 - (c) any other issues as either Party wishes to raise.
- 1.7. There is nothing to compel either Party to agree to modify any of the terms of the Agreement as a result of the review under 1.6. The Parties agree, however, to consider any modification review in good faith.
- 1.8. The rights granted to the Shire in this Agreement are in contract only and do not give the Shire any other interest in any part of the Land. Nothing expressed or implied in this Agreement shall confer a right of exclusive possession of the Facilities to the Shire, and the College may at any time and at all times exercise all of its rights in respect of the Facilities except where such rights shall:

- (a) prevent either Party OR the general public from using the Facilities during their Authorised Times of Use in accordance with the Permitted Use; or
- (b) be inconsistent with the express provisions of this Agreement.

2. CONCESSIONAL DEVELOPMENT CONTRIBUTION RATE

- 2.1. The Parties acknowledge and agree that the Concessional Development Contribution Rate will apply in respect of any development on the Land that is approved by the Shire during the Share Period.
- 2.2. More specifically with regard to clause 2.1, in respect of:
- each aspect of Salvado Catholic College's Masterplan and;
 - each additional aspect which results in physical additions and;
- which requires Development Approval and which:
- is commenced after the Parties execute this Deed; and
 - is not the subject of a development approval already granted prior to the date of this Deed;
- the College shall pay developer contributions calculated upon the basis of 0.3 percent of the total development cost for each Stage of the College's Masterplan, as determined by the Shire on the basis of the building permit for that particular work.
- 2.3. The Shire will not terminate this Agreement at any point during the Share Period.
- 2.4. If the College breaches this Agreement and the use of the Facilities are terminated during the Share Period, the College must pay the full development contribution to the Shire in accordance with Shire of Serpentine Jarrahdale Town Planning Scheme No. 2.
- 2.5. At the expiration of the Share Period or subsequent Extension Period (as exercised by the Shire under Clause 1.4) and on payment of the Concessional Development Contribution Rate for the development of the College, the liability to pay full development contribution to the Shire expires.

3. SAFETY

- 3.1. The Parties acknowledge and agree that the safety of all users, including the College's students, is of important consideration.

4. DEVELOPMENT OF FACILITIES

- 4.1. The College agrees to develop at its cost and, subject to clause 13, maintain the Facilities, within 5 years of the date of this Agreement, subject to obtaining all required approvals from all relevant Authorities. The College must use Reasonable Endeavours to obtain these approvals.
- 4.2. Should the Facilities not be developed within 5 years, this Agreement will terminate unless an extension is agreed by the Shire. In the event of termination, the College will be liable to pay to the Shire the full non-concessional development contribution in accordance with the prevailing development contribution rate, within 60 days of the date of termination.
- 4.3. The Shire acknowledges that it may grant an extension (not to be unreasonably withheld) to the timeframe listed in 4.1, if the College is unable to develop the Facilities as it is unable to obtain all required approvals from all relevant Authorities, funding for the development or secure a groundwater bore resource for the Facilities.
- 4.4. The Shire will use reasonable endeavours to assist the College with obtaining an allocation of water to the Land.
- 4.5. The College and the Shire agree to work in good faith to set out seasonal use arrangements that reflect the needs of both Parties, and the Authorised Times of Use as defined by Item 6 of the Schedule.

5. SHIRE ACCESS

- 5.1. The College shall ensure access for the Shire and general public to the Facilities in accordance with the Authorised Times of Use for the Permitted Use.
- 5.2. The College acknowledges that the Shire will promote the Facilities for junior sport and recreational purposes in accordance with the Permitted Use.
- 5.3. The College acknowledges that the Facilities will also be available for public use as defined by the Permitted Use definition under this Agreement.

6. USE OF THE FACILITIES

- 6.1. The Parties shall use reasonable endeavours to ensure that the Facilities are

left in a clean and safe condition free from litter waste and rubbish at all times.

- 6.2. The College will maintain the Facilities in a suitable condition for the Permitted Use.
- 6.3. The College shall use all reasonable endeavours to conduct maintenance works on the Facilities in a manner that does not impact on use of the Facilities by the Shire in accordance with the Authorised Times of Use. In the case where the College is required to conduct maintenance works on the Facilities which may impact Permitted Use by the Shire, the College shall first notify the Shire at least 4 weeks' prior, to allow the Shire to make arrangements in order to minimise the disruption to pre-arranged bookings. The general public will be given sufficient notice to advise when access to the Facilities may not be available due to maintenance.
- 6.4. The College shall provide, at the beginning of each year, its annual maintenance plan to enable considerations in respect of potential restrictions on use of the Facilities. This maintenance is to be to a standard of an oval used for junior sporting purposes.

7. DAMAGE OR DESTRUCTION

- 7.1. The College will remedy any damage to the Facilities as soon as practicable.
- 7.2. The Party responsible for that damage must pay for those costs incurred by the College for remedying any damage to the Facilities.
- 7.3. The Shire will not be held liable for any damage caused by the general public.

8. NON-PERMITTED ACTS

- 8.1. Neither Party shall permit any person under their control to:
 - (a) act unlawfully, indecently or disorderly on the Facilities;
 - (b) do anything on the Facilities which may give rise to the nuisance, disturbance or annoyance to any occupier in the vicinity of the Facilities, other than where permitted by the prevailing legislation;
 - (c) bring onto, or store on the Facilities anything of a dangerous, hazardous or flammable nature;
 - (d) do anything which causes pollution or contamination of the Facilities;

- (e) permit any person to smoke, vape and/or consume alcohol; or
- (f) enter any of the adjacent educational facilities on the Land.

8.2. The College acknowledges that the Shire is not responsible for regulating the behaviours of the general public in regard to Clause 8.1.

8.3. The Parties agree to work collaboratively to address issues of antisocial behaviour and/or vandalism.

9. BOOKINGS FOR LARGER EVENTS or ADDITIONAL USE

9.1. The College may seek to use its Facilities outside the Authorised Times of Use, such as for a large event or gathering, by providing the Shire with at least 4 weeks' notice.

10. SIGNAGE

10.1. Should the Shire wish to affix or erect any sign on the Facilities, the Shire shall first obtain approval in writing by the College. If such approval is given, the Shire shall undertake all necessary approvals and be responsible for the costs of erecting the sign and shall be responsible for maintaining the sign in good repair and condition. All out of date signage will be removed.

11. INSURANCE

11.1. Each Party must maintain a public liability policy of insurance with a cover for any one occurrence of not less than the amount specified in Item 7 of the Schedule.

12. LIABILITY

12.1. The parties acknowledge and agree that the Shire shall only be regarded as the occupier or co-occupier of Facilities for the purposes of the *Occupiers Liability Act 1985 (WA)*, and shall only be exposed to liability in that capacity, if and to the extent that the Shire assumes temporary control of Facilities for:

- (a) the duration of a sporting event; and/or
- (b) the activities immediately preparatory to or winding down from a sporting event.

For avoidance of doubt, the Shire shall not at any time by virtue of this Agreement be regarded as the occupier or co-occupier of the Land or any part thereof or the Facilities or any part thereof (and shall not be exposed to liability in that capacity) during times when the Facilities are merely made available to the general public for passive recreation when no activities of the kinds referred to (a) or (b) are being undertaken at Facilities under the temporary control of the Shire.

- 12.2. For avoidance of doubt, except to the extent expressly provided in subclauses 12.1, this clause does not operate to relieve either Party from liability for Loss incurred or suffered by any person to the extent that the same was caused or contributed to by any tortious or other unlawful act or omission (including breach of a contractual term, condition or warranty) by the Party or any of its officers, employees, agents, contractors, licensees, invitees or representatives.

13. MAINTENANCE COSTS OF FACILITIES

- 13.1. The Parties will be responsible for the cost (including cost of labour) to undertake the maintenance of the Facilities based on the proportional use of the Facilities. This will be determined every three (3) months in arrears, based on the following formula:

Maintenance Cost for Previous 3 Month Period = A

Total Hours of Use by both Parties During 3 Month Period = Y =

= Z + (B x 8.5) + C

Number of School Days in Previous 3 Month Period = B

Additional hours for College's after school Activities = C

Shire Booked Use for Junior Sports = Z

Shire Cost = $(Z/Y) \times A$

College Cost = $A - [(Z/Y) \times A]$

- 13.2. The College will undertake required maintenance of the Facilities, in accordance with standards for a junior sporting oval. Required maintenance

must maintain this standard for junior sporting at all times.

- 13.3. The College will invoice the Shire for payment based on a three (3) month in arrears schedule.

14. FENCING AND LOCKING OF THE FACILITIES

- 14.1. The Parties acknowledge and agree that the College may, at its cost, install a minimum 1.8m high perimeter fence on the outside boundary of the Facilities, with gated entry linked to the future car park, located in the south east corner of the oval.

- 14.2. The gated entry to the southern property boundary (Mead Street) will only be locked during the College's exclusive use times, as defined in Item 6. For the avoidance of doubt, outside of the College's exclusive use times, the gated entry will be unlocked during the following times:

- Summer timetable:

Weekdays (school term): 05:30am to 07:30am, 5:00pm to 08:00pm

Weekends and school holidays: 05:30am to 08:00pm

- Winter, Spring and Autumn timetable:

Weekdays (school term): 06:00am to 07:30 am, 5:00 pm to 06:30pm

Weekends and school holidays: 06:00am to 06:30pm

- 14.3. The College is responsible (including costs incurred) for the locking and unlocking of gates as per Clause 14.2.

- 14.4. Clause 14.2 does not include the associated basic toilet and storage component of the Facilities, which are to remain locked outside of the College's exclusive use times, except when in use for booked formalised junior sports.

- 14.5. The College will provide access keys to the Shire to enable access to the basic toilet and storage component of the Facilities in accordance with Clause 14.4.

15. COSTS

- 15.1. The College shall pay all reasonable costs incurred relating to the negotiations and instructions for the preparation and completion of this Agreement by the Shire's nominated solicitors.

16. RESTRICTION ON DISPOSAL OF LAND

- 16.1. The College may not assign, transfer, financially or physically encumber or otherwise dispose of the Land or the Facilities or any part thereof or the rights, liberties or authorities granted to the College under this Agreement, unless such assignee, transferee, mortgagee or chargee has first executed a Deed of Covenant to be prepared by the Shire's solicitors whereby the assignee, transferee, mortgagee or chargee covenants to observe and perform such of the covenants conditions and stipulations herein contained on the College's part (including this covenant) as the Shire requires.

17. STATUTORY OBLIGATIONS AND NOTICES

- 17.1. Each Party and its Visitors shall at all times promptly comply with the provisions of any Statute, local laws, relevant codes and standards published by Standards Australia (including without limitation the Building Code of Australia) in force.
- 17.2. Each Party shall follow all directions, order, notices, requests required under any Federal or State Act and local laws relating to its use of the Facilities or relating to the Permitted Use.
- 17.3. Each Party shall promptly advise the other Party in writing of any requirements and orders of any Authority that it receives or becomes aware of which affect its use of the Facilities.

18. GST

Recovery of GST

- 18.1. Terms that are defined in the GST Act have the same meaning when used in this clause 9.
- 18.2. If GST is or will be imposed on a supply made by a party under or in connection with this Agreement, either Party may, to the extent that the consideration otherwise provided for that Supply under this document is not stated to already include an amount in respect of GST on the Supply:
- a) increase the consideration otherwise provided for that supply under this document by the amount of that GST; or
 - b) otherwise recover from the recipient the amount of that GST.

Invoices required

- 18.3. The recovery of any amount in respect of GST by either Party under this Agreement on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient.

19. NOTICE

- 19.1. Notices that may or must be sent under or in connection with this Agreement shall be in writing and signed by the Party or representative of the Party giving notice.

- 19.2. A notice is deemed to be given or made:

- (a) by hand-delivery; or
- (b) by registered post to the recipient's nominated mailing address set out below in this clause; or
- (c) by email.

- 19.3. A Notice given in accordance with this clause is taken to be received:

- (a) if hand-delivered, immediately upon delivery; or
- (b) if sent by registered post, on the third Business Day after the date of posting (or the seventh Business Day after the date of posting to or from a place outside Australia); or
- (a) when the email enters the recipient's information system.

- 19.4. A Notice which is delivered after the normal business hours of the Party to whom it is delivered or sent, is to be treated as having been given or made at 9.00am the next Business Day.

- 19.5. The following are each Party's nominated address:

College: The College Principal
 Salvado Catholic College
 115 Abernethy Road
 Byford 6122

Shire: Chief Executive Officer
Shire of Serpentine Jarrahdale6
Paterson Street
MUNDIJONG WA 6123
info@sjshire.wa.gov.au

20. TERMINATION

- 20.1. Neither Party may terminate this Agreement during the Share Period for convenience.
- 20.2. If this Agreement is terminated by the College, the College must make payment to the Shire of its full non-concessional development contribution in accordance with the prevailing development contribution rate.

21. DISPUTE RESOLUTION

- 21.1. If any Dispute or difference arises between the Parties in connection with any aspect of this Agreement, the Parties will refer the matter to a nominated representative of CEWA Ltd and a nominated representative of the Shire for the negotiation who will have authority to settle the dispute on behalf of the Parties.
- 21.2. If CEWA Ltd and the Shire cannot settle the dispute within 28 days of the matter being referred to them then the dispute or difference shall be referred to and determined by arbitration under and in accordance with the provisions of the *Commercial Arbitration Act 2012* and any party may be represented by a duly qualified legal practitioner or other representative.
- 21.3. The preceding provisions of this clause shall not prevent a party from litigating with a view to seeking urgent interlocutory, declaratory or injunctive relief.

22. NO FETTER

The Parties acknowledge that the Shire is a local government established by the *Local Government Act 1995*, and in that capacity, the Shire may be obliged to determine applications for consent, approvals, authorities,

licences and permits pursuant to written law governing such applications. The Shire shall not be taken in default or fettered under this Agreement by performing its statutory obligations or statutory discretions.

23. ACTS BY AGENT

23.1. All acts or things which the Shire is required to do under this Agreement may be done by the Shire, the CEO, an authorised employee, solicitor, or contractor of the Shire.

23.2. All acts or things which the College is required to do under this Agreement may be done by the College, the Principal or an authorised employee or solicitor of the College.

24. VARIATION

This Agreement may only be varied by agreement and signed in writing by both Parties.

25. SEVERANCE

25.1. If:

- (a) a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way;
- (b) any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected; and
- (c) the removal of a clause or part of a clause under clause 25.1(b) materially alters the commercial allocation of benefit and risk (or management of risk) under this Agreement, the parties agree to negotiate in good faith to amend or modify the terms of the Agreement as may be necessary or desirable having regard to the original terms of the bargain and the prevailing circumstances.

26. STATUTORY POWERS

26.1. This Agreement is not intended to prejudice or derogate from the powers conferred on the Parties by or under any statute.

26.2. The rights, powers and remedies in this Agreement are in addition to, and

not exclusive of, the rights, powers and remedies existing at law or in equity.

27. GOVERNING LAW

This Agreement is governed by the law in force in Western Australia. Each Party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising in connection with this Agreement. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

28. TIMELINESS

The Parties shall use all reasonable endeavours to ensure that the performance and observance of the provisions of this Agreement shall be fulfilled in a timely and prompt manner.

29. WAIVER

- 29.1. Failure to exercise or delay in exercising (whether full or partial) any right, power or privilege in this Agreement by a Party does not operate as a waiver of that right, power or privilege.
- 29.2. No right of any Party under this Agreement shall be deemed to be waived except where such a waiver is in writing signed by or on behalf of that Party.
- 29.3. A waiver by a Party shall not prejudice the rights of that Party in respect of any subsequent or other breach of the Agreement by the other Party.
- 29.4. A failure by a Party to enforce any provision of this Agreement or any forbearance, delay or indulgence granted by a Party to the other shall not be construed as a waiver of the first mentioned Party's rights under this Agreement.

30. MISCELLANEOUS

- 30.1. The Parties must do everything reasonably necessary, including signing further documents, to give full effect to this Agreement.

- 30.2. Nothing in this Agreement may be construed to make the Shire a partner, agent, employee or joint venturer of the College or Roman Catholic Archbishop of Perth.
- 30.3. Whenever the consent of a Party is required under this Agreement:
- (a) that consent may be given or withheld by that Party in its absolute discretion and may be given subject to such conditions as that Party may determine;
 - (b) the Parties agree that any failure by a Party to comply with or perform a condition imposed under clause 30.3(a) will constitute a breach of this Agreement by that Party.

31. DEFINITIONS

In this Agreement unless the contrary intention appears:

2011 Deed means the 'Agreement in respect of Development Cost Contribution for Lot 281 on Deposited Plan 72017' entered into in 2011 between the Shire, LWP Byford Syndicate and the Roman Catholic Archbishop of Perth.

2020 Deed means the 'Agreement for Developer Contributions: Salvado Catholic College Lot 102 (No. 115) Abernethy Road, Byford' entered into in 2020 by the Shire and the Catholic Archbishop of Perth.

Authorised Times of Use means the authorised times of use specified in **Item 6** of the Schedule.

Authority means any entity, person or group of persons empowered by Statute or otherwise to perform and carry out public regulatory administrative or executive functions of Commonwealth, State or local government.

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

CEO means the local government chief executive officer.

College means the College specified in **Item 3** of the Schedule.

Concessional Development Contribution Rate means, in accordance with TPS 2, 0.3% of the total cost of development on the Land consistent with the Salvado Catholic College Masterplan.

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

Extension Period means the periods of extension specified in **Item 5** of the Schedule.

Facilities means the facilities specified in **Item 2** of the Schedule.

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

Land means the land specified in **Item 1** of the Schedule.

Loss means loss, damage, liability, lawsuit, action, writ, proceeding, cost or expense.

Masterplan means the Masterplan which depicts a staged development of Salvado College and which is attached as Annexure 1.

Party depending on the context means the Shire or the College.

Permitted Use means the use specified in **Item 4** of the Schedule.

Principal means the principal or acting principal of the College.

Reasonable Endeavours means the taking by the person subject to the obligation of all the reasonable steps, which a prudent and conscientious person having willingly undertaken the obligations would take to achieve the object of the obligation.

Schedule means the schedule annexed to this Agreement.

Share Period means the period specified in **Item 5** of the Schedule.

State means the State of Western Australia and any government department, agency and instrumentality thereof.

Statute includes all Statutes (State and Commonwealth) for the time being enacted or modifying any Statutes and all regulations, bylaws and other statutory orders and instruments made under any Statute.

Total Facility Hours Available means, within any given period, the total number of hours within that period EXCEPT FOR:

- (a) during the College's summer timetable (including school holiday periods): hours between 8pm and 5:30am; and
- (b) during the College's winter, spring and autumn timetable including any school holiday periods: hours between 6:30pm and 6:00am.

TPS 2 means *Shire of Serpentine Jarrahdale Town Planning Scheme No. 2* as made and amended from time to time pursuant to the *Planning and Development Act 2005*.

Visitor includes officers, employees, agents, contractors, licensees, invitees or representatives of a Party. In the case of the College, 'Visitor' includes students of the College.

32. INTERPRETATIONS

In this Agreement unless a contrary intention appears:

- (a) references to a person include that person's legal personal representatives, assigns and successors;
- (b) an obligation on the part of two or more parties shall bind them jointly and severally and a right in favour of two or more parties shall be enforceable by them jointly and severally;
- (c) references to this Agreement include its schedules and annexures;
- (d) references to a person which has ceased to exist or has been amalgamated, reconstituted or merged or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (e) words importing any gender include the other genders;
- (f) headings shall be ignored in the construction of this Agreement;
- (g) reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them but this is not to be taken as implying that performance of part of an obligation is the performance of the whole;
- (h) where time is to be calculated from a day or event, such day or the day of such event shall be excluded;
- (i) words importing the singular include the plural and vice versa;
- (j) references to writing include any mode of representing or reproducing

words in tangible and permanently visible form, and includes telex and facsimile transmission;

- (k) references to persons include corporations and vice versa;
- (l) references to time are to local time in Perth, Western Australia;
- (m) references to this Agreement or any other document include the document as varied, extended, renewed or replaced, and notwithstanding any change in the identity of the parties thereto;
- (n) references to a statute whether by name or otherwise includes the amendments to the statute for the time being in force and also any statute passed in substitution for it or in lieu of it and all subsidiary or subordinate legislation for the time being in force under it;
- (o) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- (p) reference to a clause means a clause of this Agreement;
- (q) all the provisions in the Schedule are incorporated in and form part of this Agreement.
- (r) no rules of construction apply to disadvantage a Party on the basis of that Party being responsible for the preparation of this Agreement or any part of it;
- (s) reference to \$ or Dollars is a reference to Australian dollars;
- (t) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (u) reference to the College using the Facilities means and includes use of the Facilities by the College or any of the College's Visitors; and
- (v) reference to the Shire using the Facilities means and includes the use of the Facilities by the Shire or any of the Shire's Visitors.

SIGNING PAGE

EXECUTED by the Parties

The seal of the Roman Catholic Archbishop of Perth

was hereunto affixed by _____

The Roman Catholic Archbishop of Perth

for the time being and attested by him

in the presence of:

Signature of witness

Seal

Name of witness

Signature of Archbishop

Address of witness

The **COMMON SEAL** of the)
SHIRE OF SERPENTINE)
JARRAHDAL was hereunto affixed in the)
presence of:)

(Signed) (Position) (Print Full Name)

(Signed) (Position) (Print Full Name)

ANNEXURE A - MASTERPLAN

