



Mildura Rural City Council

# **MINUTES**

## **Ordinary Meeting of Council**

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**5:30pm Wednesday 23 September 2020**

### **VENUE:**

**Webex Virtual Meeting Room**

### **NEXT ORDINARY MEETING OF COUNCIL**

**5:30pm Wednesday 25 November 2020**

Copies of Mildura Rural City Council's Agendas & Minutes  
can be obtained online at [www.mildura.vic.gov.au](http://www.mildura.vic.gov.au)

# INDEX

|           |  |           |
|-----------|--|-----------|
| <b>1</b>  | <b>PRAYER AND ACKNOWLEDGEMENT OF COUNTRY .....</b>                         | <b>4</b>  |
| <b>2</b>  | <b>OPENING AND WELCOME .....</b>   | <b>4</b>  |
| <b>3</b>  | <b>PRESENT.....</b>  | <b>4</b>  |
| <b>4</b>  | <b>APOLOGIES AND ABSENCES .....</b>  | <b>4</b>  |
| <b>5</b>  | <b>CONFIRMATION OF MINUTES .....</b>                                       | <b>4</b>  |
| <b>6</b>  | <b>CONFIRMATION OF COUNCIL AUSPICED MEETINGS .....</b>                     | <b>5</b>  |
| <b>7</b>  | <b>NOTIFICATION OF ABSENCE .....</b>                                       | <b>7</b>  |
| <b>8</b>  | <b>MAYORAL REPORT .....</b>  | <b>7</b>  |
| <b>9</b>  | <b>COUNCILLOR REPORTS.....</b>   | <b>7</b>  |
| <b>10</b> | <b>RESPONSES TO COUNCILLOR QUESTIONS .....</b>                             | <b>7</b>  |
| <b>11</b> | <b>QUESTIONS FROM COUNCILLORS .....</b>                                    | <b>7</b>  |
| 11.1      | CR GLENN MILNE COSTINGS FOR MILDURA SOUTH REGIONAL SPORTING PRECINCT ..... | 7         |
| 11.2      | CR GLENN MILNE KUMATORI SISTER CITY VISIT.....                             | 7         |
| 11.3      | CR GLENN MILNE RED CLIFFS TOURISM SIGNAGE .....                            | 8         |
| 11.4      | CR GLENN MILNE FUNDING FOR MILDURA SOUTH REGIONAL SPORTING PRECINCT .....  | 8         |
| 11.5      | CR GLENN MILNE MURRAYVILLE LIBRARY.....                                    | 8         |
| 11.6      | CR HELEN HEALY GREEN WASTE CONCERNS .....                                  | 9         |
| 11.7      | CR MARK ECKEL MOTOR SPORTS PRECINCT PROPOSAL.....                          | 9         |
| 11.8      | CR MARK ECKEL TOURISM SIGNAGE.....   | 10        |
| <b>12</b> | <b>NOTICES OF MOTION.....</b>  | <b>10</b> |
| <b>13</b> | <b>PETITIONS, JOINT LETTERS AND DEPUTATIONS .....</b>                      | <b>10</b> |
| <b>14</b> | <b>MANAGEMENT REPORTS.....</b>   | <b>11</b> |
| 14.1      | COMMUNITY RELIEF AND RECOVERY PLAN - COVID-19.....                         | 11        |
| 14.2      | DEVELOPMENT AND USE AGREEMENT - NICHOLS POINT PRIMARY SCHOOL.....          | 11        |
| 14.3      | CLARIFICATION OF A-DOUBLES RESOLUTION.....                                 | 48        |
| <b>15</b> | <b>URGENT BUSINESS .....</b>   | <b>50</b> |

|    |                          |    |
|----|--------------------------|----|
| 16 | COMMUNITY QUESTIONS..... | 50 |
| 17 | CLOSURE .....            | 50 |

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**SARAH PHILPOTT**

**CHIEF EXECUTIVE OFFICER**

**DRAFT**

## 1 PRAYER AND ACKNOWLEDGEMENT OF COUNTRY

The Mayor read the Council prayer and paid respects to the traditional land owners.

## 2 OPENING AND WELCOME

The Mayor welcomed Councillors, management, staff and members of the public viewing the live stream.

## 3 PRESENT

### Councillors

Cr Simon Clemence  
Cr Min Poole  
Cr Greg Brown  
Cr Anthony Cirillo  
Cr Mark Eckel  
Cr Helen Healy  
Cr Glenn Milne  
Cr Jason Modica  
Cr Gavin Sedgmen

Mayor  
Deputy Mayor

### Officers

Sarah Philpott  
Mandy Whelan  
Martin Hawson  
Chris Parham  
Richard Sexton

Chief Executive Officer  
General Manager Development  
General Manager Community  
General Manager Corporate  
Manager Corporate Administration

## 4 APOLOGIES AND ABSENCES

Nil

## 5 CONFIRMATION OF MINUTES

2020/0210

Moved: Cr Gavin Sedgmen  
Seconded: Cr Anthony Cirillo

That the Minutes of the Ordinary Meeting of Council held on Wednesday 26 August 2020 be confirmed as a correct record.

That the Minutes of the Confidential Meeting of Council held on Wednesday 26 August 2020 be confirmed as a correct record.

**CARRIED**

## 6 CONFIRMATION OF COUNCIL AUSPICED MEETINGS

In accordance with Section 80A of the *Local Government Act 1989* (the Act), records of Assemblies of Councillors must be reported at the next practicable Council meeting and recorded in the minutes.

An Assembly of Councillors is defined in Section 76AA of the Act as a meeting at which matters are considered that are intended or likely to be the subject of a Council decision or the exercise of a delegated authority and which is either of the following:

- A meeting of an advisory committee where at least one Councillor is present; or
- A planned or scheduled meeting that includes at least half the Councillors and at least one Council officer.

The record is therefore presented for Council's noting.

2020/0211

**Moved:** Cr Min Poole  
**Seconded:** Cr Helen Healy

**That Council note the Assembly of Councillor records for the following meetings:**

- Council Planning Forum - 24 August 2020
- COVID-19 Briefing - 28 August 2020
- Finance Advisory Committee Meeting - 9 September 2020
- Council Forum - 9 September 2020
- COVID-19 Briefing - 11 September 2020

**CARRIED**

## RECORD OF ASSEMBLIES OF COUNCILLORS

| Assembly Details  | Councillor Attendees   | All Other Attendees   | Matters Discussed   | Conflict of Interest Disclosures |
|---|--|---|---|----------------------------------|
| Council Planning Forum<br>24 August 2020<br>(via Webex)               | Cr Clemence<br>Cr Poole<br>Cr Eckel<br>Cr Healy<br>Cr Milne<br>Cr Modica<br>Cr Sedgmen             | Sarah Philpott, Chief Executive Officer<br>Mandy Whelan, General Manager Development<br>Andrew Millen, Manager Development Services<br>Damien Sutton, Statutory Planning Coordinator<br>Tim Berger, Senior Statutory Planner<br>Andrea Collins, Senior Town Planner         | 1. Planning Application 005.2019.00000332.001<br>2. Planning Application 005.2020.00000132.003  | Nil                              |
| COVID-19 Briefing<br>28 August 2020<br>(via Skype)                    | Cr Clemence<br>Cr Poole<br>Cr Eckel<br>Cr Healy<br>Cr Modica<br>Cr Sedgmen                         | Sarah Philpott, Chief Executive Officer<br>Martin Hawson, General Manager Community<br>Richard Sexton, Acting General Manager Corporate   | 1. COVID-19 – various matters   | Nil                              |
| Finance Advisory Committee Meeting<br>9 September 2020<br>(via Webex) | Cr Clemence<br>Cr Poole<br>Cr Cirillo  | Chris Parham, General Manager Corporate<br>Mandy Whelan, General Manager Development<br>Mark McMillan, Manager Financial Services   | 1. Confidential Matter<br>2. Confidential Matter<br>3. Confidential Matter  | Nil                              |
| Council Forum<br>9 September 2020<br>(via Webex)                      | Cr Clemence<br>Cr Poole<br>Cr Brown<br>Cr Cirillo<br>Cr Eckel<br>Cr Healy<br>Cr Milne<br>Cr Modica | Sarah Philpott, Chief Executive Officer<br>Chris Parham, General Manager Corporate<br>Mandy Whelan, General Manager Development<br>Martin Hawson, General Manager Community<br>Richard Sexton, Manager Corporate Administration<br>Ben Piscioneri, Public Relations Officer | 1. Mildura South Regional Sporting Precinct Project Update<br>2. Development and Use Agreement - Nichols Point Primary School<br>3. Draft Library Service Strategy 2020-2025<br>4. Community Relief and Recovery Plan<br>5. Red Cliffs Heritage Walk<br>6. Princes Court Homes Land Acquisition<br>7. Mildura Riverfront Project - VicTrack Land<br>8. A Doubles (Road Trains)<br>9. Monthly Management Report<br>10. Councillor Issues & Questions<br>11. CEO Issues | Nil                              |

## 7 NOTIFICATION OF ABSENCE

Nil

## 8 MAYORAL REPORT

Nil

## 9 COUNCILLOR REPORTS

Nil

Cr Mark Eckel acknowledged the passing of Mary Chandler and her vast contribution to the Sunraysia community.

## 10 RESPONSES TO COUNCILLOR QUESTIONS

Nil

## 11 QUESTIONS FROM COUNCILLORS

### 11.1 CR GLENN MILNE COSTINGS FOR MILDURA SOUTH REGIONAL SPORTING PRECINCT

**File Number: PROJ/500270**

*"What is the expected completed cost, including Stage 2, for the Mildura South Sporting Complex?"*

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Martin Hawson, General Manager Community advised that the current budget for Stage 1 is \$31.6 million, with an additional \$1.58 million from the netball/cricket lighting project, bringing the total to \$33.2 million. Mr Hawson further advised that Council is currently advocating for \$10 million from the state government for Stage 2 of the project.

### 11.2 CR GLENN MILNE KUMATORI SISTER CITY VISIT

**File Number: 02/03/03**

*"Have we had a recent discussion with Kumatori regarding the Sister City visits and what will happen in 2021?"*

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Chris Parham, General Manager Corporate advised that Kumatori made contact with Council earlier this calendar year and requested that their August 2020 visit be postponed due to COVID-19. Mr Parham further advised that Mildura and Kumatori have committed to making contact early in the new calendar year to see if it is appropriate to schedule a visit around August 2021.

**11.3 CR GLENN MILNE RED CLIFFS TOURISM SIGNAGE****File Number: 14/02/07**

*“Donata Carrazza asked me recently for directions to the Red Cliffs cliffs, because there is no signage showing the way. Can I ask again why there is no sign on the highway to direct people to the Red Cliffs cliffs?”*

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Mandy Whelan, General Manager Development advised that Council has put together a working group including Regional Roads Victoria and Mildura Regional Development to look at tourism signage across the municipality because it has to meet certain standards. It had been agreed that the Red Cliffs cliffs signage would be part of a holistic approach to review tourism signage for Red Cliffs, and that it would be used as a trial for updating tourism signage across the municipality.

Ms Whelan further advised that this was proposed as a new initiative in the 2020-2021 Budget, but it was not funded. The plan to review the signage is still there, but it needs to be funded.

**11.4 CR GLENN MILNE FUNDING FOR MILDURA SOUTH REGIONAL SPORTING PRECINCT****File Number: PROJ/500270**

*“Warrnambool have just been given \$10 million for their sporting ground from the state government. Do we have an update on \$10 million for our sporting ground?”*

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Martin Hawson, General Manager Community advised that Council's \$10 million will hopefully be in the state budget announced soon, however it is up to the state government if they choose to fund it. Due to Council's advocacy efforts on the matter, the state government would be well aware of Council's requirement for the \$10 million, so it will hopefully be forthcoming in the budget.

**11.5 CR GLENN MILNE MURRAYVILLE LIBRARY****File Number: PROJ/500254**

*“Do we know when the Murrayville Library will open?”*

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Martin Hawson, General Manager Community advised that Council is awaiting the arrival of defibrillators to receive approval of the building permit. The library is not allowed to operate under the current COVID-19 restrictions, but hopefully the easing of restrictions will coincide with the works being completed. Mr Hawson further advised that a remote service is being provided to Mallee Track residents in the interim.



## 11.6 CR HELEN HEALY GREEN WASTE CONCERNS

**File Number: 15/05/02**

*"I have a constituent question. Why do we allow contamination in our green waste? Why do we not monitor what comes in? Why do we use contaminated green waste as a dust suppression when it generally creates its own dust and has harmful particles that have been mixed in during the mulching process? Why don't we use spray on dust suppression methods (used throughout the world and easy to use)? And why can't residents access mulch from the tip?"*

Mandy Whelan, General Manager Development advised that as of 6 July 2020, garden waste that is dropped off by residents is no longer processed onsite at the Mildura landfill, and is therefore no longer being used for dust suppression. There is now a Cleanaway staff member monitoring green waste that is being dropped off, before being transported to Cleanaway's offsite processing location.

Ms Whelan further advised that in the future, Council will be undertaking dust suppression via spray control methods. In accordance with the contract, the garden waste product is being sent to an offsite processing location along with what is collected in the kerbside organics system, and does not come back to the Mildura landfill, meaning that residents can no longer access mulch at the landfill.

Additionally, Ms Whelan noted that there is excellent product produced as a result, which can be purchased and re-used.

Cr Healy further asked:

*"Why can't residents access mulch from the tip that is free, as per most other landfills around the country?"*

Mandy Whelan, General Manager Development advised that this is because mulch is not produced at the landfill and is therefore not available.

## 11.7 CR MARK ECKEL MOTOR SPORTS PRECINCT PROPOSAL

**File Number: 13/10/08**

*"Can we have an update, if there is an update, on the Platinum Group? I think they were given a \$150,000 grant from the state government to proceed and look for private investment into the motor sports precinct. Can we have a report on how that's going and if there's any progress?"*

Martin Hawson, General Manager Community advised that the \$150,000 was an election budget allocation through Regional Development Victoria, to facilitate the development of funding brokerage for the project. Mr Hawson further advised that there is no further update on the grant allocation as the state government is still considering Platinum Group's proposal. Therefore the interest expressed by Platinum Group through Council's Expression of Interest process is still pending.

**11.8 CR MARK ECKEL TOURISM SIGNAGE****File Number: 14/02/07**

*“Is Council aware of the push, for numerous years now, for the Oasis and Murray Outback signage to be taken down from the skins around our region? They are about 20 years old now. Just asking whether that is part of the overall audit process.”*

Mandy Whelan, General Manager Development advised that it has been discussed as part of the working group, but Council is still waiting to hear back from other authorities in regard to those signs.

**12 NOTICES OF MOTION**

Nil

**13 PETITIONS, JOINT LETTERS AND DEPUTATIONS**

Nil

## 14 MANAGEMENT REPORTS

### 14.1 COMMUNITY RELIEF AND RECOVERY PLAN - COVID-19

#### Summary

The purpose of this report is to present the Community Relief and Recovery Plan COVID-19 (The Plan) for information. The plan includes Mildura Rural City Council's (MRCC) overall role and approach to relief and recovery planning from the pandemic, and specific high level action plans for the Economic and Social environments and planning for the foundations of recovery.

2020/0212

**Moved:** Cr Min Poole  
**Seconded:** Cr Gavin Sedgmen

That Council note the Community Relief and Recovery Plan COVID-19 for information.

**CARRIED**

### 14.2 DEVELOPMENT AND USE AGREEMENT - NICHOLS POINT PRIMARY SCHOOL

#### Summary

The purpose of this report is to present the Draft Development and Use Agreement between the Minister for Education, the Nichols Point Primary School Council and Mildura Rural City Council to Councillors and seek endorsement for the signing of the agreement.

2020/0213

**Moved:** Cr Helen Healy  
**Seconded:** Cr Glenn Milne

That Council endorse the execution of the Development and Use Agreement as presented, between the Minister for Education, the Nichols Point Primary School Council and Mildura Rural City Council.

**CARRIED**

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**The Minister for Education**  
Minister

**The Nichols Point Primary School Council**  
School Council

**Mildura Rural City Council**  
City Council

**Development and Use Agreement**



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Nichols Point DUA Exe as at May 2020

**Table of Contents**

|                |   |           |
|----------------|---|-----------|
| <b>1.....</b>  | <b>Definitions and interpretation .....</b>                           | <b>1</b>  |
| 1.1            | Definitions .....   | 1         |
| 1.2            | Interpretation .....  | 4         |
| <b>2.....</b>  | <b>Necessary approvals .....</b>                                      | <b>5</b>  |
| <b>3.....</b>  | <b>Nature of rights granted .....</b>                                 | <b>5</b>  |
| 3.1            | Grant of Licence .....  | 5         |
| 3.2            | No Proprietary Rights .....   | 5         |
| <b>4.....</b>  | <b>Contributions towards the construction of the Facility .....</b>   | <b>6</b>  |
| 4.1            | Contributions .....   | 6         |
| 4.2            | Tendering .....   | 6         |
| <b>5.....</b>  | <b>Construction obligations of the School Council .....</b>           | <b>6</b>  |
| 5.1            | General obligations.....  | 6         |
| 5.2            | Insurance .....   | 7         |
| 5.3            | Legal obligations .....   | 7         |
| <b>6.....</b>  | <b>Construction obligations of Minister and the City Council.....</b> | <b>7</b>  |
| 6.1            | Payment of Construction Contributions.....                            | 7         |
| <b>7.....</b>  | <b>Matters prior to Practical Completion .....</b>                    | <b>7</b>  |
| 7.1            | No early termination .....  | 7         |
| 7.2            | Destruction of the Facility .....                                     | 7         |
| 7.3            | Certificate of Practical Completion.....                              | 7         |
| <b>8.....</b>  | <b>Repayments to Parties .....</b>                                    | <b>8</b>  |
| <b>9.....</b>  | <b>Licence Term and Licence Fee .....</b>                             | <b>8</b>  |
| 9.1            | Licence.....  | 8         |
| 9.2            | Licence Fee.....  | 8         |
| 9.3            | Initial Term of the Agreement .....                                   | 8         |
| 9.4            | Further Term of the Agreement .....                                   | 8         |
| 9.5            | Renewal process.....  | 8         |
| <b>10.....</b> | <b>Use of the Facility .....</b>                                      | <b>9</b>  |
| 10.1           | Matters relating to use .....   | 9         |
| 10.2           | The School Council reserves rights .....                              | 9         |
| 10.3           | Entry.....  | 9         |
| <b>11.....</b> | <b>Capital Reserve Account.....</b>                                   | <b>9</b>  |
| 11.1           | Account .....   | 9         |
| 11.2           | Contributions .....   | 10        |
| 11.3           | Interest .....  | 10        |
| 11.4           | Withdrawal .....  | 10        |
| 11.5           | Deficit .....   | 10        |
| 11.6           | Surplus at termination.....   | 10        |
| <b>12.....</b> | <b>Business and Other Plans.....</b>                                  | <b>10</b> |
| 12.1           | Rolling Plans .....   | 10        |
| 12.2           | Endorsement.....  | 11        |
| 12.3           | Dispute .....   | 11        |
| 12.4           | Endorsement by Default .....  | 11        |

|            |  |           |
|------------|--|-----------|
| <b>13.</b> | <b>Obligations of the City Council</b>   | <b>11</b> |
| 13.1       | General obligations  | 11        |
| 13.2       | Financial responsibility   | 12        |
| 13.3       | City Council's insurance   | 12        |
| 13.4       | Not to void insurance  | 13        |
| 13.5       | Damage to the Facility caused by negligence, gross negligence or wilful misconduct | 13        |
| 13.6       | Damage to the Facility not covered by insurance                                    | 13        |
| 13.7       | Dispute mechanism  | 14        |
| 13.8       | Reinstating Facility to original state   | 14        |
| 13.9       | Failure to comply  | 14        |
| <b>14.</b> | <b>Obligations of the School Council</b>   | <b>15</b> |
| 14.1       | Maintenance obligations of the School Council                                      | 15        |
| 14.2       | Financial obligations of the School Council  | 15        |
| 14.3       | Hiring obligations   | 15        |
| 14.4       | Minister's and School Council's insurance  | 16        |
| <b>15.</b> | <b>Management</b>  | <b>16</b> |
| <b>16.</b> | <b>Breach of the Agreement</b>   | <b>17</b> |
| 16.1       | The School Council's right to require the City Council to correct breach           | 17        |
| <b>17.</b> | <b>Disputes</b>  | <b>17</b> |
| 17.1       | Notice of dispute  | 17        |
| 17.2       | Mediation  | 17        |
| 17.3       | Expert   | 17        |
| 17.4       | Expert's power   | 17        |
| 17.5       | Performance of obligations pending resolution of dispute                           | 18        |
| 17.6       | Right to arbitrate   | 18        |
| <b>18.</b> | <b>Termination</b>   | <b>18</b> |
| 18.1       | Minister requires Land   | 18        |
| 18.2       | Destruction of Facility  | 19        |
| <b>19.</b> | <b>Minister's options on termination</b>   | <b>19</b> |
| 19.1       | Options  | 19        |
| 19.2       | Dispute  | 19        |
| 19.3       | Agreement to remain in force   | 20        |
| 19.4       | Dispute mechanism  | 20        |
| 19.5       | Compensation   | 20        |
| <b>20.</b> | <b>Notices</b>   | <b>21</b> |
| 20.1       | Method of giving Notices   | 21        |
| 20.2       | Address for Notices  | 21        |
| 20.3       | New address  | 21        |
| 20.4       | Time of receipt  | 21        |
| <b>21.</b> | <b>Disposal</b>  | <b>21</b> |
| 21.1       | Minister may deal with interests   | 21        |
| 21.2       | Dissolution of School Council  | 22        |

|          |                                    |    |
|----------|------------------------------------|----|
| 22. .... | Governing law .....                | 22 |
| 23. .... | Variations .....                   | 22 |
| 24. .... | Waivers .....                      | 22 |
| 25. .... | Further acts .....                 | 22 |
| 26. .... | Confidentiality .....              | 22 |
| 27. .... | Conflict of interest .....         | 22 |
| 28. .... | Entire agreement .....             | 23 |
| 29. .... | Counterparts .....                 | 23 |
| 30. .... | Costs .....                        | 23 |
| 31. .... | Assignment .....                   | 23 |
| 32. .... | Acting on behalf of Minister ..... | 23 |
| 33. .... | GST .....                          | 23 |
| 34. .... | Relationship of the parties .....  | 24 |
|          | Schedule .....                     | 25 |
|          | Annexure A .....                   | 31 |

### This Development and Use Agreement made on the date stated in Item 1 of the Schedule

**Parties**

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

**The Nichols Point Primary School Council** of 110, Koorlong Avenue, Nichols Point, Victoria 3501 ("School Council")

**Mildura Rural City Council** of 108-116 Madden Avenue, Mildura, Victoria 3502 ("City Council")

### Recitals

- A. The Minister is a responsible Minister under the Act.
- B. The School Council is a body corporate under the Act.
- C. The City Council is a body corporate under the *Local Government Act* 1989 (Vic).
- D. The Land is used for the purposes of the School, being a "Government school" within the meaning of the Act.
- E. The School Council has agreed to build the Facility, and the City Council has agreed to contribute towards the cost of building the Facility, subject to and upon the terms and conditions of this Agreement.
- F. The Minister, School Council and the City Council agree that from the Date of the Agreement, the Use Provisions will become effective for the purpose of regulating the use of the Facility.
- G. The Facility forms part of the relocation of the Nichols Point Primary School developed by the Minister and the School Council ("the Project").
- H. The School Council is responsible for the Project and has entered into a construction contract for the Project including the construction of the Facility.

### The Parties agree

## 1. Definitions and interpretation

### 1.1 Definitions

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

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

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

"Agreement" means this Development and Use Agreement including the Annexures and Schedules.

"Building Works Contract" means the building works contract entered into by the School Council and the Contractor for the construction of the Facility.



**"Capital Expenditure"** means expenditure on new works or upgrade works in relation to the Facility.

**"Capital Reserve"** means the unexpended sum from time to time of all Capital Reserve Amounts within the Capital Reserve Account.

**"Capital Reserve Account"** means an interest bearing account established under clause 11.

**"Capital Reserve Amount"** means the contribution made under clause 11.

**"Certificate of Practical Completion"** has the meaning given to that term under the Building Works Contract.

**"City Council Maintenance Contribution"** means the amount payable by the City Council to the School Council under clause 13.2(c) and as specified in Item 14 of the Schedule as a contribution towards maintenance and operating costs of the Facility (excluding Capital Expenditure).

**"CPI"** means the All Groups Consumer Price Index number published by the Australian Bureau of Statistics or, if the All Groups Consumer Price Index number ceases to be published, the nearest equivalent economic indicator.

**"Construction Contributions"** means the financial contributions of the Minister, the School Council and the City Council towards the cost of constructing the Facility.

**"Construction Costs"** means the amount specified in Item 7 of the Schedule, being the estimated costs of constructing the Facility at the Date of the Agreement.

**"Contractor"** has the meaning given to it under the Building Works Contract.

**"Date of the Agreement"** means the date in Item 1 of the Schedule.

**"Date of Practical Completion"** has the meaning given to that term under the Building Works Contract.

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

**"Facility"** means the facility as described in Item 2 in the Schedule and shown on Plan 1 (the building located within the red square) and on Plan 2.

**"Further Term"** means the period by which the Agreement is extended (if at all) under clause 9.4.

**"Government Agency"** means a body or person charged with the administration of any Law.

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

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

**"Hours of Use of the Facility"** means the hours set out in Item 11 of the Schedule.

**"Initial Term"** means the period specified in Item 9 of the Schedule.

**"Input Tax Credit"** has the meaning given to it in the GST Legislation.

**"Land"** means the whole of the land marked with a red border on Plan 1.

**"Law"** means any legislation and includes any subordinate legislation, ordinances, by-laws, regulations, rules, other statutory instruments issued and orders made under that legislation.

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

**"Permitted Purposes"** means the use of the Facility as specified in Item 3 of the Schedule or as amended and agreed to by the School Council from time to time and notified in writing to the City Council.

**"Plan 1"** and **"Plan 2"** means the plans annexed as Annexure A.

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

**"Project"** means the relocation of the School being developed by the Minister and the School Council.

**"School"** means the School described in Item 4 of the Schedule.

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

**"School Hours"** means, in respect of a School Day, the hours as set out under Item 5 of the Schedule.

**"Specifications"** means the plans and specifications for the construction of the Facility contained in or referred to in the Building Works Contract.

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

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

**"Taxable Supply"** has the meaning given to it in the GST Legislation.

**"Term"** means:

- (a) the term of this Agreement, comprising the Initial Term and the Further Term; or
- (b) if this Agreement is terminated prior to the end of the Initial Term or the Further Term (as the case may be), the period up to and including the date of such termination.

**"Valuer-General"** means the holder of the office of Valuer General under the *Valuation of Land Act 1960*.

**"Variation"** has the meaning given to that term in the Building Works Contract.

## 1.2 Interpretation

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

- (a) a reference to any legislation or legislative provision:
  - (i) includes any statutory modification or re-enactment of, or legislative provision substituted for that legislation or legislative provision; and
  - (ii) includes any subordinate legislation, ordinances, by-laws, regulations, rules, other statutory instruments issued and orders made under that legislation or legislative provision;
- (b) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (c) any marginal notes or headings are included for convenience and will not affect the interpretation of this Agreement;
- (d) a reference to any party to this Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (e) the singular includes the plural and vice versa;
- (f) words denoting any gender include all genders;
- (g) if any day specified by this Agreement falls on a Saturday, Sunday or a day appointed under the *Public Holidays Act 1993* (Vic) as a holiday for the whole day, that day will be the next day following the specified day which is not a Saturday, Sunday or day appointed under the *Public Holidays Act 1993* (Vic);
- (h) a reference to this Agreement includes any schedule, annexure, special conditions or attachment to it;
- (i) a reference to a recital, clause, subclause, paragraph, schedule, annexure or attachment is to a recital, clause, subclause, paragraph, schedule, annexure or attachment of or to this Agreement;
- (j) a reference to this Agreement or to any deed, agreement, document or instrument includes a reference to such documents as amended, novated, supplemented, varied, altered or replaced from time to time;
- (k) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government body and vice versa;
- (l) a reference to any thing is a reference to the whole and each part of it;
- (m) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (n) a reference to "dollars" or "\$" is reference to Australian currency;
- (o) the terms "including" and "include" are not terms of limitation;
- (p) a reference to a matter being "to the knowledge" of a person means that the matter is to the best of the knowledge and belief of that person after making

reasonable enquiries in the circumstances;

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## 2. Necessary approvals

- (a) The Minister approves, pursuant to sections 2.3.12(1) and 5.2.7(5) of the Act:
  - (i) the School Council entering into this Agreement;
  - (ii) the School Council authorising, subject to and for the purposes of this Agreement and subject to such conditions as the School Council considers appropriate, use of the Facility by members of the local community for their benefit; and
  - (iii) the construction of the Facility on the Land in accordance with the Specifications.
- (b) The City Council confirms that it has obtained, at its own cost, all the necessary approvals and consents required under the *Local Government Act 1989* (Vic) to enable it to enter into this Agreement and to comply with its obligations.

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## 3. Nature of rights granted

### 3.1 Grant of Licence

The Minister and the School Council grant a licence to:

- (a) the City Council and its servants and agents; and
- (b) the Contractor and its servants and agents,

to enter upon the Land and to do all such things as may be necessary to carry out their obligations under this Agreement and the Building Works Contract in relation to the construction of the Facility.

### 3.2 No Proprietary Rights

- (a) The rights conferred by this Agreement:
  - (i) will rest in contract only; and
  - (ii) will not create in or confer or grant upon or in the School Council or the City Council or any other person (either jointly or severally) any estate, or any tenancy or interest whatsoever in the Facility or otherwise create any estate or interest in the Land.
- (b) The parties acknowledge that:
  - (i) the use of the Facility by the City Council and members of the public will not be exclusive and will be subject to the provisions of this Agreement; and
  - (ii) the right to exclusive possession of the Facility shall remain with the State of Victoria.

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#### 4. Contributions towards the construction of the Facility

##### 4.1 Contributions

- (a) The Minister has contributed towards the cost of the Facility by contributing the Land.
- (b) The Minister, the School Council and the City Council have contributed towards the cost of constructing the Facility in accordance with the amounts, if any, as specified in Item 6 of the Schedule ("**Construction Contributions**").
- (c) The Construction Contributions are to be exclusive of any GST payable.

##### 4.2 Tendering

- (a) The School Council has complied with all Laws as well as ministerial directions, government policies and other requirements, including, but not limited to those:
  - (i) published by the Building Commission and required under the *Project Development and Construction Management Act 1994* (Vic);
  - (ii) published by the Victorian Government Purchasing Board and required under the *Financial Management Act*;
- (b) For the purposes of sub-paragraph (a), in the event that a ministerial direction conflicts with a supply policy within the meaning of the *Financial Management Act 1994* (Vic), the ministerial direction will prevail.
- (c) The City Council has ensured that the full amount of its contribution towards the cost of constructing the Facility pursuant to clause 4.1 complied with any tendering requirements or quality and cost standards set out under the *Local Government Act 1989* (Vic).

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#### 5. Construction obligations of the School Council

##### 5.1 General obligations

The School Council is responsible:

- (a) for the construction of the Facility;
- (b) for ensuring the construction of the Facility was commenced, carried out and completed in accordance with the provisions of the Building Works Contract; and
- (c) for doing all acts, matters and things which a reasonably prudent proprietor in similar circumstances would do in relation to enforcing the terms of the Building Works Contract and ensuring that the rights and entitlements of the principal (as defined in the Building Works Contract) are exercised in a proper and timely manner including all procedures in relation to any Variations.

**5.2 Insurance**

The School Council confirms:

- (a) the provisions of the Building Works Contract, in relation to the construction of the Facility, included the insurance requirements as specified in Item 8 (a), (b) and (c) of the Schedule; and
- (b) That where volunteer workers were used for the Construction of the Facility each party providing such workers obtained insurance as specified in Item 8 (d) of the Schedule.

**5.3 Legal obligations**

The School Council confirms that it has, at its own cost, complied with all Laws, authorisations and agreements capable of application to the design and construction of the Facility, including:

- (a) all necessary permits and approvals under the *Planning and Environment Act* 1987 (Vic) and the *Building Act* 1993 (Vic); and
- (b) the Code of Practice for the Building and Construction Industry prepared by the Minister responsible for administering the *Project Development and Construction Management Act* 1994 (Vic).

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**6. Construction obligations of Minister and the City Council****6.1 Payment of Construction Contributions**

- (a) The Minister and the City Council confirm that they have each made payment on account of their Construction Contributions (if any) and any additional costs payable in such amounts as required under this Agreement.

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**7. Matters prior to Practical Completion****7.1 No early termination**

No party will be entitled to terminate this Agreement for breach by any other party at any time after the Building Works Contract has been executed and before the Certificate of Practical Completion is issued under the Building Works Contract.

**7.2 Destruction of the Facility**

If any part or the whole of the Facility is destroyed or damaged before the Date of Practical Completion, all money received, as insurance proceeds will be applied towards the reconstruction or reinstatement of the Facility.

**7.3 Certificate of Practical Completion**

- (a) The School Council must notify the Minister and the City Council in writing that Practical Completion has been achieved.
- (b) The School Council will, within 7 days of receiving the Certificate of Practical Completion, provide the Minister and the City Council with a copy of the Certificate of Practical Completion.

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**8. Repayments to Parties**

If the School Council:

- (a) receives a payment representing in whole or in part the Minister's or the City Council's Construction Contribution; and
  - (b) for any reason is not required to pay that amount or part of that amount to the contractor under the Building Works Contract,
- the School Council will:
- (c) refund that amount or part of that amount to the Minister or the City Council ; and
  - (d) not pay interest to the Minister or the City Council, unless interest has accrued on such money (in which case, such interest will be paid in full)

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**9. Licence Term and Licence Fee****9.1 Licence**

The Minister and the School Council grant a licence to the City Council to use the Facility, subject to and upon the terms and conditions of this Agreement.

**9.2 Licence Fee**

The Licensee will pay to the School Council the annual Licence Fee as specified in Item 9A of the Schedule annually if demanded.

**9.3 Initial Term of the Agreement**

The Initial Term of the Agreement shall be for that period specified in Item 9 of the Schedule and will run from the Date of the Agreement.

**9.4 Further Term of the Agreement**

The City Council may give notice to the School Council not earlier than 12 months and not later than three months before the expiration of the Initial Term of the Agreement requesting a renewal of the Agreement for a further period, not exceeding the Further Term specified in 0 of the Schedule.

**9.5 Renewal process**

After receipt of a notice given under clause 9.4, the School Council will consult with the Minister regarding the request for renewal and as soon as practicable the School Council will give notice to the City Council, either that:

- (a) the Minister and the School Council have no objection to a renewal of the Agreement for the specified period, in which event the Agreement will be deemed to be renewed from the expiry of the Initial Term for the Further Term on the same terms and conditions (other than clause 9.4 or this clause 9.5); or
- (b) the Minister and School Council have formed the opinion that the Agreement should not be renewed in which case the Agreement will terminate at the end of

the Initial Term.

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## **10. Use of the Facility**

### **10.1 Matters relating to use**

- (a) The School Council shall have priority usage of the Facility during School Hours.
- (b) The School Council and the City Council must in good faith negotiate the use of the Facility by the School Council during school holiday periods.
- (c) The School Council may use the Facility, or a part of it, free of charge outside School Hours on up to 20 occasions per year at such times to be agreed with the City Council on or before 30 June each year.
- (d) Use of the Facility must not conflict with any curriculum initiatives of the School undertaken during School Hours.
- (e) The School Council and the City Council will encourage use of the Facility by community groups outside School Hours for the Permitted Purposes within the Hours of Use of the Facility specified in Item 11 of the Schedule, such use to be administered by the School Council.
- (f) If the City Council wishes to use the Facility, it may do so outside School Hours with the prior written approval of the School Council, such written approval to state the manner, conditions and payment of the fees (if any) for such use.
- (g) Use of the Facility is subject to compliance with all applicable permits and laws relevant to that party's use of the Facility.

### **10.2 The School Council reserves rights**

The Minister and the School Council reserve the right to undertake any works and take any other steps which are necessary to comply with any Law or to ensure the safe and proper use of the Facility and the Land.

### **10.3 Entry**

Except in any emergency or whether the parties have otherwise agreed in writing, the Minister or the School Council must exercise the rights set out in clause 10.2:

- (a) at a reasonable time; and
- (b) in a way which seeks, so far as is reasonably practicable, to minimise any interference with the use of the Facility by the City Council and community groups.

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## **11. Capital Reserve Account**

### **11.1 Account**

The School Council will establish and maintain the Capital Reserve Account.



**11.2 Contributions**

- (a) Subject to clause 11.2(b), the School Council and the City Council will each contribute annually to the Capital Reserve Account the amount specified in Item 13 of the Schedule (**Capital Reserve Amount**), commencing on 30 June 2020.
- (b) On 30 June 2021 and 30 June of each year of the Term thereafter, the Capital Reserve Amount payable by the School Council and the City Council will be increased by CPI. If there has been no increase in the CPI during the period, then the Capital Reserve Amount will remain the same.

**11.3 Interest**

Interest accruing on the Capital Reserve will be credited to the Capital Reserve Account.

**11.4 Withdrawal**

The School Council:

- (a) will only use the funds from the Capital Reserve Account:
  - (i) in accordance with the Business Plans prepared under clause 12; and
  - (ii) for Capital Expenditure;
- (b) will not be required to spend all money paid into the Capital Reserve Account during a year in that year.

**11.5 Deficit**

The School Council will not budget for a deficit. In the event that the Capital Reserve is insufficient, and additional funds are required in order to implement a capital works plan prepared and endorsed under clause 12, the School Council will contribute to the Capital Reserve Account such amount as is required to implement the plan and ensure that the Capital Reserve Account is not in deficit.

**11.6 Surplus at termination**

Any balance in the Capital Reserve Account at the termination or expiry of this Agreement is to remain with the School Council.

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**12. Business and Other Plans****12.1 Rolling Plans**

Within 3 months of the Date of Practical Completion of the Facility the School Council will prepare, and not later than 30 June annually will update, in relation to the Facility:

- (a) a 5-year rolling business plan;
- (b) a 5-year rolling capital works plan and Capital Expenditure plan taking into account, amongst other things, the Capital Reserve Amount; and
- (c) a 5-year rolling asset maintenance and management plan;

("Business Plans").

**12.2 Endorsement**

- (a) Not later than 30 days after preparation or updating of the Business Plans, the School Council shall request endorsement of the Business Plans by the City Council.
- (b) Not later than 60 days after receiving a request for endorsement under clause 12.2(a), the City Council will either:
  - (i) notify the School Council in writing of its endorsement; or
  - (ii) notify the School Council in writing that it will not endorse the Business Plans, providing its reasons for doing so and reasonable requests to amend the Business Plans.
- (c) Not later than 30 days after receiving a request from the City Council under clause 12.2(b)(ii) to amend the Business Plans, the School Council will amend the Business Plans as reasonably requested by the City Council and resubmit to the City Council who shall endorse the Business Plans as soon as practicable after receipt of the amended Business Plans.
- (d) Nothing in this clause shall be construed as imposing on the City Council any obligation to provide any funds in addition to those specified in the Schedule to meet the business plans notwithstanding any approval of the business plans by the City Council.

**12.3 Dispute**

If the School Council does not agree to a request by the City Council to amend the Business Plans under clause 12.2(b)(ii), the School Council shall issue a notice of a dispute under clause 17.

**12.4 Endorsement by Default**

Any Business Plans in respect of which the City Council does not respond in accordance with clause 12.2 will, upon the School Council giving 14 days' written notice to the City Council of its intention to invoke this subclause, be deemed to have been endorsed by the City Council.

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**13. Obligations of the City Council****13.1 General obligations**

If the City Council uses the Facility in accordance with clause 10.1(f), the City Council must:

- (a) not permit it to be used other than for the Permitted Purposes;
- (b) leave the Facility and any equipment, fixtures and fittings on or in the Facility in a clean and tidy condition after each use;
- (c) not cause any injury or nuisance to neighbours or other users of the School or the Facility;
- (d) at its own cost, comply with and observe all relevant Laws capable of application to the Land or to the operation of the Facility or any Laws that

affect this Agreement or anything done or to be done under it, or that relates to the City Council's occupation or use of the Facility;

- (e) comply with all Department policies or guidelines which deal with the safety or health of persons in buildings on its premises or otherwise under its control;
- (f) obey all rules from time to time made by the School Council with regard to the management of the School and the Facility;
- (g) enter or leave the Facility only by the route, and park its motor vehicles in the area, nominated by the School Council;
- (h) at the request of the Principal, cease any action which in the opinion of the Principal endangers the School's students or property;
- (i) observe fire precautions;
- (j) ensure that all external doors and windows at the Facility are secured and locked and all lights, heating and cooling are turned off when leaving the Facility; and
- (k) at all times exercise due care, skill and judgement and act with the utmost good faith.

### **13.2 Financial responsibility**

- (a) The City Council will be responsible for paying its annual contribution to the Capital Reserve Account in accordance with clause 11.2 and Item 13 of the Schedule.
- (b) The City Council will be responsible for paying costs of entering into and maintaining insurances under clause 13.3.
- (c) The City Council will be responsible for paying the City Council Maintenance Contribution as specified in Item 14 of the Schedule as adjusted pursuant to this clause 13.2.
- (d) Commencing on 30 June 2020 and annually thereafter, the City Council shall pay the City Council Maintenance Contribution to the School.
- (e) On 30 June 2021 and 30 June of each year thereafter, the City Council Maintenance Contribution shall be adjusted:
  - (i) by agreement between the School Council and the City Council; or
  - (ii) if the parties fail to reach agreement under (i) above, in accordance with changes in the CPI since the last payment date;

and will apply on and from that anniversary day inclusive.

### **13.3 City Council's insurance**

The City Council will:

- (a) enter into and maintain at all times during the Term the insurances set out under Item 12 of the Schedule; and

- (b) promptly, on request by the School Council, produce for inspection by the School Council those policies of insurance.

#### **13.4 Not to void insurance**

The City Council must not do or permit any act, matter or thing to be done which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance of the School Council or any other person.

#### **13.5 Damage to the Facility caused by negligence, gross negligence or wilful misconduct**

- (a) The City Council is responsible for damage to the Facility or any plant, fixtures and equipment located in the Facility caused entirely or substantially by the negligence, gross negligence or wilful misconduct of the City Council, its employees and agents or any person or persons for whom the City Council is responsible, excluding hirers of the Facility. The City Council will reimburse the School Council for any costs incurred by it in respect of such damage within 28 days of receipt of a written notice from the School Council to the City Council specifying the damage and the cost of repair.
- (b) The School Council is responsible for damage to the Facility or any plant, fixtures and equipment located in the Facility caused entirely or substantially by the negligence, gross negligence or wilful misconduct of the School Council, its students, employees and agents or any person or persons for whom the School Council is responsible, excluding hirers of the Facility. The School Council will reimburse the City Council for any costs incurred by it in respect of such damage within 28 days of receipt of a written notice from the City Council to the School Council specifying the damage and the cost of repair.
- (c) For the purposes of this clause:
  - (i) gross negligence is defined by the Law governing this Agreement. However, if the Law does not define the term gross negligence, it means any failure to act which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to the harmful consequences.
  - (ii) wilful misconduct is defined by the Law governing this Agreement. However, if the Law does not define the term wilful misconduct, it means an intentional disregard of good and prudent standards of performance or of any terms of this Agreement.

#### **13.6 Damage to the Facility not covered by insurance**

- (a) If any part of the Facility (including any plant, fixtures and equipment located in or on the Facility) suffers damage which arises from a risk that is not covered by any of the insurances required to be obtained by the parties under this Agreement or any other applicable insurance, (including insurance obtained by hirers of the Facility) and neither clause 13.5(a) nor 13.5(b) is applicable, then the School Council and the City Council agree to equally share the cost of repairing the damage.
- (b) Unless the parties agree otherwise, the School Council will pay for the cost of repairing the damage in the first instance and the City Council will reimburse

the School Council for 50% of this cost within 28 days of receipt of a notice from the School Council to the City Council specifying the damage and the cost of repair.

- (c) Clause 13.6(a) does not apply if the amount is not recoverable under a policy of insurance because the School Council or the City Council has failed to meet a condition, requirement or warranty forming part of the policy. In such a situation:
- (i) if the City Council has failed to meet a condition, requirement or warranty forming part of the policy then the City Council is responsible for all of the costs to repair the damage.
  - (ii) if the School Council has failed to meet a condition, requirement or warranty forming part of the policy then the School Council is responsible for all of the costs to repair the damage.
- (d) If the amount is not recoverable under a policy of insurance because a hirer has failed to meet a condition, requirement or warranty forming part of the policy, then the School Council and the City Council will be equally responsible for the cost of repairing the damage if this cannot be recovered from the hirer. Pending any recovery from the hirer, the School Council will pay for the cost of repairing the damage in the first instance and the City Council will reimburse the School Council for 50% of this cost within 28 days of receipt of a notice from the School Council to the City Council specifying the damage and the cost of repair.

### 13.7 Dispute mechanism

If the City Council disputes a Notice received under clause 13.5 it may within 14 days of receipt of the notification refer the matter for resolution in accordance with clause 17. Pending resolution of the dispute, it must pay the amount stated in the Notice to the School Council.

### 13.8 Reinstating Facility to original state

- (a) At its own expense within one month of expiration or sooner termination of this Agreement and at the request of the School Council, the City Council will:
- (i) remove any materials and equipment brought onto the Facility by the City Council or the City Council's employees, agents, customers, or invitees and make good all damage to the Facility caused by the removal thereof; and
  - (ii) remove any signs and writing from the Facility installed or erected by the City Council and make good any damage or injury caused by the affixing, retention or removal thereof.

### 13.9 Failure to comply

If the City Council fails to comply with any of its obligations under this clause within 14 days after written notice of such default has been notified to the City Council (or in the cases where immediate action is required to rectify the default, upon receipt of the written notice) by the School Council, then:

- (a) the School Council, without in any way being bound to do so, may rectify the

City Council's default on behalf of the City Council; and

- (b) the full cost of the School Council in doing so will be a debt due from the City Council to the School Council which debt will be due and payable 7 days from the date of the invoice provided by the School Council to the City Council in respect of the cost incurred by the School Council under this clause 13, recoverable by action.

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## **14. Obligations of the School Council**

### **14.1 Maintenance obligations of the School Council**

The School Council will be responsible for:

- (a) the general operating, cleaning, maintenance, mowing of grassed areas, repair and security of the Facility; and
- (b) procuring the Capital Expenditure works;

to a standard not less than that generally considered appropriate for a facility similar to the Facility.

### **14.2 Financial obligations of the School Council**

- (a) The School Council will be responsible for paying all financial costs of operating and managing the Facility including:
  - (i) subject to clause 13.2(c), costs associated with complying with its obligations under clause 14.1(a);
  - (ii) the employment of staff and the engagement of contractors for the purposes of the Facility;
  - (iii) Statutory Charges;
  - (iv) costs of entering into and maintaining insurances under clause 14.4;
  - (v) telephone and telecommunication charges;
  - (vi) any other costs or expenses associated with the Facility.
- (b) The School Council must pay all costs charged by providers of gas, electricity and water to the Facility.
- (c) The School Council will be responsible for paying its annual contribution to the Capital Reserve Account in accordance with clause 11.2 and Item 13 of the Schedule.

### **14.3 Hiring obligations**

- (a) The School Council will be responsible for:
  - (i) taking bookings and hiring the Facility out for use by members of the public outside School Hours;

- (ii) subject to paragraph (b) fixing the terms and conditions for the use of the Facility outside School Hours;
- (iii) collecting the fees payable for the use of the Facility outside School Hours;
- (iv) instructing all users of the Facility as to what constitutes appropriate behaviour and how to ensure security is maintained during that use;
- (b) The terms and conditions for the use of the Facility:
  - (i) must be consistent with the guidelines of the Department;
  - (ii) will include the general fees for the use of the Facility;
  - (iii) must require all users to leave the Facility in a tidy condition;
  - (iv) must require that all users enter into and maintain at all times during their use of the Facility all insurances required to insure against risks reasonably anticipated in respect of the facility or arising out of their use of the Facility including but not limited to the insurance set out under Item 12(a) of the Schedule and produce evidence of such insurance.
- (c) The fees for the use of the Facility shall belong to the School Council.

#### 14.4 Minister's and School Council's insurance

- (a) The Minister will keep enforced during the Term of the Agreement the insurance set out under Item 15(a) of the Schedule.
- (b) The School Council will enter into and maintain at all times during the Term of the Agreement the insurance set out under Item 15(b) of the Schedule.

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#### 15. Management

- (a) The School Council will be responsible for the management and operation of the Facility.
- (b) The School Council and the City Council will each appoint a person to act as their respective representative (to be known as the "**School Council's Representative**" and the "**City Council's Representative**" respectively).
- (c) The School Council's Representative and the City Council's Representative may liaise with each other to discuss management, operation and use issues that may arise from time to time concerning the Facility. The School Council's Representative and the City Council's Representative roles are advisory only and any management, operation or use issue requiring resolution is to be referred to the School Council.
- (d) The School Council will provide a report to the City Council in relation to the management and operation of the Facility on a 6 monthly basis.

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**16. Breach of the Agreement****16.1 The School Council's right to require the City Council to correct breach**

If the City Council commits a substantial breach of this Agreement, the School Council or the Minister may give the City Council a written notice that the City Council is in breach, and require the City Council to correct it within a time specified in the notice, which must be a reasonable time. If the City Council fails to rectify the breach to the reasonable satisfaction of the School Council or the Minister within the time specified, the School Council or the Minister may do anything that the School Council or the Minister reasonably believes is necessary to rectify the breach. The City Council must reimburse the School Council or the Minister for any costs the School Council or the Minister incurs in rectifying the breach. Any other right of the School Council is not affected.

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**17. Disputes****17.1 Notice of dispute**

The parties agree to consult in good faith with each other, but if any dispute or difference arises between the parties with respect to or arising out of or in connection with this Agreement (except in relation to a dispute under clause 19.2) then a party may serve upon the other parties a notice of the dispute or difference which shall be resolved in the manner set out in this clause 17.

**17.2 Mediation**

If a dispute or difference that is the subject of a notice served under clause 17.1 is not settled within 14 days of receipt of the notice, the dispute is referred to mediation to be conducted by a mediator agreed between the parties or, failing any agreement, appointed by the Chairperson or acting Chairperson of the Victorian Chapter of the Resolution Institute, who shall be requested to appoint an independent person reasonably expert in the matters or areas the subject of the dispute or difference. The mediation must be held within 45 days of receipt of the notice referred to in clause 17.1.

**17.3 Expert**

If a dispute or difference that is the subject of a notice served under clause 17.1 is not settled at the mediation referred to in clause 17.2, it will be settled by an expert appointed by the Chairperson or acting Chairperson of the Victorian Chapter of the Resolution Institute, who shall be requested to appoint an independent person reasonably expert in the matters or areas the subject of the dispute or difference.

**17.4 Expert's power**

The parties agree that in respect of the expert appointed under this clause 17:

- (a) subject to clause 17.6, the decision of the expert will be binding on the parties;
- (b) the costs, fees and expenses of the expert will be borne by the parties equally;  
and



- (c) the expert:
  - (i) will initiate such enquiries and investigations as the expert considers necessary or desirable for the purposes of performing the expert's functions;
  - (ii) will determine and inform the parties to the dispute of a time for presentation to the expert by the parties of their respective positions. Unless the parties both otherwise agree, the presentation must be no later than 7 days after the appointment of the expert;
  - (iii) must make a determination or finding in respect of the dispute within 30 days of appointment;
  - (iv) will act as an expert and not an arbitrator;
  - (v) will keep confidential all materials and information made available to the expert in respect of the dispute; and
  - (vi) is released by the parties to this Agreement from liability (other than for fraud) in acting as an expert.

#### **17.5 Performance of obligations pending resolution of dispute**

- (a) Prior to resolution of a dispute under this clause 17 the parties must continue to perform their respective obligations under this Agreement.
- (b) Pending resolution of a dispute under this clause 17, whether or not the dispute relates to payment of money, each party must pay all amounts under this Agreement when due in accordance with this Agreement without regard to the pending dispute.

#### **17.6 Right to arbitrate**

- (a) The determination or finding of the expert shall be binding upon the parties unless, within 14 days of the date of the determination or finding, any dissatisfied party gives written notice to the other parties that it requires the dispute to be referred to arbitration.
- (b) Upon the giving of a notice by any party under paragraph (a), the dispute will be submitted to the arbitration of a nominee of the Chairman (or acting Chairman) of the Victorian Chapter of the Resolution Institute.
- (c) An award made by the arbitrator will be final and binding on the parties.
- (d) In accordance with section 20 of the *Commercial Arbitration Act* 1984 (Vic), the parties agree that in any arbitration proceedings conducted pursuant to this clause 17.6, a party may be represented by a duly qualified legal practitioner.

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### **18. Termination**

#### **18.1 Minister requires Land**

If the Minister requires the Land or part of it for:

- (a) the construction of school buildings;
- (b) disposal of the Land or part of it;
- (c) closure of the School; or
- (d) any other reason,

then the Minister may terminate this Agreement on notice in writing to the parties.

## **18.2 Destruction of Facility**

If the Facility is damaged or destroyed so as to render it or part of it unfit for use and it is, in the opinion of the Minister, impractical or undesirable to reinstate the Facility or part of the Facility, then the Minister may terminate this Agreement on notice in writing to the parties.

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## **19. Minister's options on termination**

### **19.1 Options**

If this Agreement is terminated by the Minister under clause 18.1 or 18.2, then the Minister will after consultation with the City Council offer to the City Council one of the following options:

(a) **Option 1**

the subdivision of the whole or part of the Land to create a separate saleable parcel and first offer the parcel for sale to the City Council at a price to be agreed by the parties and approved by the Government Land Monitor or its successor or failing agreement as determined by the Valuer-General Victoria in consultation with the Government Land Monitor or its successor;

(b) **Option 2**

the entering into a lease of the whole or part of the Facility between the Minister and the City Council consistent with the terms and conditions of this Agreement, with the rent as agreed by the parties or failing agreement as determined by the Valuer-General; or

(c) **Option 3**

subject to clause 19.5(b), the payment by way of compensation to the City Council of such amount as the Minister reasonably determines in good faith, taking into account the contribution towards the cost of constructing the Facility made by the City Council under this Agreement.

### **19.2 Dispute**

If a dispute arises between the parties as to:

- (a) the price at which the parcel of the Land is to be offered to the City Council under Option 1;
- (b) the basis of the lease and terms and conditions under Option 2; or

- (c) the compensation to the City Council under Option 3,

then such dispute will be settled by way of arbitration in accordance with the requirements of clause 19.4. It is expressly acknowledged that the choice of an option under clause 19.1 is entirely at the discretion of the Minister and cannot be the subject of a dispute.

### 19.3 Agreement to remain in force

The parties acknowledge that if this Agreement is terminated under clause 18.1 and to the extent possible if this Agreement is terminated under clause 18.2, this Agreement will remain in force until the Minister has chosen an option under clause 19.1 or until the arbitrator makes a decision under clause 19.4.

### 19.4 Dispute mechanism

- (a) If a dispute or difference arises between the parties as to any matter set out in clause 19.2, then any party may give to the other parties notice of the dispute or difference.
- (b) Any such dispute will be submitted to the arbitration of a nominee of the Chairperson or acting Chairperson of the Victorian Chapter of the Resolution Institute.
- (c) An award made by the arbitrator will be final and binding on the parties.
- (d) In accordance with section 20 of the *Commercial Arbitration Act 1984* (Vic), the parties agree that in any arbitration proceedings conducted pursuant to this clause 19.4, a party may be represented by a duly qualified legal practitioner.

### 19.5 Compensation

- (a) No compensation will be paid on termination of this Agreement by the Minister under clause 18.1 or 18.2 other than in accordance with clause 19.1(c).
- (b) If this Agreement is terminated by the Minister under clause 18.1 or 18.2 and the Minister chooses Option 3 under clause 19.1(c) then the amount of any compensation payable to the City Council will be the amount determined by the Minister at the Minister's discretion but acting in good faith and taking into consideration the following:
  - (i) the Construction Contribution made by the City Council, adjusted to reflect the present day value as at the date of the determination by the Minister and reduced to reflect the portion of the Term which has then expired; and
  - (ii) any amount which the City Council:
    - A. has received or is entitled to receive by way of:
      - 1) indemnity under contract of insurance entered into and maintained in accordance with clause 13.3; or
      - 2) damages in respect of the loss or destruction of the Facility; or

- B. would have received or would have been entitled to receive if the contracts of insurance had been entered into and maintained in accordance with clause 13.3.

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## **20. Notices**

### **20.1 Method of giving Notices**

A notice, consent, approval or other communication (a "Notice") under this Agreement must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) hand delivered; or
- (b) sent by prepaid and certified mail,

to that person's address.

### **20.2 Address for Notices**

For the purpose of this clause 20.2 the address of each party will be those addresses set out in Item 16 of the Schedule, or such other addresses as may be substituted under clause 20.3.

### **20.3 New address**

Where Notice of a new address has been given by any party to another party the new address will be substituted for the previous address of the party giving such Notice as and from the date of service of such Notice.

### **20.4 Time of receipt**

A Notice shall be deemed to have been received by the addressee:

- (a) in the case of delivery by hand, on delivery at the address of the addressee; or
- (b) in the case of a posted letter, on the second (seventh, if posted to or from a place outside Australia) day after posting,

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

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## **21. Disposal**

### **21.1 Minister may deal with interests**

This Agreement shall not be construed so as to prevent:

- (a) the Minister at any time during the term from subdividing, selling or otherwise disposing of or dealing with the whole or any part or parts of the lands presently or hereafter occupied by the School; and
- (b) the assignment by the Minister or the School Council of their respective interests in this Agreement.

**21.2 Dissolution of School Council**

Notwithstanding anything to the contrary in this Agreement, any Order or legislative enactment or regulation dissolving the School Council shall for all purposes be deemed to have simultaneously effected an assignment by the School Council to the Minister of the whole of the School Council's right, title and interest under this Agreement.

**22. Governing law**

This Agreement shall be construed according to the law of the State of Victoria.

**23. Variations**

No addition to or variation of this Agreement shall be of any force or effect unless in writing signed by or on behalf of all parties.

**24. Waivers**

No waiver or indulgence by any party to this Agreement shall be binding upon the parties unless in writing and in any event no waiver of one breach of any term or condition of this Agreement shall operate as a continuing waiver unless so expressed nor operate as a waiver of another breach of the same or any other term or condition of this Agreement.

**25. Further acts**

The parties shall promptly do and perform such further acts and execute and deliver all further instruments required by law or reasonably requested by any other party, to establish, maintain and protect the respective rights and remedies of the other parties and to carry out and effect the intent and purpose of this Agreement.

**26. Confidentiality**

Apart from the purpose of performing their obligations under this Agreement the School Council and the City Council:

- (a) will treat as confidential all information which comes into its possession pursuant to or as a result of or in the performance of this Agreement;
- (b) will not without the permission of the Minister disclose such information to an outside party; and
- (c) will not without the permission of the Minister disclose any details of the terms and conditions of this Agreement to an outside party.

**27. Conflict of interest**

The City Council warrants that, to the best of its knowledge and belief after due inquiry as at the Date of the Agreement, it has no duties or interests that create or might reasonably be anticipated to create a conflict with its duties and obligations under this Agreement.

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**28. Entire agreement**

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

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**29. Counterparts**

This Agreement may be executed in any number of counterparts all of which taken together shall be deemed to constitute one and the same instrument.

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**30. Costs**

Each party shall bear its own legal costs.

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**31. Assignment**

The City Council shall not assign or transfer any part of its rights or obligations under this Agreement or sub-licence the Facility.

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**32. Acting on behalf of Minister**

Any:

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

may be made, done, executed, performed or exercised on behalf of the Minister by any employee of the Department authorised in that regard by the Minister.

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**33. GST**

- (a) Where a party to this Agreement (the "**Supplier**") makes a Taxable Supply under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement to another party to this Agreement (the "**Recipient**") and the consideration otherwise payable for the Taxable Supply does not include GST, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Recipient the amount of any GST on the Taxable Supply.
- (b) If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the Taxable Supply (taking into account any Adjustment Events that occur in relation to the Taxable Supply), an adjustment will be made. If the amount paid by the Recipient exceeds the GST on the Taxable Supply, the Supplier will refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the Taxable Supply, the Recipient will pay the deficiency to the Supplier.
- (c) Where a party to this Agreement is entitled, under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement, to recover all or a proportion of its costs or is entitled to be

compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any Input Tax Credits available in respect of those costs.

- (d) A party will not be obliged to pay any amount in respect of GST to the other party unless and until a valid tax invoice (being an invoice that complies with the GST Legislation) has been issued in respect of that GST.

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**34. Relationship of the parties**

No party to this Agreement is a partner, agent or trustee of the other party. No party has the power or authority directly or indirectly through its employees or agents to bind the other party to any agreement, negotiate or enter into any binding relationship for or on behalf of the other party, or pledge the credit of the other party.

**Schedule****Item 1 Date of Agreement**

The date the Minister signs the Agreement

**Item 2 Facility - Clause 1.1**

Multipurpose community sports centre comprising:

- (i) multi-purpose court;
- (ii) storage areas;
- (iii) canteen;
- (iv) male and female toilets and change room facilities;
- (v) staff work area;
- (vi) music/GPC area;
- (vii) foyer; and
- (viii) bicycle enclosure

as shown on the attached Plan 2.

**Item 3 Permitted Purposes - Clause 1.1**

The playing, performing or conduct of community, recreation and sporting activities that would normally be played, performed or conducted in Victoria at a facility similar to the Facility and which by law is capable of being played, performed or conducted at the Facility.

**Item 4 School - Clause 1.1**

Nichols Point Primary School

**Item 5 School Hours - Clause 1.1**

8:00 am to 5:00 pm each School Day

**Item 6 Construction Contributions Clause 4.1(b)**

- |                     |   |
|---------------------|---|
| (a) Minister:       | \$750,000 (including \$250,000 Community Facilities Fund) |
| (b) School Council: | \$130,000   |
| (c) City Council:   | \$120,000   |

**Item 7 Construction Costs - Clause 1.1**

\$1,000,000 (including \$100,000 for consultants fees)



**Item 8 Construction Insurances - Clause 5.2**

- (a) Public liability insurance covering the City Council, the School Council and the State of Victoria, their respective employees including any person who is a volunteer school worker within the meaning of Section 5.6.1 of the Act (while acting in the course of their employment) against any liability in respect of the death of or personal injury or the destruction of or damage to property occurring in or on the Facility or arising out of or in connection with the construction or in relation to the use of the Facility.

The public liability insurance must be in the joint names of the City Council, the School Council and the State of Victoria and must, with the exception of the limit of the cover provided, cover each of those parties and their respective employees in the same manner as if that party was the only party insured.

The limit of the cover provided by the public liability insurance must not be less than \$10,000,000 per insured event.

- (b) Insurance in the joint names of the City Council, the School Council and the State of Victoria which provides those parties with replacement value cover in respect of the loss or destruction of or damage to the Facility and any buildings or structures erected in or on the Facility and any apparatus or equipment belonging to or used by the State of Victoria, the School Council or the City Council which is housed, stored, kept or used in or on the Facility.
- (c) Insurance in accordance with the requirements of the *Accident Compensation Act* 1985 (Vic) and the *Accident Compensation (Work Cover Insurance) Act* 1993 (Vic) which provide the servants, agents and employees of the City Council with cover against personal injury or sickness arising from providing goods or services or working in or on the Facility.
- (d) Insurance which provides the City Council's volunteer workers with cover equivalent to that required by the *Accident Compensation (Work Cover Insurance) Act* 1993 (Vic) in respect of an employer's employees, and which is commonly known as accident and sickness insurance.

**Item 9 Initial Term - Clause 9.1**

25 years

**Item 9A Licence Fee – Clause 9.2**

\$1.00

**Item 10 Further Term - Clause 9.4**

20 years

**Item 11 Hours of Use of the Facility - Clause 1.1**

8:00am to 10:00pm Monday to Saturday

8:00am to 8:00pm Sunday

or otherwise as authorized by the Planning Scheme or Planning Permit

**Item 12 City Council's Insurances - Clause 13.3(a)**

The City Council will procure and maintain the following policies of insurance:

- (a) Public Liability Insurance which provides the City Council including its employees (while acting in the course of their employment) with at least \$10,000,000 cover per event against any liability resulting from death or personal injury or the destruction of or damage to property occurring in or on the Facility or arising out of or in relation to the use of the Facility.
- (b) If applicable, insurance in accordance with the requirements of the *Accident Compensation Act 1985* (Vic) and the *Accident Compensation (Work Cover Insurance) Act 1993* (Vic) which provide the servants, agents and employees of the City Council with cover against personal injury or sickness arising from provided goods or services or working in or on the Facility.
- (c) If applicable, insurance which provides the City Council's volunteer workers, working in or on the Facility or providing goods or services to the Facility, with cover equivalent to that required by the *Accident Compensation (Work Cover Insurance) Act 1993* (Vic) in respect of an employer's employees, and which is commonly known as accident and sickness insurance.

**Item 13 Capital Reserve Amount - Clauses 1.1 and 11.2**

\$6218 plus GST as adjusted pursuant to Clause 11.2(b)

**Item 14 City Council Maintenance Contribution - Clauses 1.1 and 13.2(c)**

\$6218 plus GST as adjusted pursuant to Clause 13.2(e)

**Item 15 Minister's and School Council's Insurance – Clause 14.4**

- (a) Public Liability Insurance which provides the School Council including its employees (while acting in the course of their employment) with at least \$10,000,000 cover per event against any liability resulting from death or personal injury or the destruction of or damage to property occurring in or on the Facility or arising out of or in relation to the use of the Facility.
- (b) Industrial Special Risks Insurance (or equivalent insurance) which provides the State of Victoria, the School Council and the City Council with insurance cover for the reinstatement or replacement value of the Facility against the destruction of or damage to the Facility and any apparatus or equipment belonging to or used by the School Council which is housed, stored, kept or used in or on the Facility.

**Item 16 Addresses - Clause 20.2**

## (a) Minister:

Chief Executive Officer  
Victorian School Building Authority  
Department of Education and Training

2 Treasury Place  
East Melbourne Vic 3002

Postal Address:  
GPO Box 4367  
Melbourne Vic 3001

## (b) School Council:

Executive Officer Nichols Point Primary School Council  
110, Koorlong Avenue Nichols Point Victoria 3501

## (c) The City Council:

The Chief Executive Officer  
Mildura Rural City Council  
108-116 Madden Avenue  
Mildura Victoria 3502

**Executed** as an Agreement.

**Signed by**

\_\_\_\_\_  
Signature

this \_\_\_\_\_ day of \_\_\_\_\_ 2020  
for and on behalf of, **James Merlino, MP** in  
her capacity as Minister for Education, in the  
presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

**The Common Seal of Nichols Point  
Primary School Council** was affixed by order  
of the Council and in the presence of the  
President of the School Council and its  
Authorised Appointee:

\_\_\_\_\_  
Signature of President of School Council

\_\_\_\_\_  
Signature of Authorised Appointee

\_\_\_\_\_  
Name of President of School Council in full

\_\_\_\_\_  
Name of Authorised Appointee in full

The Common Seal of Mildura Rural City Council was affixed in the presence of:

\_\_\_\_\_  
Signature of Councillor

\_\_\_\_\_  
Signature of Chief Executive Officer

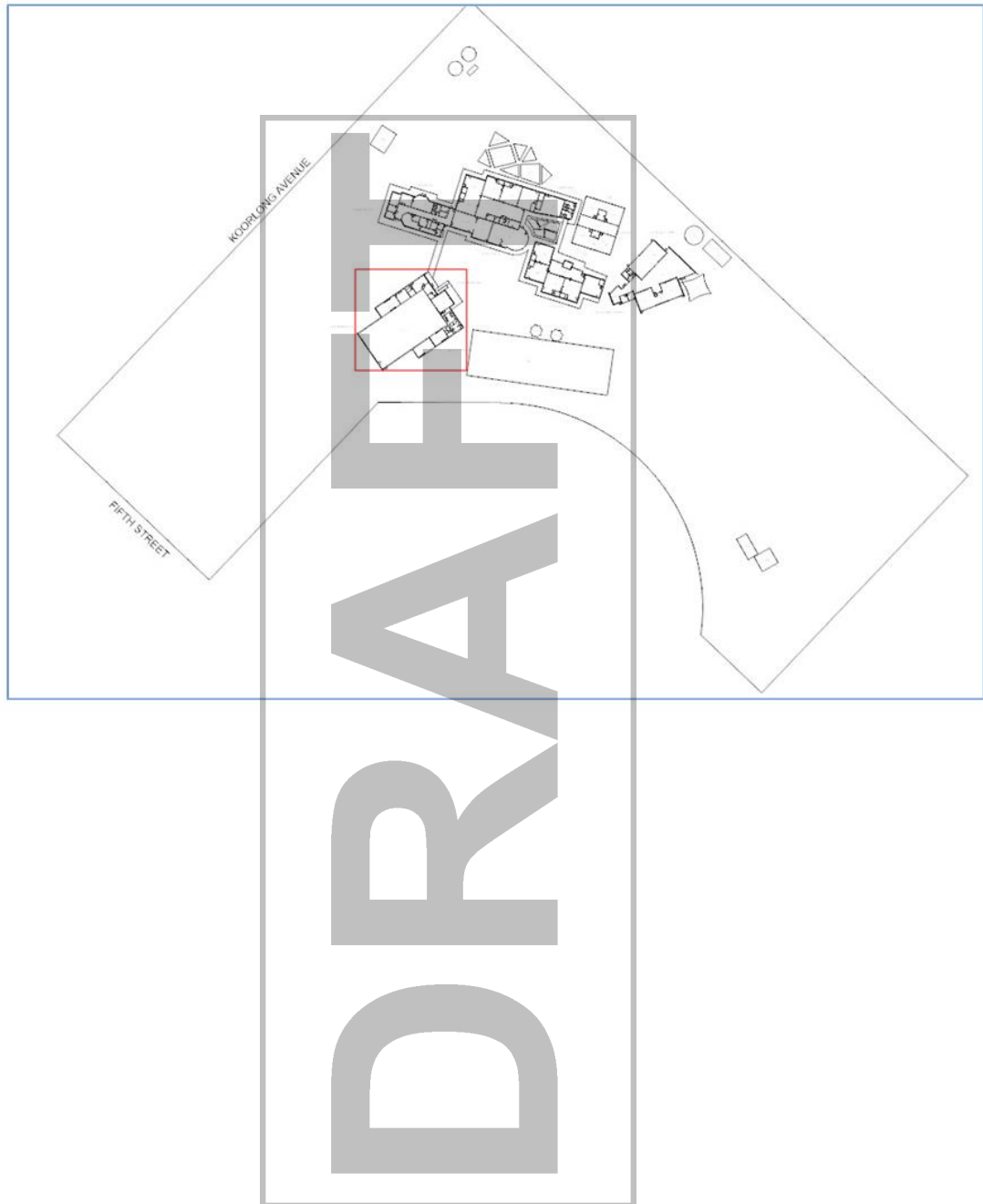
\_\_\_\_\_  
Name of Councillor in full

\_\_\_\_\_  
Name of Chief Executive Officer in full

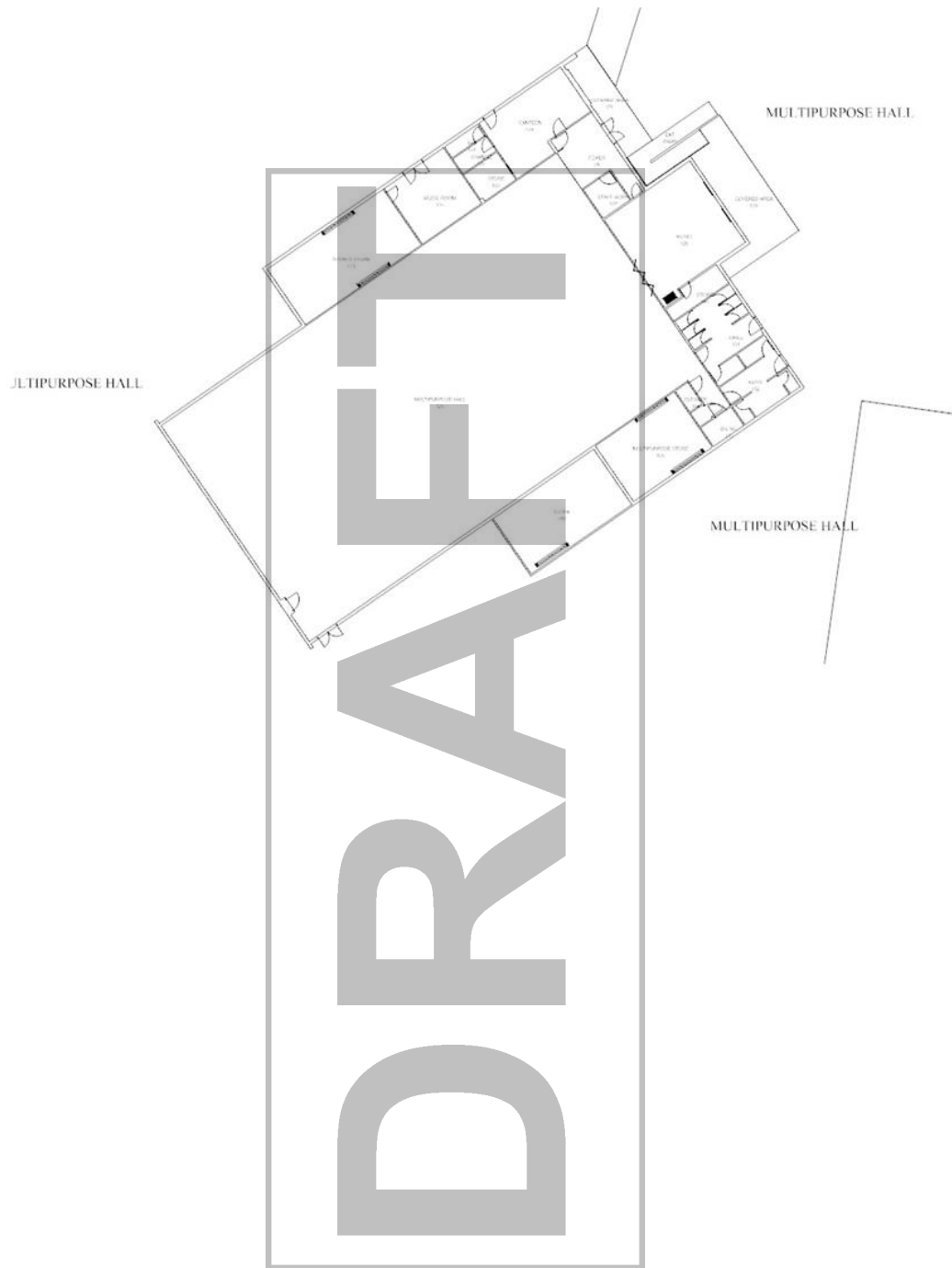


**Annexure A**

Plan 1



Plan 2



## 14.3 CLARIFICATION OF A-DOUBLES RESOLUTION

### Summary

The purpose of this report is to achieve further clarification on the resolution made at the 22 July 2020 Ordinary Council Meeting (as detailed below) with respect to A-Doubles (36.5m road trains) being gazetted to travel on Council's Rural Roads, so that Council Officers can ensure the motion is able to be enacted as intended.

2020/0147

Moved: Cr Greg Brown

Seconded: Cr Glenn Milne

*That Mildura Rural City Council, in line with the National Heavy Vehicle Regulator decision on national highways in North West Victoria, permit A-Double vehicles up to 36.5 metres long to travel on Council's rural roads with the same access and conditions as B-Doubles are currently permitted.*

### Procedural Motion

Moved: Cr Jason Modica

That the motion be laid on the table.

LOST

2020/0214

Moved: Cr Greg Brown

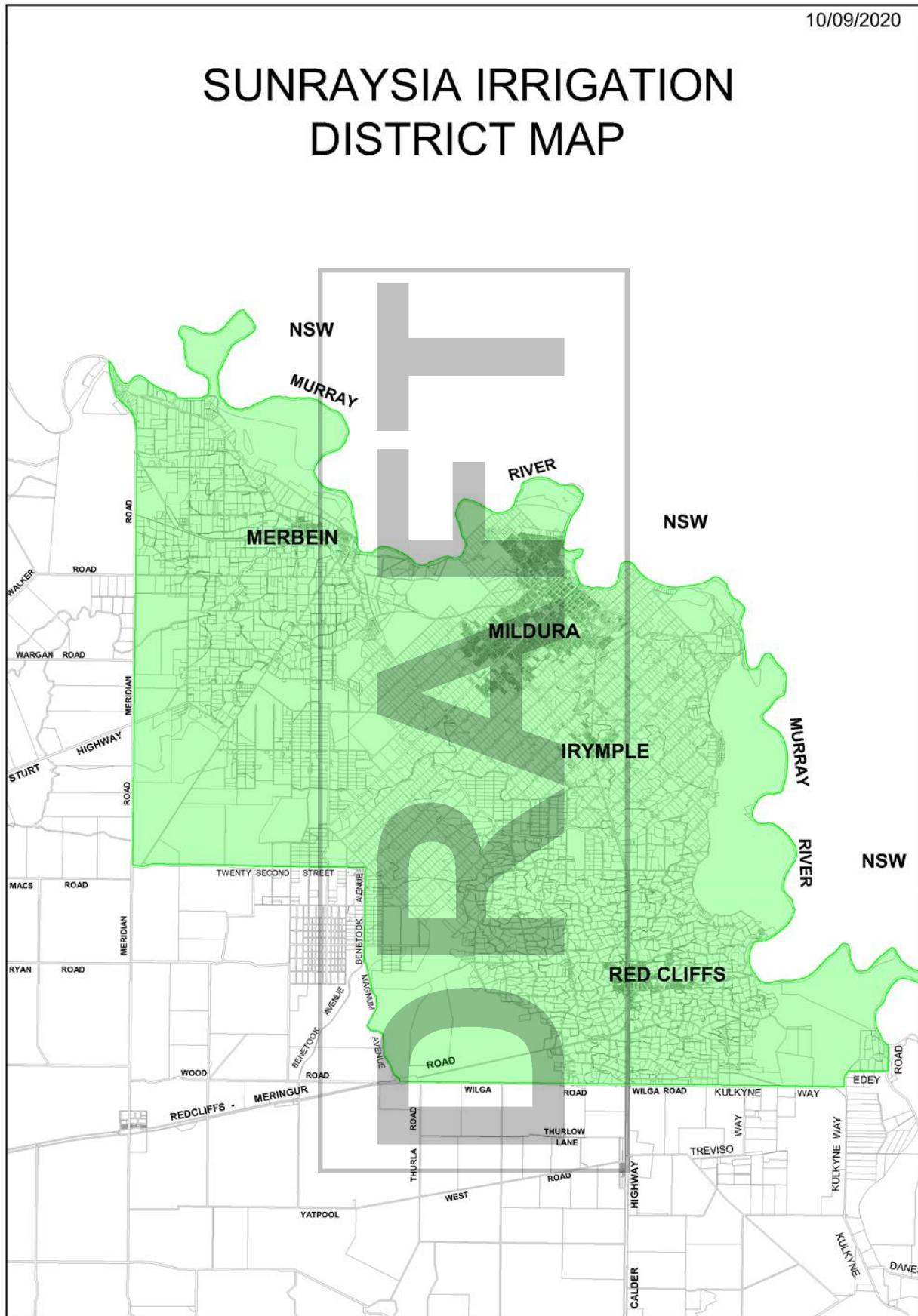
Seconded: Cr Glenn Milne

**That Council, with regard to resolution 2020/0147 of the Ordinary Meeting of Council held on 22 July 2020, provide further clarification with respect to the intention of the resolution by:**

- (i) defining a rural road as being a road outside an urban area;
- (ii) defining an urban area as per the definition in the *Road Management Act 2004* in relation to a road being a road which;
  - a. a speed limit of 60 kilometres per hour or less applies (not being a speed limit which applies only because of a temporary reason such as roadworks or a street event); or
  - b. there are buildings on land next to the road, or there is street lighting; at intervals not exceeding 100 metres for;
    - i. a distance of at least 500m; or
    - ii. if the length of road is less than 500 metres over the length of the road; and
- (iii) confirming that the reference to rural roads with respect to the 22 July 2020 resolution relating to A-Doubles:
  - a. refers to all roads that lie outside the Sunraysia Irrigated Area as presented by the attached map, and for those roads to be gazetted for A-Double access; and
  - b. those roads that fall within the Sunraysia Irrigated Area will be subject to permit requests.

**CARRIED**





## 15 URGENT BUSINESS

Nil

## 16 COMMUNITY QUESTIONS

Nil

## 17 CLOSURE

Cr Simon Clemence, Mayor, acknowledged the current term of Councillors for their four years of service to the community. In particular, the Mayor acknowledged Cr Greg Brown for his long-standing contribution to Council.

There being no further business the meeting closed at 5:59pm.

**Date of Confirmation: 25 November 2020**

Signed: \_\_\_\_\_

**Chairperson**