

ORIGINAL

DEED

Between

Shire of Serpentine-Jarrahdale

and

Serpentine-Jarrahdale Grammar School

JACKSON McDONALD

Lawyers

140 St Georges Terrace
PERTH, Western Australia 6000

Tel: 9426.6611 Fax: 9322.4299
REF: JAB:JKS

DEED

THIS DEED OF AGREEMENT is made the 14th day of MARCH 2008

BETWEEN:

Shire of Serpentine-Jarrahdale ("*the Shire*") of 6 Paterson Street, Mundijong in the State of Western Australia

AND

Serpentine-Jarrahdale Grammar School Inc (ABN 85 376 961 684) ("*the School*") of 6A Paterson Street, Mundijong in the State of Western Australia

("the Parties")

RECITALS:

- A. The Shire is the local planning authority responsible for development at Lot 1 Bishop Road, Mundijong ("**Lot 1**").
- B. On 29 January 2008, the Shire granted the School approval, subject to conditions, for the development of a new private school at Lot 1 Bishop Road, Mundijong ("*the Approval*").
- C. The Approval was subject to certain conditions which required the School to enter into a suitable legal agreement ("*the Conditions*").
- D. The Parties have agreed on the terms of the Conditions as set out in this Deed.
- E. The Parties have agreed to perform the requirements of the Conditions as set out in this Deed.

OPERATIVE PART:

GOOD FAITH AND BEST ENDEAVOURS

- 1. The Parties agree to negotiate in good faith and use their best endeavours to resolve any issues relating to any matter that is the subject of this Deed.

- 2 -

2. Each party must at the request of the other party and at its own cost do everything reasonably necessary to give effect to the terms of this Deed.

ROAD WIDENING

3. The School agrees to engage a suitably qualified road safety engineer ("*the Expert*") to undertake a road safety audit ("*the Audit*") and provide a copy of the Audit to the Shire within 12 months of the date of the Approval.
4. The Shire agrees, as soon as reasonably practicable after receiving the Audit, to consider the Audit and, at its absolute discretion, to either:
 - (a) implement the recommendations of the Expert as set out in the Audit; or
 - (b) implement an alternative course of action that is a variation of the recommendations of the Expert as set out in the Audit.
5. If the Shire's decision under clause 4 will require the widening of any road:
 - (a) at, or near, the intersection of Soldiers Road or Bishop Road; or
 - (b) adjacent to the railway crossing at the southern corner of Lot 1,then the School agrees to cede the portion or portions of Lot 1 that are required for the purpose of any such road widening to the Shire, the Crown, the State Government or a State Government agency or instrumentality, free of any charge or cost to the Shire, the Crown, the State Government or any State Government agency or instrumentality.
6. The School covenants that it will not make any claim for compensation for any portion or portions of Lot 1 that the School is required to cede to the Shire, the Crown, the State Government or a State Government agency or instrumentality for the purpose of any road widening referred to in clause 5.
7. This Deed may be pleaded in bar to any action or proceedings for any compensation or payment in respect of any portion or portions of Lot 1 required to be ceded for the purpose of road widening referred to in clause 5.
8. The School indemnifies the Shire against any claim or action that it or anyone else may bring in respect of any matter arising from any portion or portions of Lot 1 required to be ceded for the purpose of road widening referred to in clause 5.

DUAL USE PATHS

General provisions

9. The Parties agree that the development the subject of the Approval will require the provision of dual use paths in accordance with conditions of the Approval.
10. The design, construction, maintenance and repair of dual use paths will at all times be to the absolute satisfaction of the Shire.
11. The Parties agree to take any action that is necessary to identify, apply for, obtain and comply with any conditions of any external funding sources which are, or may become, available for the provision of any dual use paths referred to in this Deed.
12. Where this Deed requires the School to make an equitable contribution towards any costs associated with the construction of a dual use path then the amount of the equitable contribution ("***Equitable Contribution***") is to be determined in accordance with the following criteria:
 - (a) in the first instance, the Equitable Contribution is to be determined by the Shire;
 - (b) if the School does not agree with the amount determined by the Shire, then the Equitable Contribution is to be determined by the School;
 - (c) if the Shire does not agree with the amount determined by the School then the Parties are to negotiate in good faith and use their best endeavours to agree on the Equitable Contribution, and the Equitable Contribution will be the amount agreed between the Parties;
 - (d) if the Parties are not able to agree on the Equitable Contribution then the Equitable Contribution is to be determined by an independent expert, acting as an arbitrator, appointed by the President of the Australian Property Institute (Western Australian Division) and the costs of the independent expert are to be shared equally by the Parties.

Bishop Road Dual Use Path

13. The Parties agree that:
 - (a) a dual use path is required for the full length of Lot 1 adjacent to Bishop Road; and

- 4 -

- (b) there is insufficient space within the Bishop Road road reserve for the installation of the above dual use path on the Bishop Road road reserve.
14. Within 12 months of the date of the Approval, the School agrees to design, to the absolute satisfaction of the Shire, a dual use path to be located on Lot 1, and adjacent to the fence between Lot 1 and Bishop Road, for the full length of Lot 1 adjacent to Bishop Road ("*the Internal Dual Use Path*").
15. The School agrees:
- (a) to construct the Internal Dual Use Path at its own cost and to a standard that is to the absolute satisfaction of the Shire;
 - (b) to at all times, permit any member of the public to access and use the Internal Dual Use Path; and
 - (c) not to obstruct the Internal Dual Use Path, or permit it to be obstructed.
16. The Shire agrees to maintain and repair the Internal Dual Use Path.
17. The School agrees to:
- (a) create an easement in gross over the Internal Dual Use Path in favour of the Shire for the purpose of providing public access to the Internal Dual Use Path and permitting the Shire to maintain and repair the Internal Dual Use Path; and
 - (b) execute any agreement or instrument necessary to give effect to such an easement in gross; and
 - (c) register, or permit the Shire to register, against the title any instrument, dealing or document necessary to give effect to such an easement in gross.
18. The Shire indemnifies the School for any claim or action that it or anyone else may bring as a result of any member of the public using the Internal Dual Use Path.

Other Dual Use Paths

19. The School agrees to make an equitable contribution towards the construction of:
- (a) a dual use path on Soldiers Road between the boundary of Lot 1 and the existing dual use path on Soldiers Road;

- 5 -

- (b) a pedestrian crossing facility at the Soldiers Road railway crossing;
- (c) such other paths and pedestrian facilities which are, in the Shire's absolute discretion, required to connect any bus stop on Soldiers Road to:
 - (i) any existing dual use path;
 - (ii) any other dual use path required to be constructed, or constructed, as a result of the Approval; or
 - (iii) the boundaries of Lot 1.

ACCESS TO SERVICES AND FACILITIES

- 20. The School agrees to conditional community access to services and facilities located or provided on Lot 1 at times when these services and facilities are not required by the School ("**Community Access**").
- 21. The School agrees to negotiate in good faith and use its best endeavours to provide Community Access.
- 22. The School and the Shire agree that the requirement to provide Community Access is in satisfaction of the School's obligations to make equitable developer contributions in accordance with any current or future Community Infrastructure Contribution Plan for the Mundijong/Whitby Urban Cell ("**Developer Contributions**").
- 23. If the School:
 - (a) fails to provide Community Access; or
 - (b) fails to provide Community Access to a level that the Shire deems, in its absolute discretion, to be sufficient to discharge the School's obligation to make Developer Contributions;

then the School must make Developer Contributions as determined by the Shire, in its absolute discretion, in accordance with any current or future Community Infrastructure Contribution Plan for the Mundijong/Whitby Urban Cell.
- 24. The School agrees to establish, maintain and operate a booking system to provide Community Access ("**the Booking System**").
- 25. The School agrees to advertise contact details to enable members of the community to access the Booking System.

- 6 -

26. The School agrees to enter into any agreement with the Shire, the State Government, any State Government agency or instrumentality or any incorporated association which is necessary to give effect to Community Access.
27. The School agrees to the conditional sharing of facilities and services provided by the Shire, the State Government, any State Government agency or instrumentality or any incorporated association that are located within the Mundijong/Whitby Urban Cell (*"Sharing of Community Facilities and Services"*) .
28. The School agrees to enter into any agreement with the Shire, the State Government, any State Government agency or instrumentality or any incorporated association which is necessary to give effect to the Sharing of Community Facilities and Services.

MISCELLANEOUS

Indemnity

29. The parties hereby indemnify each other and each of their employees, agents and officers against any claim or action that anyone else may bring either in these parties' names or on the parties' behalf or in their own right arising out of the action or the policy.

Warranty as to Authority

30. The signatories to this Deed warrant that they are duly authorised to sign this Deed on behalf of the party on whose behalf they have signed it.

Governing Law

31. This Deed shall be governed by, take effect and be construed in accordance with the laws in force in the State of Western Australia.

Determinations of the Shire

32. Where this Deed requires or permits the Shire to make a decision or express an opinion or a state of mind then a decision, expression of an opinion or a state of mind of a duly authorised officer of the Shire is, and shall be taken to be, the decision, expression of opinion or state of mind of the Shire.

- 7 -

Costs

33. Each party shall bear its own solicitors' costs of the instructions for and the preparation of this Deed.

No Fetter on Discretion

34. The Parties agree that nothing in this Deed is intended to, or has the effect of, acting as a fetter on any statutory power or duty of the Shire.

Stamp Duty

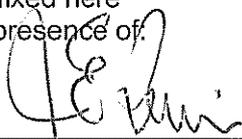
35. The School agrees to pay any Western Australian stamp duty assessed on this Deed.

Variation

36. No variation of, addition to, consent or cancellation of this Deed and no waiver of any party of any of its rights hereunder shall be of any force and effect unless and until reduced to writing and signed by or on behalf of the parties.

EXECUTED as a Deed as at the date set out above :

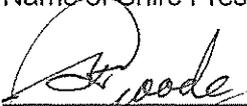
The Common Seal of the)
Shire of Serpentine-Jarrahdale)
 was affixed here)
 in the presence of.)



 Shire President

JOHN PRICE

 Name of Shire President



 Chief Executive Officer

STEPHEN K. GOODE

 Name of Chief Executive Officer

The Common Seal of
Serpentine-Jarrahdale
Grammar School Inc
ABN 85 376 961 684 is fixed to this
document by authority of the Board
in the presence of:



Kenneth
Board Member

KENNETH WALTER COURT
Name of Board Member

R. Scott
Board Member

Lorraine F. Scott
Name of Board Member