

# Lease of Portion of Reserve 30277, Lot 952 (No. 2) Crellin Street, Denmark

Shire of Denmark

Spirit Of Play Community School T/As  
Kwoorabup Nature School



McLEODS

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# Details

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## Parties

### Shire of Denmark

Of PO Box 183, Denmark, Western Australia  
(Lessor)

### Spirit Of Play Community School T/As Kwoorabup Nature School (ABN 88 445 425 948)

Registration No. A1004939E  
of Old Post Office Building, Inlet Drive, Denmark, Western Australia  
(Lessee)

## Background

- A The Lessor is the management body of the Land under the Management Order.
- B Under the Management Order, the Lessor has the power to lease the Land for any term not exceeding 21 years, subject to the approval of the Minister for Lands being first obtained.
- C The Lessor has agreed, subject to the prior approval of the Minister for Lands, to grant the Lessee a lease of the portion of the Land, more particularly the Premises, on the terms and conditions contained within this agreement.

## Agreed terms

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### 1. Definitions

In this Lease, unless otherwise required by the context or subject matter:

**Amounts Payable** means the Rent and any other money payable by the Lessee under this Lease;

**Authorised Person** means:

- (a) an agent, employee, licensee or invitee of the Lessor; and
- (b) any person visiting the Premises with the express or implied consent of any person mentioned in paragraph (a);

**CEO** means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease;

**Commencement Date** means the date of commencement of the Term specified in **Item 4** of the Schedule;

**Common Areas** means all those areas of the Land not leased to any lessee but made available from time to time by the Lessor for use by the tenants and visitors to the Land in common with

each other including the Car Park, footpaths, accessways, roads, entrances, stairs, playground, toilets and washrooms;

**Contaminated Sites Act** means the *Contaminated Sites Act 2003 (WA)*;

**CPI** means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics;

**DEC** means the Department of Environment and Conservation of Western Australia;

**Denmark Heritage Railway Station Precinct Concept Plan** means the Denmark Heritage Railway Station Precinct Concept Plan for Reserve 30277 adopted by the Lessor;

**Environmental Contamination** has the same meaning as the word “contaminated” in the Contaminated Sites Act;

**EPA** means the Environment Protection Agency of Western Australia;

**Encumbrance** means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Crown Land Title for the Land;

**Further Term** means each further term specified in **Item 3** of the Schedule;

**Good Repair** means good and substantial tenantable repair and in clean, good working order and condition;

**Historical Relics** means any item, property, structure or thing which are of historical significance including but not limited to, the Turntable, the Ash Pit, the Old Post Office and the Station Masters House;

**Interest Rate** means the rate at the time the payment falls due being 2% greater than the Lessor’s general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00;

**Land** means the land described at **Item 1** of the Schedule;

**Lease** means this deed as supplemented, amended or varied from time to time;

**Lessee’s Agents** includes:

- (a) the sublessees, employees, agents, contractors, invitees and licensees of the Lessee; and
- (b) any person on the Leased Premises by the authority of a person specified in paragraph (a);

**Lessee’s Covenants** means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by any person other than the Lessor;

**Lessee’s Property** includes the School Buildings and all other associated improvements on the Premises and any other property of the Lessee;

**Lessor’s Covenants** means the covenants, agreements and obligations set out or implied in this Lease, or imposed by law to be observed and performed by the Lessor;

**Lessor’s Fixtures and Fittings** are outlined in **Annexure 2** of this Lease;



**Management Order** means the Management Order made under section 46 of the *Land Administration Act 1997*, under which the Land was vested in the Lessor to be held for the purpose of “*Historical Precinct, Recreation and Community Purposes*”;

**Notice** means each notice, demand, consent or authority given or made to any person under this Lease;

**Old Post Office** means the old post office building located on the Premises;

**Other Tenants** means the Lessors other tenant or tenants currently occupying the Land;

**Party** means the Lessor or the Lessee according to the context;

**Permitted Purpose** means the purpose set out in **Item 7** of the Schedule;

**Public Shared Use Area** means the public shared use area shown on the plan annexed hereto as **Annexure 1**;

**Premises** means the premises described at **Item 1** of the Schedule;

**Rent** means the rent specified in **Item 5** of the Schedule;

**Reserve** means Reserve 30277;

**Schedule** means the Schedule to this Lease;

**School Buildings** means all buildings and improvements constructed or installed on the Premises by the Lessee or at the request of the Lessee, except the Old Post Office or the Station Masters House;

**Station Masters House** means that structure located on the Land described and identified as “Station Masters House” by the Lessor;

**Term** means the term of years specified in **Item 2** of the Schedule and any Further Term; and

**Termination** means expiry by effluxion of time or sooner determination of the Term or any period of holding over.

## 2. Interpretation

In this Lease, unless expressed to the contrary:

- (a) words importing:
  - (i) the singular includes the plural and vice versa; and
  - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to:
  - (i) a natural person includes a body corporate or local government;
  - (ii) a body corporate or local government includes a natural person;

- (iii) a professional body includes a successor to or substitute for that body;
- (iv) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (v) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
- (vi) a right includes a benefit, remedy, discretion, authority or power;
- (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (viii) this Lease or provisions of this Lease or any other deed, agreement, instrument or contract includes a reference to:
  - (A) both express and implied provisions; and
  - (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (x) any thing (including, without limitation, any amount) 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; and
- (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Lease;
- (d) the covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include:
  - (i) covenants not to permit that act or thing to be done or omitted to be done by a Lessee's Agent; and
  - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- (e) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- (f) if a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.

### 3. Minister for Lands Consent

This Lease is subject to and conditional on the prior approval of the Minister for Lands under the *Land Administration Act 1997*. A copy of the Minister for Lands consent is annexed hereto as **Annexure 2**.

## 4. Grant of lease

The Lessor, subject to **clause 3** of this Lease, leases to the Lessee the Premises for the Term subject to:

- (a) all Encumbrances and any reservations;
- (b) the payment of the Amounts Payable; and
- (c) the performance and observance of the Lessee's Covenants,

together with the non-exclusive right for the Lessee and the Lessee's Agents to use the Common Areas for the purpose for which they are intended.

## 5. Quiet enjoyment

Except as provided in the Lease, for so long as the Lessor is the management body of the Premises under a management order, and subject to the performance and observance of the Lessee's Covenants the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

## 6. Rent and other payments

The Lessee covenants with the Lessor:

### 6.1 Rent

To pay to the Lessor the Rent in the manner set out at **Item 5** of the Schedule on and from the Commencement Date clear of any deductions.

### 6.2 Outgoings

- (1) To pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges, assessed or incurred in respect of the Premises and Common Areas:
  - (a) local government rates, specified area rates, taxes, service and other charges and including but not limited to rubbish collection charges and the emergency services levy;
  - (b) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
  - (c) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection;
  - (d) land tax and metropolitan regional improvement tax on a single ownership basis; and
  - (e) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (2) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 6.2(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

### 6.3 Interest

Without affecting the rights, power and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 7 days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

### 6.4 Costs

- (1) To pay to the Lessor on demand:
  - (a) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes payable on or in connection with this Lease;
  - (b) all registration fees in connection with this Lease; and
  - (c) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies.
- (2) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:
  - (a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
  - (b) any breach of covenant by the Lessee or the Lessee's Agents;
  - (c) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
  - (d) any work done at the Lessee's request which the Lessor is not responsible for under the terms of this Lease; and
  - (e) any action or proceedings arising out of or incidental to any matters referred to in this **clause 6.4** or any matter arising out of this Lease.

### 6.5 Accrual of amounts payable

Amounts Payable accrue on a daily basis.

## 7. Rent Review

### 7.1 Rent to be Reviewed

The Rent will be reviewed on and from each Rent Review Date to determine the Rent to be paid by the Lessee until the next Rent Review Date.

### 7.2 Methods of Review

The review will be either based on CPI or a Market Review. The basis for each rent review is as identified for each Rent Review Date in **Item 6** of the Schedule.

### 7.3 CPI Review

A rent review based on CPI will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Rent Review Date

as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review Date. If there is a decrease in CPI having regard to the relevant CPI publications the Rent payable from the relevant Rent Review Date will be the same as the Rent payable during the immediately preceding period. Should the CPI be discontinued or suspended at any time or its method of computation substantially altered, the parties shall endeavour to agree upon the substitution of the CPI with an equivalent index, or failing agreement by the parties, the substitution shall be made by a Valuer appointed in accordance with **clause 7.4**.

#### **7.4 Market Rent Review**

- (1) A rent review based on market rent will establish the current market rent for the Premises (which will not be less than the Rent payable in the period immediately preceding the Rent Review Date) by agreement between the parties and failing agreement, will be determined in accordance with the following provisions.
- (2) If agreement as to the substitution of the CPI with an equivalent index for the Premises is not reached at least one (1) month prior to the relevant Rent Review Date then the current market rent for the Premises will be determined at the expense of the Lessee by a valuer (**Valuer**) licensed under the *Land Valuers Licensing Act 1978*, to be appointed, at the request of either party, by the President for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the Commencement Date by that Institute).
- (3) The Valuer will act as an expert and not as an arbitrator and his or her decision will be final and binding on the parties. The parties will be entitled to make submissions to the Valuer.
- (4) In this **clause 7**, “current market rent” means the rent obtainable for the Premises in a free and open market if the Premises was unoccupied and offered for rental for the use for which the Premises is permitted pursuant to this Lease and on the same terms and conditions contained in this Lease, BUT will not include:
  - (a) any improvements made or effected to the Premises by the Lessee; and
  - (b) any rent free periods, discounts or other rental concessions.

#### **7.5 Rent will not decrease**

Notwithstanding the provisions in this clause, the Rent payable from any Rent Review based on CPI Review will not be less than the Rent payable in the period immediately preceding such Rent Review Date.

#### **7.6 Lessor’s right to review**

The Lessor may institute a rent review notwithstanding the Rent Review Date has passed and the Lessor did not institute a rent review on or prior to that Rent Review Date, and in which case the Rent agreed or determined shall date back to and be payable from the Rent Review Date for which such review is made.

### **8. Insurance**

#### **8.1 Insurance required**

The Lessee must effect and maintain with insurers approved by the Lessor (noting the Lessor’s and the Lessee’s respective rights and interest in the Premises) for the time being:

- (a) adequate public liability insurance for a sum not less than the sum set out at **Item 8** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require;
- (b) insurance against all risks as the Lessor may require, of all plate glass windows, doors and display show cases forming part of or within the Premises for a sum which is not less than its full insurable value;
- (c) insurance to cover the Lessee's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a Lessee can and does ordinarily insure in their full replacement value, and loss from theft or burglary;
- (d) employers' indemnity insurance including workers' compensation insurance in respect of all employees of the Lessee employed in, about or on the Premises; and
- (e) any other policy of insurance which the Lessor may reasonably require or specify from time to time.

## **8.2 Building Insurance for School Buildings to be effected by Lessee**

The Lessee shall effect and keep effected insurance to the full insurable value on a replacement or reinstatement value basis of the School Buildings on the Premises against damage arising from fire, tempest, storm, earthquake, explosion, aircraft, or other aerial device including items dropped from any device, riot, commotion, flood, lightning, act of God, fusion, smoke, rainwater, leakage, impact by vehicle, machinery breakdown and malicious acts or omissions and other standard insurable risks.

## **8.3 Building Insurance for Old Post Office to be effected by Lessor**

The Lessor shall effect and keep effected insurance to the full insurable value on a replacement or reinstatement value basis of the Old Post Office on the Premises against damage arising from fire, tempest, storm, earthquake, explosion, aircraft, or other aerial device including items dropped from any device, riot, commotion, flood, lightning, act of God, fusion, smoke, rainwater, leakage, impact by vehicle, machinery breakdown and malicious acts or omissions and other standard insurable risks.

## **8.4 Details and receipts**

In respect of the insurances required by **clause 8.1** the Lessee must:

- (a) if requested by the Lessor, upon renewal of any insurance policy immediately forward to the Lessor copies of Certificates of Currency and details of the insurances as held by the Lessee;
- (b) if requested by the Lessor, promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Lessor immediately:
  - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
  - (ii) when a policy of insurance is cancelled.

## **8.5 Lessee May be Required to Pay Excess on Insurances**

The Lessee AGREES with the Lessor that it shall be responsible to pay any excess payable in connection with the insurances referred to in **clause 8.1** and **clause 8.2**.

## **8.6 Not to invalidate**

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Premises which might:

- (a) render any insurance effected under **clause 8.1**, **clause 8.2** and **clause 8.3** on the Premises, or any adjoining premises, void or voidable; or
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

## **8.7 Report**

Each Party must report to the other promptly in writing and in an emergency verbally:

- (a) any damage to the Premises of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person in or on the Premises.

## **8.8 Settlement of claim**

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any policy of insurance required by **clauses 8.1(a)** and **(b)** and **clause 8.3**.

## **8.9 Lessor as attorney**

In relation to any insurances required by **clauses 8.1(a)** and **(b)** and **clause 8.3**, the Lessee irrevocably appoints the Lessor as the Lessee's attorney during the Term:

- (a) in respect to all matters and questions which may arise in relation to the insurance;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurance ;
- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

# **9. Indemnity**

## **9.1 Lessee responsibilities**

- (1) The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner and occupier of the freehold of the Premises.
- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

## 9.2 Indemnity

(1) The Lessee indemnifies, and shall keep indemnified, the Lessor and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor or the Minister for Lands, or brought, maintained or made against the Lessor, in respect of:

- (a) any loss whatsoever (including loss of use);
- (b) injury or damage of, or to, any kind of property or thing; and
- (c) the death of, or injury suffered by, any person,

caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:

- (i) the use or occupation of the Premises or Common Areas by the Lessee or the Lessee's Agents;
- (ii) any work carried out by or on behalf of the Lessee or Common Areas on the Premises;
- (iii) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
- (iv) the presence of any Contamination, Pollution or Environmental Harm in on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
- (v) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- (vi) an act or omission of the Lessee.

## 9.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 9.2** will be reduced by the extent of such payment.
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

## 9.4 No indemnity for Lessor's negligence

The parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

## 9.5 Release

(1) The Lessee:

- (a) agrees to occupy and use the Premises at the risk of the Lessee; and



- (b) releases to the full extent permitted by law, the Lessor and the Minister for Lands from:
- (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by;
  - (ii) loss of or damage to the Premises or personal property of the Lessee; and
  - (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Premises or surrounding area

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

- (2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

## 10. Limit of Lessor's liability

### 10.1 No liability for loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring.

### 10.2 Limit on liability for breach of Lessor's covenants

- (1) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is the management body for the Land.
- (2) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

## 11. Maintenance, repair and cleaning

### 11.1 Generally

- (1) The Lessee agrees during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises (which for the avoidance of doubt includes the Lessor's Fixtures and Fittings) and Appurtenances in Good Repair having regard to the age of the Premises at the Commencement Date provided that this subclause shall not impose on the Lessee any obligation:
  - (a) to carry out repairs or replacement that are necessary as a result of fair and reasonable wear and tear, except when such repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or its servants, agents, contractors or invitees); and
  - (b) in respect of any structural maintenance, replacement or repair except when such maintenance, repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or by the Lessee's particular use or occupancy of the Premises.

- (2) The Lessee must at all times comply with any heritage requirements and all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.
- (3) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall where maintaining, replacing, repairing or cleaning:
- (a) any electrical fittings and fixtures;
  - (b) any plumbing;
  - (c) any air-conditioning fittings and fixtures;
  - (d) any gas fittings and fixtures,
- in or on the Premises use only licensed trades persons, or such trades persons as may be approved by the Lessor and notified to the Lessee, which approval shall not be unreasonably withheld.
- (4) The Lessee must take such reasonable action as is necessary to:
- (a) prevent, if it has occurred as a result of the Lessee's use of the Premises; and
  - (b) rectify or otherwise ameliorate,
- the effects of erosion, drift or movement of sand, soil, dust or water on or from the Premises.

## 11.2 Heritage Acknowledgments

The Lessee acknowledges that the Premises:

- (a) are subject to the heritage listings in **Item 10** of the Schedule;
- (b) any works, any development or alteration to the Premises must be in accordance with any applicable heritage requirements and any conservation plan/s; and
- (c) any development application requires advertising in accordance with the provisions of the Shire of Denmark Town Planning Scheme No.3.

## 11.3 Cleaning

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish.

## 11.4 Repair

Unless such damage is the Lessor's responsibility pursuant to the terms of the Lease, the Lessee must promptly repair at its own expense to the satisfaction of the Lessor, any damage to the Premises, regardless of how the damage is caused and replace any of the Lessor's fixtures and fittings which are or which become damaged.

## 11.5 Responsibility for Securing the Premises

The Lessee must ensure the Premises, including Lessor's and Lessee's fixtures and fittings, are appropriately secured at all times.

## 11.6 Maintain surroundings

- (1) The Lessee must regularly inspect and maintain in good condition any part of the Premises which surrounds any buildings, including but not limited to any flora, gardens, lawns, shrubs, hedges and trees.
- (2) The Lessee agrees that any pruning of trees must be undertaken by a qualified tree surgeon or suitably qualified contractor.
- (3) If any flora, trees or lawn dies the Lessee must replace the flora, trees or lawn at its own expense.
- (4) The Lessee must plant and care for such trees on the Premises as the Lessor may from time to time reasonably require.
- (5) The Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

## 11.7 Lessor's Fixtures and Fittings

The Lessee covenants and agrees that the Lessor's Fixtures and Fittings will remain the property of the Lessor and must not be removed from the Premises at any time.

## 11.8 Pest control

The Lessee must keep the Premises free of any pests and vermin and the cost of extermination will be borne by the Lessee.

## 11.9 Painting and Decorate

- (1) The Lessee must on or before each repainting date as stated in **Item 9** of the Schedule paint with at least 2 coats of paint those parts of the Old Post Office and the Station Masters House internally and externally.
- (2) All painting carried out under this **clause 11.9** must be carried out by a registered painting contractor; and the registered painting contractor or other person engaged by the Lessee to paint the Premises must:
  - (a) do so in a proper manner using good quality materials;
  - (b) have the colour and quality of the materials for the Old Post Office and the Station Masters House approved in writing by the Lessor and the Denmark Historical Society before the work commences;
  - (c) comply with all reasonable directions given or requests made by the Lessor; and
  - (d) be finished in a proper and workmanlike manner.
- (3) The Lessee must at all times keep the walls and ceilings clean and washed to the satisfaction of the health authorities and the Lessor.

## **11.10 Drains**

- (1) The Lessee must keep and maintain the waste pipes drains and conduits originating in the Premises or connected thereto in a clean clear and free flowing condition and must pay to the Lessor upon demand the cost to the Lessor of clearing any blockage which may occur in such waste pipes, drains and conduits between the external boundaries of the Premises and the point of entry thereof into any trunk drain unless such blockage has been caused without neglect or default on the part of the Lessee.
- (2) The Lessee must not permit the drains, toilets, grease traps (if any) and other sanitary appliances on the Premises to be used for any purpose other than that for which they were constructed and must not allow any foreign matter or substance to be thrown therein.

## **12. Use**

### **12.1 Restrictions on use**

#### **(1) Generally**

The Lessee must not and must not suffer or permit a person to:

- (a) use the Premises or any part of it for any purpose other than the Permitted Purpose; or
- (b) use the Premises for any purpose which is not permitted under any local or town planning scheme, local laws, acts, statutes or any law relating to health.

#### **(2) No offensive or illegal acts**

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any harmful, offensive or illegal act, matter or thing.

#### **(3) No nuisance**

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties.

#### **(4) No dangerous substances**

The Lessee must not and must not suffer or permit a person to store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions:

- (a) any such storage must comply with all relevant statutory provisions;
- (b) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
- (c) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
- (d) upon the request of the Lessor, the Lessee will provide a list of all dangerous compounds or substances stored on the Premises.

#### **(5) No harm or stress**

The Lessee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of the Premises.

**(6) No signs**

The Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on:

- (a) the Old Post Office, without the prior written consent of the Lessor;
- (b) the Station Masters House, without the prior written consent of the Lessor; and
- (c) any other building or improvement on the Premises, unless the sign directly relates to school operations and/or educational programs.

**(7) No smoking**

The Lessee must not suffer or permit a person to smoke inside any building or other enclosed area on the Premises.

**(8) Consumption of alcohol**

The Lessee covenants and agrees:

- (a) not to use or allow the Premises to be used for the consumption or sale of alcohol without first obtaining the written consent of the Lessor, and the Lessor shall determine any such application in its absolute discretion; and
- (b) that it shall not make an application for a licence or permit under *the Liquor Control Act 1988* (or any other relevant written laws that may be in force from time to time) for the Premises, without first obtaining the written consent of the Lessor.

**(9) Removal of rubbish**

The Lessee must keep the Premises free from dirt and rubbish and to store and keep all trade waste and garbage in proper receptacles.

**(10) No pollution**

The Lessee must do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, waste matter, oil and other pollutants.

**(11) No Animals**

The Lessee must not keep on or bring into the Premises any live animal or bird, other than:

- (a) any animal or bird related to curriculum delivery; and
- (b) domesticated animals (excluding cats) which are suitably restrained and confined to designated areas.

**(12) Non-Indigenous Plants**

The Lessee must not plant in or otherwise introduce to the Premises any exotic plant or any plant not indigenous to the locality of the Premises, without the Lessor's prior written consent, unless such plant is related to curriculum delivery or a school program and is adequately confined to prevent spreading risk of invasive non-indigenous plants.

**12.2 No warranty**

The Lessor gives no warranty:

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any statute for its use of the Premises.

### **12.3 Lessee to Observe Copyright**

In the event that the Lessee or any person sub-leasing, hiring, or in temporary occupation of the Premises provides, contracts for, or arranges for the performance, exhibition or display of any music or work of art the copyright of which is not vested in the Lessee or that person, the Lessee shall ensure that all obligations in regard to payment of copyright or licensing fees with the owner or licensor of the copyright are met before any such performance, exhibition or display is held.

### **12.4 Premises Subject to Restriction**

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

### **12.5 Indemnity for Costs**

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, reasonably incurred by the Lessor by reason of any claim in relation to any matters set out in this **clause 12**.

## **13. Common Areas**

### **13.1 Lessee's covenants and acknowledgements**

- (1) The Lessee may use the Common Areas in common with the Other Tenants.
- (2) The Lessee shall not use the Common Areas, or any facility, item of plant and equipment or Lessor's fixture for a purpose other than that for which was designed or for which it is designated by the Lessor.
- (3) The Lessee shall not do or omit to do any act or thing which might cause or allow the Common Areas:
  - (a) to deteriorate or become impaired except for fair wear and tear;
  - (b) to be in a condition other than a good and sanitary condition; or
  - (c) to be obstructed, except where the Lessor has approved any temporary obstruction in writing to enable the Lessee to carry out any approved works or improvements.

### **13.2 Lessor's reservations**

The Lessor may cancel, suspend, vary or restrict the Lessee's rights in relation to the Common Areas:

- (a) to enable work to be carried out; or
- (b) to comply with the law or with the Lessor's obligations to any third party;

but in so doing, the Lessor must not prevent access to the Premises or otherwise materially impair the Lessee's use and enjoyment of the Premises during the Lessee's normal hours of use of the Premises.

### 13.3 Lessee to comply with Lessor's directions

The Lessee must:

- (a) comply with and observe the reasonable requirements of the Lessor in relation to the use, maintenance and handling of the plant and equipment or any amenity or facility; and
- (b) not do anything which might interfere with or impair the efficient operation of the plant and equipment or any amenity or facility, unless as otherwise agreed between the parties.

### 13.4 Comply with Rules and Regulations in relation to Common Areas

The Lessee must comply with all rules and regulations made by the Lessor with respect to the Common Areas provided that such rules and regulations are not inconsistent with the express terms of this Lease.

### 13.5 Damage to Common Areas

The Lessee must make good any breakage defect or damage to the Common Areas or to any other part of the Land or any appurtenance or equipment of facility therein caused by want of care misuse or abuse on the part of the Lessee or the Lessee's Agents or by any breach of this Lease by the Lessee.

## 14. Minimise nuisance to neighbours

- (1) The Lessee must take all reasonable action to minimise and prevent disruption, nuisance and disturbance to surrounding residential premises and Other Tenants, particularly during and following social events held at the Premises.
- (2) The Lessee must comply with all reasonable conditions and directions that may be imposed by the Lessor from time to time in relation to the minimisation and prevention of disruption, nuisance and disturbance to surrounding residential premises and Other Tenants.

## 15. Alterations

### 15.1 Restriction

- (1) Unless otherwise provided by this Lease, the Lessee must not:
  - (a) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or
  - (b) subject to the performance of the Lessee's obligations in **clause 11**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises,

without the prior written consent from the Lessor and any other person from whom consent is required under this Lease and any consent required under statute in force from time to time, including but not limited to the planning approval of the Lessor under a local or town planning scheme of the Lessor and the consent of the Heritage Council.

### 15.2 Consent

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 15.1** the Lessor may:
  - (a) consent subject to conditions; and

- (i) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
  - (ii) require that any alteration be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and
- (b) if the Lessor consents to any matter referred to in **clause 15.1**:
- (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
  - (ii) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

### **15.3 Cost of Works**

All works undertaken under this **clause 15** will be carried out at the Lessee's expense.

### **15.4 Conditions**

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must at the option of the Lessor either:

- (a) carry out those other works at the Lessee's expense; or
- (b) permit the Lessor to carry out those other works at the Lessee's expense, in accordance with the Lessor's requirements.

### **15.5 Compliance with Plans**

The Lessee acknowledges that:

- (a) it shall not carry out any works on the Premises without first obtaining the consent of the Lessor to such works; and
- (b) any works approved by the Lessor on the Premises shall be carried out in accordance with plans or requirements or other restraints which relate to the Premises.

## **16. Lessor's right of entry**

### **16.1 Entry on Reasonable Notice**

The Lessee must permit entry by the Lessor or any Authorised Person onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice:

- (a) (i) at all reasonable times;
- (ii) with or without workmen and others; and
- (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes:
  - (i) to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;



- (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
- (iii) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
- (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this **clause 16.1(b)(iv)** is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

## 16.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 16.1(b)(iv)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

## 17. Statutory obligations and notices

### 17.1 Comply with Statutes

The Lessee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises, including without limitation all relevant laws relating to occupational health and safety and the health and safety of all persons entering upon the Premises;;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at **clause 12**;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

### 17.2 Indemnity if Lessee Fails to Comply

The Lessee indemnifies the Lessor and the Minister for Lands against:

- (a) failing to perform, discharge or execute any of the items referred to in **clause 17.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 17.1**.

## 18. Report to Lessor

The Lessee must immediately report to the Lessor:

- (a) any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee becomes aware;

- (b) any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment; and
- (c) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

## 19. Termination and Default

### 19.1 Events of Default

A default occurs if:

- (a) the Lessee is in breach of any of the Lessee's Covenants for 28 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (b) the association is wound up whether voluntarily or otherwise;
- (c) the Lessee passes a special resolution under the *Associations Incorporation Act 1997* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) the Premises are vacated, or otherwise not used, in the Lessor's reasonable opinion, for the Permitted Purpose for six month period; or
- (g) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.

### 19.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 19.1** the Lessor may:

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 20**,

but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Covenants or releasing the Lessee from liability in respect of the Lessee's Covenants.

### 19.3 Lessor may remedy breach

If the Lessee:

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Covenants,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

#### **19.4 Acceptance of Amount Payable By Lessor**

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers conferred on the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

#### **19.5 Essential Terms**

Each of the Lessee's Covenants in **clauses 6** (Rent and Other Payments), **8** (Insurance), **9** (Indemnity), **11** (Maintenance, Repair and Cleaning), **12** (Use), **24** (Assignment, Subletting and Charging) and **30** (Goods and Services Tax), is an essential term of this Lease but this clause **19.5** does not mean or imply that there are no other essential terms in this Lease.

#### **19.6 Breach of Essential Terms**

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor:

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
- (c) the Lessee covenants with the Lessor that if the Term is determined:
  - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
  - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by effluxion of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises;

- (d) the Lessee agrees that the covenant set out in this **clause 19.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 19.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by effluxion of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

## 20. Damage or destruction of Premises

### 20.1 Abatement of Rent

If the Premises are at any time during the Term, without neglect or default of the Lessee, destroyed or damaged by fire or other risk covered by insurance so as to render the same unfit for the occupation and use of the Lessee, then the Rent or a proportionate part thereof (according to the nature and extent of the damage) shall abate until the Premises have been rebuilt or made fit for the occupation and use of the Lessee.

### 20.2 Dispute as to Abatement of Rent

Any dispute arising in relation to the abatement of rent pursuant to **clause 20.1** shall be referred to arbitration under the provisions of the *Commercial Arbitration Act 2012* and the full Rent must be paid without any deduction or abatement until the date of the arbitrator's award whereupon the Lessor will refund to the Lessee any Rent which according to the award appears to have been overpaid.

### 20.3 Total Damage or Destruction

If the premises are at any time during the Term destroyed or damaged to an extent as to be wholly unfit for the occupation and use of the Lessee, either party may by notice in writing delivered to the other party within sixty (60) days of such occurrence, elect to cancel and terminate this Lease. The Term will terminate upon such notice being given and the Lessee must vacate the Premises and surrender the same to the Lessor, but such termination will be without prejudice to the Lessor's rights in respect of any antecedent breach of this Lease.

## 21. Holding over

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.

## 22. Obligations on Termination

### 22.1 Restore premises

Prior to Termination, the Lessee at the Lessee's expense must restore the Premises to a condition consistent with the observance and performance by the Lessee of the Lessee's Covenants under this Lease fair wear and tear excepted.

### 22.2 Peacefully surrender

On Termination the Lessee must:

- (a) peacefully surrender and yield up to the Lessor the Premises in a condition consistent with the observance and performance of the Lessee's Covenants under this Lease; and
- (b) surrender to the Lessor all keys and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

### **22.3 Remove property prior to termination**

Prior to Termination, unless otherwise mutually agreed between the parties, the Lessee must remove from the Premises all of the Lessee's Property and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal.

### **22.4 Lessor can remove Lessee's property on re-entry**

If the Lessee fails to remove any such fixtures or fittings and any other chattels, stock or goods belonging to the Lessee in accordance with **clause 22.3** within fourteen (14) days from the determination of the Term, the Lessor may at its option:

- (a) cause any such fixtures or fittings to be removed and stored at the cost of the Lessee and any such damage to be made good and any such alterations to be so re-altered and may recover the costs thereof from the Lessee as a liquidated debt payable on demand; or
- (b) elect to treat any such fixtures or fittings and any other chattels, stock or goods of the Lessee to be deemed abandoned by the Lessee and such property shall then be and become the property of the Lessor absolutely.

### **22.5 Obligations to Continue**

The Lessee's obligations under this clause will survive termination.

## **23. Casual Hire of Premises**

### **23.1 Casual Hire**

- (1) The Lessee may hire out the Premises or any part thereof on a casual basis only provided:
  - (a) such use is consistent at all times with the Permitted Purpose;
  - (b) the Lessee ensures any hirer complies strictly with the relevant terms of this Lease; and
  - (c) the Lessee obtains the prior written consent for any hire arrangements, which consent may be withheld by the Lessor in its absolute discretion. Consent shall not be required for casual hire where it relates to an event which is not more than 24 hours in duration provided that the event:
    - (i) does not adversely impact neighbouring properties;
    - (ii) does not adversely impact traffic within the immediate vicinity of the Premises;
    - (iii) does not adversely impact parking within the immediate vicinity of the Premises; and
    - (iv) does not exceed more than 100 patrons in attendance;
    - (v) is contained within the Premises area; and
    - (vi) complies with statutory requirements;

and the Lessee provides prior written notice to the Lessor of the 24-hour casual hire event. The Lessor retains its authority to provide and the Lessee agrees to comply with any reasonable direction, including a direction to stop or vacate the casual hire at any time where it causes nuisance or adversely impacts on neighbouring properties.

- (2) For the purposes of this Lease, “casual hire” means any hire of the Premises by the Lessee to a third party for a period of no more than 48 hours in any calendar month and does not include any formal transfer, assignment or sublease of the Premises.

### **23.2 Lessee remains responsible for Premises at all times**

The Lessee ACKNOWLEDGES that at all times, including when the Premises are hired to a third party, it remains responsible for the Premises, including without limitation any damage that may be caused or occurs during any hire period.

## **24. Assignment, Subletting and Charging**

### **24.1 No assignment or sub-letting without consent**

The Lessee must not assign the leasehold estate in the Premises nor Sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other persons whose consent is required under the terms of this Lease or at law.

### **24.2 Lessor’s Consent to Assignment and Sub-letting**

Provided all parties whose consent is required, under this Lease or at law, to an assignment or Sub-letting, give their consent and any assignment or sublease is for a purpose consistent with the use of the Premises permitted by this Lease then the Lessor may not unreasonably withhold its consent to the assignment or Sub-letting of the leasehold estate created by this Lease if:

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing capable of continuing the permitted use for non-profit making community purposes;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee’s Covenants;
- (c) the Lessee procures the execution by:
  - (i) the proposed assignee of a deed of assignment; or
  - (ii) the proposed sublessee of a deed of sublease,to which the Lessor is a party and which deed is prepared and completed by the Lessor’s solicitors; and
- (d) the assignment contains a covenant by the assignee or sublessee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee’s Covenants.

### **24.3 Consents of Assignee Supplementary**

The covenants and agreements on the part of any assignee will be supplementary to the Lessee’s Covenants and will not release the assigning lessee from the Lessee’s Covenants.

### **24.4 Property Law Act 1969**

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

### **24.5 Costs for assignment and sub-letting**

If the Lessee wishes to assign or sub-let the leasehold estate created by this Lease the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to:

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee;
- (b) any consents required under this Lease or at law; and
- (c) all other matters relating to the proposed assignment or sub-letting,

whether or not the assignment or Sub-letting proceeds.

## **24.6 No mortgage or charge**

The Lessee must not mortgage nor charge the Premises without the prior written consent of the Lessor and the Minister for Lands.

## **25. Disputes**

### **25.1 Referral of Dispute: Phase 1**

Except as otherwise provided any dispute arising out of this Lease is to be referred in the first instance in writing to the Lessor's Representative as nominated in writing by the Lessor from time to time (**the Lessor's Representative**) who shall convene a meeting within 10 days of receipt of such notice from the Lessee or such other period of time as is agreed to by the parties between the Lessor's Representative and an officer of the Lessee for the purpose of resolving the dispute (**the Original Meeting**).

### **25.2 Referral of Dispute: Phase 2**

In the event the dispute is not resolved in accordance with **clause 25.1** of this Lease then the dispute shall be referred in writing to the CEO of the Lessor who shall convene a meeting within 10 days of the Original Meeting or such other date as is agreed to by the parties between the CEO and the President of the Lessee for the purpose of resolving the dispute.

### **25.3 Appointment of Arbitrator: Phase 3**

In the event the dispute is not resolved in accordance with **clause 25.2** of this Lease then the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* (as amended from time to time) and the Lessor and the Lessee may each be represented by a legal practitioner.

### **25.4 Payment of Amounts Payable to Date of Award**

The Lessee must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Lessee is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Lessor and the Lessee then the Lessor will refund to the Lessee the monies paid.

## **26. Prior notice of proposal to change rules**

The Lessee agrees that it will not change its rules of association under the *Associations Incorporations Act 1987* without notifying the Lessor of its intention to make such a change prior to consideration of the required special resolution.

## **27. Provision of information**

The Lessee agrees to provide to the Lessor upon request:

- (a) a copy of the Lessee's audited annual statement of accounts for each year;
- (b) advice of any changes in its office holders during the Term; and
- (c) any information reasonably required by the Lessor.

## 28. Right to terminate upon notice

- (1) Notwithstanding any other provision of this Lease, the Parties agree that either party may terminate this Lease for any reason upon two year written notice to the other party.
- (2) If this Lease is terminated in accordance with this clause, **clause 22** will apply.

## 29. No absolute Caveat or Other Interest

### 29.1 No absolute caveat or other interest

The Lessee nor any person on behalf of the Lessee must not lodge at Landgate any absolute caveat or any other interest including any lease, sublease, mortgage, charge over the Land or Premises or part thereof, without the prior written consent of the Lessor and the Minister for Lands.

### 29.2 Registration of Lease

This Lease is to be registered on the title to the Land at the Lessee's cost. The Lessor must do everything required of the Lessor to enable this Lease to be registered as soon as reasonably possible after the Commencement Date.

### 29.3 CEO & Lessor as attorney

In consideration of the Lessor having granted this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally:

- (a) for the Term of this Lease;
- (b) for any holding over under this Lease; and
- (c) for a period of 6 months after Termination,

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate:

- (d) a withdrawal of any absolute caveat lodged by or on behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by or on behalf of the Lessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease,

and the costs of withdrawing any caveat or surrendering this Lease (including the Lessor's solicitor's costs and registration fees) will be borne by the Lessee.

### 29.4 Ratification

The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under this clause.



## 29.5 Indemnity

The Lessee indemnifies the Lessor against:

- (a) any loss arising directly from any act done under this clause. and
- (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee under this clause.

## 30. Goods and services tax

### 30.1 Definitions

The following definitions apply for the purpose of this clause:

- (a) **Act** means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means the Amounts Payable or any other money payable to the Lessor under this Lease, but does not include the amount of the GST which may apply to the Amounts Payable or other money payable under the Act;
- (c) **GST** means a tax under the Act levied on a Supply including but not limited to the Amounts Payable or other money payable to the Lessor for goods or services or property or any other thing under this Lease; and
- (d) **Supply** means a good or service or any other thing supplied by the Lessor under this Lease and includes but is not limited to a grant of a right to possession of the Premises.

### 30.2 Lessee to pay GST

- (1) The Consideration will be increased by the amount of the GST, if any, which the Lessor is required under the Act to pay on any Supply made under this Lease.
- (2) The Lessee must pay any increase referred to at **clause 30.2(1)** whether it is the Lessee or any other person who takes the benefit of any Supply.
- (3) The Lessee must pay the amount of the GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration under this Lease.

### 30.3 Consideration in Kind

If consideration in kind is accepted by the Lessor for any Supply made under this Lease, the GST amount payable to the Lessor under **clause 30.2(2)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

### 30.4 No Contribution from Lessor

If the Lessee is required under this Lease to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind, the Lessee is not entitled to any contribution from the Lessor for any GST payable by it to any person.

### 30.5 Statement of GST paid is Conclusive

A written statement given to the Lessee by the Lessor of the amount of the GST that the Lessor pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

## **30.6 Tax Invoices**

For each payment by the Lessee under this clause the Lessor agrees to promptly deliver to the Lessee, as required under the Act, tax invoices and adjustment notes in a form which complies with the Act, so as to enable the Lessee to claim input tax credits or decreasing adjustments for Supplies.

## **30.7 Reciprocity**

If the Lessee furnishes any Supplies to the Lessor under this Lease, then the requirements set out in this clause with respect to the Lessee will apply to the Lessor with the necessary changes.

## **31. No Fetter**

Notwithstanding any other provision of this Lease, the Parties acknowledge that the Lessor is a local government established by the *Local Government Act 1995*, and in that capacity, the Lessor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any Written Law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

## **32. Commercial Tenancy Act**

If at any time and for so long as the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies to this Lease and a provision of that Act conflicts with a provision of this Lease, then each conflicting provision of this Lease is deemed to be amended to the extent necessary to comply with that Act.

## **33. Acts by agents**

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor.

## **34. Statutory powers**

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

## **35. Notice**

### **35.1 Form of delivery**

A Notice to a Party must be in writing and may be given or made:

- (a) by delivery to the Party personally; or
- (b) by addressing it to the Party and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by Notice to the other.

### **35.2 Service of notice**

A Notice to a Party is deemed to be given or made:

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 35.1(b)**, at the time of leaving the Notice, provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 35.1(b)**, on the seventh business day following the date of posting of the Notice.

### **35.3 Signing of notice**

A Notice to a Party may be signed:

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 1987*, by any person authorised to do so by the board or committee of management of the association; or
- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

## **36. Severance**

If any part of this Lease is or becomes void or unenforceable, that part is or will be severed from this Lease to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

## **37. Variation**

This Lease may be varied only by deed executed by the parties subject to such consents as are required by this Lease or at law.

## **38. Moratorium**

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

## **39. Further assurance**

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Lease.

## **40. Payment of money**

Any Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in the Lease or as otherwise directed by the Lessor by Notice from time to time.

## 41. Waiver

### 41.1 No general waiver

Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.

### 41.2 Partial exercise of right power or privilege

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

## 42. Additional Terms Covenants and Conditions

Each of the terms, covenants and conditions (if any) specified in **Item 11** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

## 43. Governing law

This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

# Schedule

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## Item 1 Land and Premises

### Land

Reserve 30277 more particularly described as Lot 952 on Deposited Plan 39348 being the whole of the land comprised in Certificate of Title Volume LR3128 Folio 653.

### Premises

The portion of the Land depicted as 'School Area' (comprising an area of 6,520sqm) and 'Public Shared Use Area' (comprising an area of 150sqm) on the plan annexed hereto as **Annexure 1**, including all buildings, structures, alterations, additions and improvements on that part of the Land, or erected on that part of the Land during the Term.

## Item 2 Term

21 years commencing on the Commencement Date and expiring on [insert date].

## Item 3 Further Term

Nil.

## Item 4 Commencement Date

The date at which Minister for Lands consent is obtained.

## Item 5 Rent

[Insert rent] per annum plus GST per annum plus GST payable in advance by equal quarterly instalments.

## Item 6 Rent Review

### Market Review

Market reviews are to be undertaken every five years during the Term (including any Further Terms and any period of holding over, if applicable) on the anniversary of the Commencement Date.

### CPI Review

CPI reviews are to be undertaken upon each anniversary of the Commencement Date for each year of the Term (including any Further Terms and any period of holding over, if applicable), except for years for which a market review is required pursuant to the provisions of this clause.

## Item 7 Permitted purpose

School/Educational facility for children, occasional community events and uses reasonably ancillary thereto.

## Item 8 Public liability insurance

Twenty million dollars (\$20,000,000.00).

## Item 9 Repainting Dates

At the expiration of the Term of this Lease.

## Item 10 Heritage Requirements

Any works undertaken on the Land must be consistent with the adopted Denmark Heritage Railway Station Precinct Concept Plan and be sympathetic to the heritage of the precinct. Any works or modifications to the Historical Relics at the site must be undertaken in liaison with the Denmark Historical Society and the Lessor.

## Item 11 Additional terms and covenants

### 11.1 Public Shared Use Area

- (1) The Lessee must during the Term and for so long as the Lessee remains in possession or occupation of the Premises:
  - (a) at its cost, maintain, replace, repair, clean and keep the Shared Use Public Area or any appurtenance or equipment of facility therein in Good Repair to the satisfaction of the Lessor;
  - (b) at all times comply with any heritage requirements and all conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Shared Use Public Area; and
  - (c) at its cost, erect clear signage on Public Shared Use Area and the Old Post Office stating that those areas are for public access.
- (2) The Lessee shall not erect any fence upon or along the boundary of the Public Shared Use Area and shall ensure that the Public Shared Use Area and the Historical Relics therein are at all times remains open and freely accessible for use by the public.

### 11.2 Funding of Works and Improvements

- (1) The Lessee and the Lessor agree that:
  - (a) the Lessee will fund the agreed costs of construction/installation of the proposed nature play areas on the Land, interpretive signage and refurbishment of the Historical Turntable and the Ash Pit in the Public Shared Use Area (**Works**);
  - (b) the Lessee will submit detailed plans and specifications for the Works including costs and an implementation timeline to the Lessor by no later than **[insert date]** for the Lessor's approval (**Plans**);
  - (c) the Lessor may require, at its full discretion, the Plans to be re-submitted with amendments prior to the issue of a written approval to commence the Works (**Approval**);
  - (d) the Works shall be carried out in accordance with the plans and specification approved by the Lessor and shall be completed to the Lessor's satisfaction in consultation with the Denmark Historical Society to ensure that the Works will retain and enhance the integrity of the Historical Relics; and

- (e) the Works must be completed within two years from the issue of the Approval, unless otherwise agreed to between the parties.

### 11.3 Shed

(1) The Lessee agrees with the Lessor:

- (a) that the shed situated on the Premises adjacent to the Station Masters House (**Shed**) shall, at all times during the Term, remain accessible to, and for the sole use by the Lessor, or other persons authorised by the Lessor to use the Shed;
- (b) to relocate the Shed within 12 months from the Commencement Date, at its full cost, to a location approved by the Lessor and that location shall be:
  - (i) within the Reserve; and
  - (ii) consistent with the Denmark Heritage Railway Station Precinct Concept Plan.

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# Signing page

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**EXECUTED**

2023

**THE COMMON SEAL** of **SHIRE OF DENMARK** was hereunto affixed in the presence of:

\_\_\_\_\_  
President

\_\_\_\_\_  
(Print Full Name)

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
(Print Full Name)

**THE COMMON SEAL** of **Spirit Of Play Community School T/As Kwoorabup Nature School** was hereunto affixed pursuant to the constitution of the Lessee in the presence of each of the undersigned each of whom hereby declares by the execution of this document that he or she holds the office in the Lessee indicated under his or her name-

\_\_\_\_\_  
Office Holder Sign

\_\_\_\_\_  
Office Holder Sign

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Address:

\_\_\_\_\_  
Address:

\_\_\_\_\_  
Office Held:

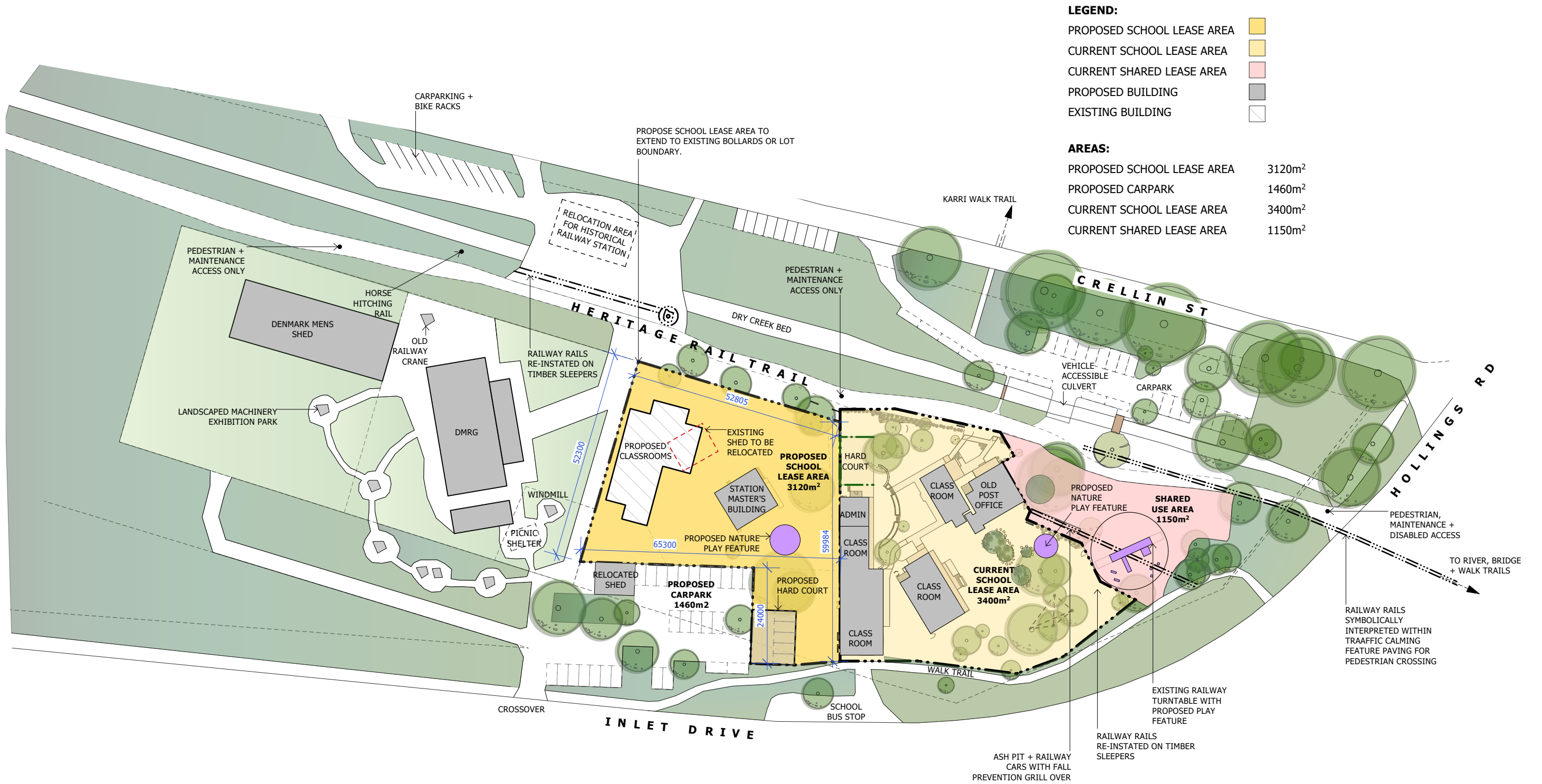
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Office Held:



# Annexure 1 – Sketch of Premises

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**LEGEND:**

- PROPOSED SCHOOL LEASE AREA
- CURRENT SCHOOL LEASE AREA
- CURRENT SHARED LEASE AREA
- PROPOSED BUILDING
- EXISTING BUILDING

**AREAS:**

PROPOSED SCHOOL LEASE AREA	3120m <sup>2</sup>
PROPOSED CARPARK	1460m <sup>2</sup>
CURRENT SCHOOL LEASE AREA	3400m <sup>2</sup>
CURRENT SHARED LEASE AREA	1150m <sup>2</sup>

## PRECINCT PLAN

Scale: 1:1000

### NOTES:

- PROPOSED SCHOOL LEASE AREA + CARPARK AT CONCEPT STAGE. SITE HAS NOT BEEN SURVEYED BY A LICENCED SURVEYOR. ALL DIMENSIONS, PROPOSED STRUCTURES + LANDSCAPING TO BE CONFIRMED.
- KWOORABUP NATURE SCHOOL'S VISION, DEVELOPMENT + USE OF THE SITE IS IN KEEPING WITH THE SHIRE APPROVED PRECINCT CONCEPT.

## Annexure 2 – Lessor’s Fixtures and Fittings

Lessor’s Fixtures and Fittings means all fixtures, fittings and equipment installed in or provided to the Premises by the Lessor at the Commencement Date or at any time during the Term, including but not limited to those items listed below:

- Old Post Office building
- Historical Turntable
- Ash Pit
- Station Masters House
- Shed

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# Annexure 3 – Consent

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