

**JOINT DEVELOPMENT AGREEMENT
FOR THE CONSTRUCTION AND USE OF THE RUSSELL
ISLAND COMMUNITY SCHOOL POOL**

Between

The State of Queensland

and

Redland Shire Council

Released under the RTI Act by DoE

TABLE OF CONTENTS

1.	Interpretation	3
2.	Term	5
3.	Construction of the Pool	6
4.	Licence During Construction	6
5.	Financial Contribution	6
6.	Management of the Pool	7
7.	Advisory Committee	7
8.	Use of the Pool	8
9.	Fees Payable for Use of the Pool	8
10.	Cleaning, Repairs and Maintenance	9
11.	Alterations And Improvements	9
12.	Land Transfer	10
13.	GST	10
14.	Insurance During Construction	10
15.	Warranties	10
16.	Intellectual Property and Warranties	10
17.	Default and Termination	11
18.	Indemnity	11
19.	Compliance with Laws	11
20.	Dispute Resolution	12
21.	Notices	13
22.	Governing Law	14
23.	Waiver	14
24.	Variation	15
25.	Costs	15
26.	Assignment	15
27.	Entire Agreement	15
28.	Relationship of Parties	15
29.	Execution	15
	Schedule 1	16
	Preliminary Plans of the Pool (attached)	17
	Schedule 2	18
	Plan of the Site (attached)	19

THIS AGREEMENT is made this day of April 2007

BETWEEN: **The State of Queensland** (represented by the Department of Education Training and the Arts) of Education House, 30 Mary Street, Brisbane in the State of Queensland.

("the State")

AND: Redland Shire **Council** of 91-93 Bloomfield Street, Cleveland in the State of Queensland.

("the Council")

RECITALS

- A. The Council is the owner of the land described as lots 135, 136 and 137 on RP130091 County of Stanley, Parish of Russell contained in Title Reference [insert title reference], situated on the corner of High Street and Borrowws Street Russell Island ("the Land").
- B. The Council land adjoins the Russell Island State School.
- C. The State and the Council have agreed that the State will construct a community school pool ("the Pool") on the Land.
- D. The Council has agreed to make a cash contribution of \$930,000 (excluding GST) towards the cost of constructing the Pool (including project management costs, regulatory assessment costs and contingencies).
- E. The State has agreed to make a cash contribution of \$110,000 (excluding GST) towards the cost of constructing the Pool (including project management costs, regulatory assessment costs and contingencies).
- F. The State and Council have agreed that the Council will arrange a 5 year management contract to manage the pool after it is constructed.
- G. At the end of the management contract or by written agreement between the Parties the Parties will negotiate the transfer of the Land including the Pool with all improvements and management rights to the State.
- H. The State and Council have agreed the pool will be available for public and school use.
- I. The parties wish to record the terms of their agreement.

NOW THE PARTIES AGREE AS FOLLOWS -

1. Interpretation

- 1.1 In this Agreement unless the context otherwise requires or the contrary intention appears, the following terms must have the meanings assigned to them -

“**Act**” means the *Education (General Provisions) Act 2006*.

“**Advisory Committee**” means the advisory committee established under clause 7.

“**Agreement**” means this document and all Schedules to this document.

“**Approvals**” means all approvals, permissions and consents as may be required by statute, regulation or local law to construct the Pool.

“**Business Day**” means a day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in Queensland.

“**Certificate of Practical Completion**” means the certificate of practical completion issued under the Construction Contract.

“**Construction Contract**” means the construction contract that the State enters into for the construction of the Pool.

“**Council**” means the Council named as a party to this Agreement and unless inconsistent with the subject matter, includes the Council’s employees, agents, contractor and invitees.

“**Date of this Agreement**” means that date referred to in clause 29.

“**DETA**” means Department of Education Training and the Arts

“**Pool**” means the Pool referred to in Recital C.

“**GST**” has the same meaning as in GST Law.

“**GST Law**” includes *A New Tax System (Goods & Services Tax) Act 1999* (Cth), order, ruling or regulation which imposes or purports to impose or otherwise deals with the administration or imposition of GST on a supply of goods or services in Australia.

“**Land**” means the land described in Recital A.

“**Law**” means a statute, regulation, ordinance or local law.

“**Licence Term**” means that period specified in clause 4.2.

“**Management Agreement**” means any agreement to manage the pool.

“**Principal**” means the Principal from time to time of the School and the obligations of the Principal under this Agreement are obligations of the State acting through the Principal.

“**Regulations**” means the *Education (General Provisions) Regulation 2006*.

“**School**” means the school referred to in Recital A.

“**School Day**” means each day the School is open for students and excludes public holidays and gazetted school holidays.

“**School Hours**” means from 8.30am to 3.00pm.

“**Site**” means that part of the Land as indicated on the plan in Schedule 2.

“**State**” means the State of Queensland acting through the Department of Education Training and the Arts, and unless inconsistent with the subject matter, includes all persons authorised for the time being by the State.

“**Supply**” means a supply which is deemed under the GST Law.

“**Tax Invoice**” includes a document which is deemed to constitute an invoice under the GST Law.

- 1.2 A reference to a person includes a reference to corporations and other entities recognised by law.
- 1.3 In this Agreement the Table of Contents and the headings to the clauses have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.
- 1.4 A reference to a statute, regulation, ordinance or local law must be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them.
- 1.5 The singular includes the plural and vice versa.
- 1.6 Words importing one gender must include a reference to all other genders.
- 1.7 A covenant or agreement on the part of two or more persons must be deemed to bind them jointly and severally.
- 1.8 A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Agreement and includes any amendments to them made in accordance with this Agreement.
- 1.9 Where under or pursuant to this Agreement the day on or by which any act, matter or thing is to be done is not a Business Day, such an act, matter or thing may be done on the next Business Day.
- 1.10 In the case of any inconsistency between the Schedules and a clause contained in this Agreement, the provisions of the clause shall prevail to the extent of any inconsistency.

2. Term

This Agreement will commence on the Date of this Agreement and will continue for a period of twenty five years, unless terminated earlier in accordance with the terms of this Agreement.

3. Construction of the Pool

- 3.1 The Council authorises the State to construct the Pool on the Site.
- 3.2 The Pool will be constructed generally in accordance with the preliminary plans in Schedule 1.
- 3.3 The State must construct the Pool on the Site, in accordance with plans and specifications to be approved by Council in writing. The Council must assess those plans and specifications as soon as practicable after they are received from the State.
- 3.4 The total cost of construction of the Pool must be not less than \$1,041,600 exclusive of GST.
- 3.5 The State must apply for and diligently obtain (at its cost) all necessary Approvals as soon as possible after the Date of this Agreement.
- 3.6 The State must start and complete the construction of the Pool as soon as possible after all necessary Approvals are obtained, acknowledging time is of the essence.
- 3.7 The State will provide the Council with a copy of the Certificate of Practical Completion for the Pool within 5 business days after the Certificate is issued.
- 3.8 Following completion of construction, the State will ensure that all rubbish, plant and equipment are removed from the Site and that the Site is left in a clean and tidy condition.
- 3.9 The State will ensure that the Construction Contract contains terms and conditions permitting the Council to enter the site at any time as the owner of the land and
 - (a) to enter the Site during construction for the purposes of the State or Council inspecting materials used and work carried out in the construction of the Pool; and
 - (b) to undertake tests and inspections of the constructed works, as the State or Council considers necessary.

4. Licence During Construction

- 4.1 The Council agrees to grant and the State agrees to accept a licence to occupy the Site for the purpose of constructing the Pool.
- 4.2 The licence will commence on the date that the State receives written approval of the plans and specifications from the Council and will terminate 7 days after the Council receives a copy of the Certificate of Practical Completion.

5. Financial Contribution

- 5.1 The Council will contribute \$930,000 (excluding GST) ("the Council's Contribution") towards the cost of constructing the Pool as it is progressively constructed. The Council contribution cost includes payment towards project management costs, regulatory assessment costs and contingencies.

- 5.2 The State will contribute \$110,000 ("the State's Contribution") towards the cost of constructing the Pool. The State contribution cost includes payment towards project management costs, regulatory assessment costs and contingencies.
- 5.3 Council's contribution may be on terms agreed in writing by the parties including lump sum or progress payments. Provided that at all times the State provides Council with all information Council requests to verify the request for a contribution including copies of the contractor's progress claims and invoices etc as verified by the contract manager.
- 5.4 The State must provide monthly progress reports in relation to the construction program and budget. The State must if requested in writing by Council, provide additional information supporting the progress claim including engineering certification.
- 5.5 Except in the case of a dispute the Council will pay the progress claim promptly in accordance with Council's usual payment terms for the supply of services.
- 5.6 If the financial contributions referred to in this clauses are insufficient to enable completion of the construction of the Pool, then the additional costs will be paid as agreed between the parties and failing agreement in accordance with a determination under clause 20 (Dispute Resolution).
- 5.7 The parties acknowledge that Council's financial contribution may only be used for the construction of the pool and if the State does not construct the pool in accordance with this agreement then it must repay Council's financial contributions.
- 5.8 Council is not responsible to pay for any contingency cost or contract variation without its prior written approval.

6. Management of Pool

- 6.1 The Council will contract with a manager of the pool who will be responsible for the control, regulation and use of the Pool for a 5 year term, consistent with the terms of this agreement and with the assistance and advice of the Advisory Committee.
- 6.2 The State will assume responsibility for the management of the pool at the end of Council's 5 year management term consistent with the terms of this agreement.

7. Advisory Committee

- 7.1 Within 3 months of the Date of this Agreement, the State will form an Advisory Committee.
- 7.2 The Advisory Committee will consist of –
 - (a) The principals (or their nominees) of the Russell Island and Macleay Island State Schools;
 - (b) President (or their nominee) of the Russell Island Parents and Citizens Association;
and

- (c) A member of the community selected by the Council;
 - (d) Council may elect to nominate 2 representatives to attend the Advisory Committee.
- 7.3 The Advisory Committee may provide advice to the State and or Council on the management, maintenance and use (including the amount of any fee payable for the use) of the Pool.
- 7.4 The Advisory Committee must hold at least 2 ordinary meetings each calendar year and any additional meetings considered necessary by the Advisory Committee.
- 7.5 At its first ordinary meeting and at the first ordinary meeting each calendar year, the Advisory Committee must appoint a chairperson and a secretary.
- 7.6 A special meeting of the Advisory Committee may be convened by the chairperson on the written request of 2 members, provided the request states the reason for convening such a meeting and the nature of the business to be transacted.
- 7.7 At an ordinary meeting of the Advisory Committee, 4 members (including at least 1 staff member from the School) constitute a quorum.
- 7.8 At a special meeting of the Advisory Committee, attendance by all members is necessary to constitute a quorum.
- 7.9 At every meeting, each member present has the right to 1 vote on each question.
- 7.10 Questions arising at any meeting of the Advisory Committee will be decided by a majority of votes. If the votes are equal, the question is deemed to be decided in the negative.
- 7.11 Subject to the provisions of this clause 7, the Advisory Committee may meet and regulate its proceedings as it deems fit.
- 8. Use of the Pool**
- 8.1 The parties agree that the School will have priority use of the Pool 3 school days per week between 8.30am and 3.00pm.
- 8.2 At all other times the parties agree that the School may use the Pool in conjunction with the general public subject to pool management approval.
- 8.3 In particular the parties agree the general public including community groups, clubs and learn to swim groups will have at least equal use of the pool to that of the School.
- 9. Fees Payable for Use of the Pool**
- 9.1 Subject to clause 9.2, the fees payable for the use of the Pool will be determined by Council in consultation with the Advisory Committee.
- 9.2 School students will receive a 20% discount on child entry during school hours.

10. Cleaning, Repairs and Maintenance

- 10.1 The Council is responsible to clean and maintain the Pool in accordance with this agreement and Council's pool management agreement. Council's management contract will include provision for annual contingency of \$7,500 (exclusive of GST) for operational shortfall. The Council's contribution is to be increased annually in line with Consumer Price Index.
- 10.2 Prior to the Land Transfer referred to in clause 12.1 the State agrees to contribute financially to the operation of the pool by provision of an annual grant to Council for the pool management inclusive of:
- (a) Minor maintenance at \$10,000.00 (exclusive of GST)
 - (b) Cleaning at \$3,720.00 (exclusive of GST)
 - (c) Chemicals at \$2,920.00. (exclusive of GST)
- 10.3 The State's annual financial contribution may be on terms agreed in writing by the parties including annual lump sum or progress payments or as payment for services provided by Council or its manager. The State's annual financial contribution is for operational expenses including pool and cleaning chemicals; disinfectants, soaps and consumables, replacing and maintaining light bulbs, fittings, glass, paint and landscaping.
- 10.4 The State agrees to pay at the request of Council for all major structural repairs and maintenance of the pool facility, including inspection, maintenance, repair and replacement of all pool equipment, pump and filtration equipment, load-bearing and/or supportive walls, floors, roofs and structures, or otherwise; essential to the continued operation of the pool.
- 10.5 The State is responsible for the payment of utility services including waste removal, water, electricity, gas and fire levies.
- 10.6 The State contribution pursuant to Clauses 10.2(a), (b) and (c) is to be increased annually in line with the Consumer Price Index.

11. Alterations And Improvements

- 11.1 Unless otherwise approved in this Agreement, the State must not make any improvements, alterations or additions to the Land, or permit them to be made without:
- (a) the written permission of the Council; and
 - (b) plans approved by the Council.
- 11.2 In any event, the State must ensure that all improvements, alterations or additions it makes to the Land are made:
- (a) Competently and lawfully;
 - (b) using quality materials;
 - and (c) to the satisfaction, and subject to any directions, of Council.

12. Land Transfer

- 12.1 At the end of the pool management contract or by written agreement between the Parties the Parties will negotiate the transfer of the Land including the Pool to the State.

13. GST

- 13.1 The Parties acknowledge that GST may be payable on the supply of goods and/or services under this Agreement.
- 13.2 Where GST is payable upon any supply of goods and/or services under this Agreement the consideration payable by the recipient for the supply must be adjusted by the amount of GST payable.
- 13.3 Subject to the supplier issuing a valid GST tax invoice, the consideration payable by the recipient to the supplier for the supply must be increased by the amount equal to that which the supplier is obliged to remit as GST on the supply.

14. Insurance During Construction

- 14.1 The State will ensure that its contractor obtains and keeps in full force and effect the following insurance indemnifying the State against –
- (a) loss or damage (from any cause) to the Pool whilst under construction;
 - (b) loss or damage to the State's property; and
 - (c) claims by third parties against the State in respect of accidental death, accidental bodily injury to persons or accidental damage to property on the Site and the policy of insurance shall be for an amount of not less than \$10 million for any single event.
- 14.2 The State will provide evidence of the contractor's insurance upon receipt of a request to do so from the Council.

15. Warranties

- 15.1 The Parties warrant that, except as disclosed in this Agreement, each of the following Statements is accurate at the time the parties executes this Agreement –
- (a) the Parties have free and unqualified capacity and power to enter into this Agreement and to complete the obligations created by this Agreement; and
 - (b) the Parties are not under any legal disability which affects their capacity to contract and to complete the obligations created by this Agreement.

16. Intellectual Property and Warranties

- 16.1 The State has commissioned or is in the process of commissioning the drawings, plans and specifications for the Pool.
- 16.2 The State grants to the Council a non-exclusive licence to use and reproduce the drawings, plans and specifications for the purpose of completing construction of the

Pool in the event of default by the State under this Agreement and for maintenance purposes.

16.3 The licence referred to in clause 16.2 includes any further amendments or modifications to the drawings, plans and specifications.

16.4 The State warrants that -

- (a) it is the sole owner of the drawings, plans and specifications;
- (b) the drawings, plans and specifications do not breach the intellectual property rights of any third party;
- (c) it has the full right and authority to grant a licence of the intellectual property rights in the drawings, plans and specifications;
- (d) the drawings, plans and specifications comply or will comply with the *Building Act 1975*, the relevant Australian Standards and all regulations, codes and standards thereto.

16.5 The State indemnifies the Council against any claims, actions, demands, costs, losses, damages, expenses, and proceedings made or instituted against the State in respect of the intellectual property rights.

16.6 The State will provide the Council with a copy of the "as built" drawings following completion of construction of the Pool.

17. Default and Termination

17.1 If any party is in default in the performance of any obligation under this Agreement ("defaulting party") the other parties may give written notice to the defaulting party to remedy the default. If the default is not remedied within 28 days of such notice, then the other parties may terminate this Agreement by further written notice to the defaulting party.

17.2 Termination under clause 17.1 shall be without prejudice to any rights, which any party may have against another arising out of or connected with this Agreement prior to the date of termination.

18. Indemnity

The Parties indemnify and release each other from and against all actions, proceedings, claims, demands, costs, losses, damages and expenses which may be brought against or made upon the State and Council, or which the State or Council may pay, sustain or be put to by reason of, or in consequence of or in connection with the construction of the Pool, except to the extent of any negligent act of the State or Council, its servants or agents.

19. Compliance with Laws

At its expense, the Parties must comply with and observe all Laws for the time being in force which apply to the construction of the Pool.

20. Dispute Resolution

- 20.1 Any party to this Agreement, claiming that a dispute has arisen between any of the parties to this Agreement, shall give written notice to the other party, or parties in dispute, designating as its representative in negotiations relating to the dispute, a person with authority to settle the dispute. Each other party who is given written notice shall promptly give written notice to the other parties in dispute, designating as its representative in negotiations relating to the dispute, a person with similar authority.
- 20.2 Following whatever investigations each deems necessary, the designated persons shall have endeavoured to resolve the dispute no later than 10 days after the last designation under clause 20.1.
- 20.3 If a dispute arises in relation to the matters subject of this Agreement, a party may refer it for determination by a person ("Referee") under this clause.
- 20.4 A party who wishes to refer a dispute for determination under this clause must do so by giving a notice to the other party ("First Dispute Notice") in which it –
- (a) states the name, address and occupation of the person it nominates to determine the dispute ("Nominated Referee"); and
 - (b) nominates one of the classes of expert listed in clause 20.14 ("Expert Category"); and
 - (c) states the matter or matters which constitute the dispute it wishes to refer for determination
- 20.5 Within 7 days after receipt of the First Dispute Notice the other party may give the party who gave the First Dispute Notice a notice ("Second Dispute Notice") in which it states that it accepts or rejects the Nominated Referee in the First Dispute Notice.
- 20.6 If no Second Dispute Notice is given within the time specified in clause 20.5, the Nominated Referee may determine the dispute under this clause.
- 20.7 If the Second Dispute Notice accepts the Nominated Referee, the Nominated Referee may determine the dispute under this clause.
- 20.8 If the Second Dispute Notice rejects the Nominated Referee and/or the nomination of the Expert Category, the nomination of the Referee and/or the Expert Category may be referred by either party to a solicitor appointed by the President for the time being of the Queensland Law Society Inc. who may nominate the Referee and/or the Expert Category.
- 20.9 When a dispute is referred to a Referee for determination under this clause, each of the parties must –
- (a) use its best endeavours to make available to the Referee all facts and circumstances which the Referee may need to know in order to determine the dispute; and
 - (b) ensure that its employees, agents and consultants are available to appear at any hearing or enquiry called for by the Referee; and

- (c) give a copy of any written submission it makes to the Referee to the other party at the same time as it gives the submission to the Referee.
- 20.10 The Referee must decide the dispute and inform the parties of the result within 14 days after the date of submission of the dispute for determination.
- 20.11 The Referee acts as an expert and not as an arbitrator. The Referee's decision is final and binding on the parties. The Referee must give a written statement of reasons for the decision to the parties.
- 20.12 The Referee may decide who must pay the costs and expenses arising out of the reference of the dispute to the Referee, including the Referee's reasonable costs and expenses. If the Referee does not make a decision about costs and expenses, the parties must pay the costs and expenses equally.
- 20.13 Each party must continue to perform its obligations under this Agreement while the determination of the dispute under this clause is in progress.
- 20.14 The classes of expert referred to in clause 20.4 are as follows
- | | |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------|
| (a) Architect | President or Acting President for the time being of the Royal Australian Institute of Architects (Queensland Chapter); |
| (b) Expert in Insurance | President or Acting President for the time being of the Insurance Institute of Queensland; |
| (c) Lawyer | President or Acting President for the time being of the Queensland Law Society Inc; and |
| (d) Engineer | President or Acting President for the time being of the Institution of Engineers, Australia, Queensland Division; |
| (e) Accountant | President or Acting President for the time being of The Institute of Chartered Accountants in Australia (Queensland Branch). |
- 20.15 Unless a party to this Agreement has complied with this clause 20, then that party may not commence court proceedings relating to any dispute arising under this Agreement, except where that party seeks urgent interlocutory relief. In that case, that party need not comply with this clause 20. Where a party fails to comply with this clause 20 ("the defaulting party") then any other party in dispute with the defaulting party need not comply with this clause 20 before commencing court proceedings.

21. Notices

- 21.1 Notices under this Agreement may be delivered by hand, by registered mail, or by facsimile to the addresses specified in clause 21.3 or any substitute address as may have been notified in writing by the relevant addressee from time to time.

21.2 Notice will be deemed to be give –

- (a) 4 Business Days after deposit in the mail with postage prepaid;
- (b) when delivered by hand; or
- (c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 4.00pm. Facsimile transmissions received after 4.00pm will be deemed to be received at the start of the next Business Day.

as the case may be.

21.3 The address for each party is –

State

Address: The Director, Facilities Services Branch
Office of Resource Services
Education Queensland
Education House
30 Mary Street
BRISBANE QLD 4000

Postal Address: PO Box 33
BRISBANE ALBERT STREET QLD 4002

Telephone: (07) 3237 0950

Facsimile: (07) 3237 4367

Council

Address: Redland Shire Council

Postal Address: PO Box 21
CLEVELAND QLD 4163

Attention: Paul Mayes

Telephone: (07) 3829 8647

Facsimile: (07) 3829 8222

22. Governing Law

This Agreement will be governed by and construed according to the Law of the State of Queensland and the Parties agree to submit to the jurisdiction of the Courts of the State of Queensland.

23. Waiver

No right under this Agreement must be deemed to be waived except by notice in writing signed by each party.

24. Variation

This Agreement may be varied at any time by a written agreement executed by all parties.

25. Costs

25.1 Each party must pay its own costs of and incidental to the negotiation, preparation and execution of this Agreement.

25.2 The State must pay any stamp duty payable on this Agreement.

26. Assignment

None of the parties to this Agreement may assign their rights and obligations without the prior written consent of the other parties.

27. Entire Agreement

This Agreement constitutes the entire agreement between the parties. Any prior arrangements, agreements, warranties, representations or undertakings are superseded.

28. Relationship of Parties

The relationship of the parties is that of independent contractor and principal. Nothing in this Agreement creates or will give rise to any relationship of partnership or agency between the parties.

29. Execution

29.1 The parties agree that if this Agreement is not executed by all parties on the same date, this Agreement shall commence on and from the last of the dates of execution.

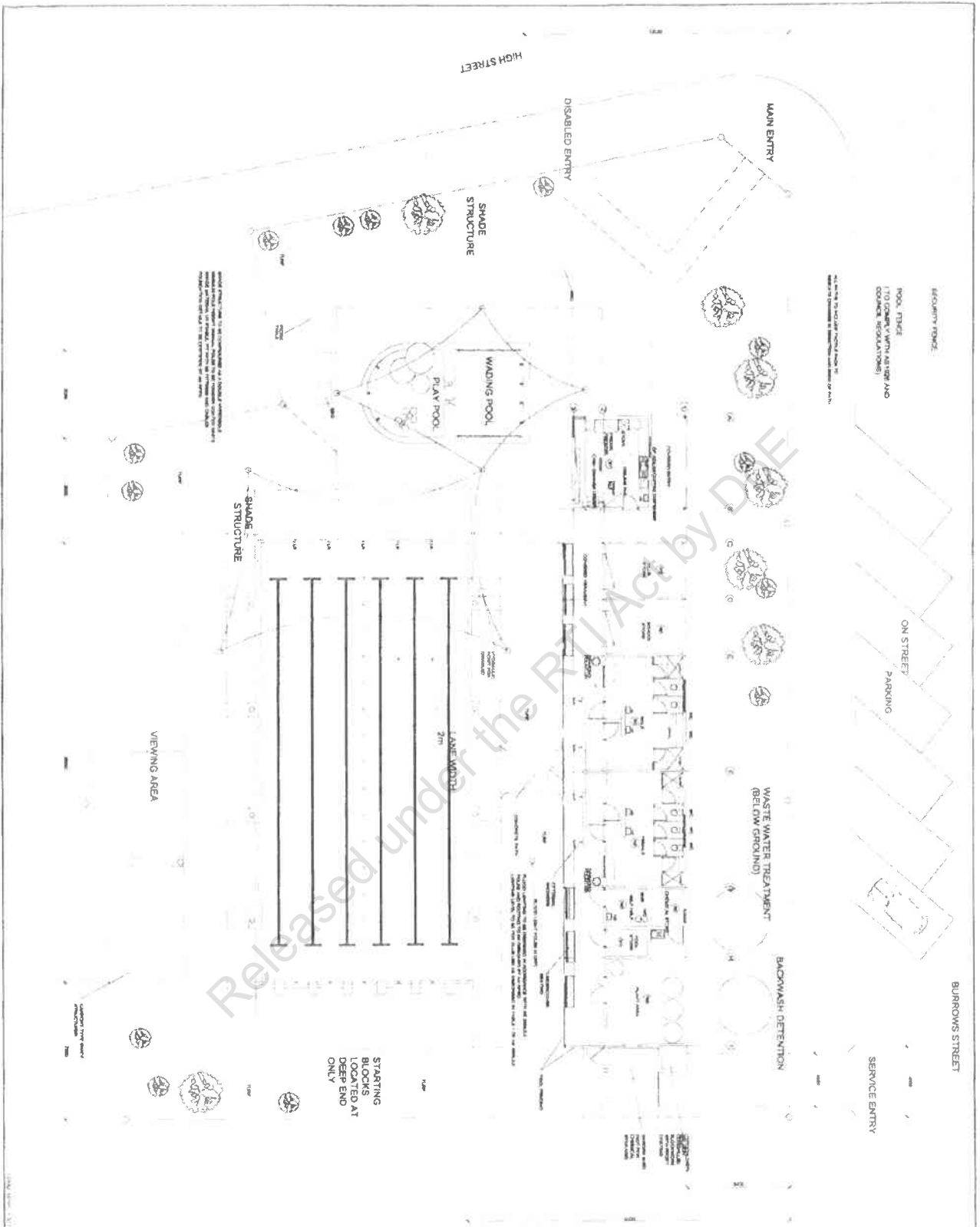
29.2 The parties shall execute copies of this Agreement with each party retaining an original copy.

Released under the RTI Act by DOE

Schedule I

Preliminary Plans of the Pool (attached)

Released under the RTI Act by DoE



Released under the RTI Act by DE

<p>1:1000</p> <p>DATE: 10/10/10</p> <p>SCALE: 1:1000</p> <p>PROJECT: RUSSELL ISLAND COMMUNITY POOL GENERAL LAYOUT</p>	
<p>RUSSELL ISLAND COMMUNITY POOL GENERAL LAYOUT</p>	
<p>PROJECT PARTNERS</p> <p>Radland Shire Council</p> <p>Russell Island Primary School</p> <p>Russell Island P&C</p> <p>Department of Education and the Arts</p>	
<p>MARK SHIPLEY</p> <p>ENGINEERING CONSULTANT</p> <p>RPEQ 6091</p>	
<p>DATE: 10/10/10</p> <p>SCALE: 1:1000</p> <p>PROJECT: RUSSELL ISLAND COMMUNITY POOL GENERAL LAYOUT</p>	

Schedule 2

Plan of Site (attached)

Released under the RTI Act by DoE



Accordingly the Parties have Executed this Agreement on the Dates Appearing Below.

Signed for and on behalf of the

STATE OF QUEENSLAND

this day of 2007

by
(full name)

.....
(designation)

.....
(signature)

who is a duly authorised officer

in the presence of:

.....
(witness)

THE COMMON SEAL of

the Redland Shire Council

was affixed

this day of 2007

by
(full name)

.....
(designation)

.....
(signature)

and by
(full name)

.....
(designation)

.....
(signature)

Released under the RTI Act by DoE

Accordingly the Parties have Executed this Agreement on the Dates Appearing Below.

Signed for and on behalf of the

STATE OF QUEENSLAND

this THIRD day of MAY 2007

by ALLAN JAMES WAGNER
(full name)

CHIEF FACILITIES OFFICER
(designation)

AJ Wagner
(signature)

who is a duly authorised officer

in the presence of:

J.P. (C. DEL)
(witness)

THE COMMON SEAL of

the Redland Shire Council

was affixed

this day of 2007

by Donald Harry Secombe
(full name)

MAYOR
(designation)

D. Secombe
(signature)

and by Susan Anita Rankin
(full name)

Chief Executive Officer
(designation)

S Rankin
(signature)



Released under the RTI Act by DoE

Accordingly the Parties have Executed this Agreement on the Dates Appearing Below.

Signed for and on behalf of the

STATE OF QUEENSLAND

this THIRD day of MAY 2007

by ALLAN JAMES WAGNER
(full name)

CHIEF FACILITIES OFFICER
(designation)

who is a duly authorised officer

in the presence of:

J.P. (C. JEL)
(witness)

AJ Wagner
(signature)

THE COMMON SEAL of

the Redland Shire Council

was affixed

this day of 2007

by Donald Harry Seccombe
(full name)

MAYOR
(designation)

and by Susan Anita Rankin
(full name)

Chief Executive Officer
(designation)

D Seccombe
(signature)

S Rankin
(signature)



Released under the RTI Act by DoE

AGREEMENT

Between

**State of Queensland
(represented by the Department of Education and
Training)**

and

Redland City Council

Released under the RTI Act by DoE

THIS DEED is made this day of 2015

BETWEEN: **State of Queensland** represented by the Department of Education and Training of 30 Mary Street, Brisbane in the State of Queensland.

("DET")

AND: **Redland City Council** of 91-93 Bloomfield Street, Cleveland in the State of Queensland.

("Council")

RECITALS

- A. In May 2007 DET and the Council entered into the JDA pursuant to which the parties agreed to construct the Pool on the Land.
- B. Upon construction of the Pool, Council operated and managed the Pool in accordance with the JDA.
- C. Pursuant to the terms of the JDA the Council will transfer the Land to DET.
- D. Subject to the Council transferring the Land, DET has agreed to grant to Council the right to manage, operate and use the Pool for the Term in accordance with this agreement.

NOW THE PARTIES AGREE AS FOLLOWS -

1. Interpretation

- 1.1 In this Deed, unless the context otherwise requires or the contrary intention appears, the following terms shall have the meanings assigned to them -

"**AUSTSWIM**" means the Australian Council for the Teaching of Swimming and Water Safety.

"**Authority**" means any court or tribunal of independent jurisdiction, or any Commonwealth, State or Territory or municipal government or body.

"**Commencement Date**" means the date of execution of this Deed by DET or the date of transfer of the Land to DET, whichever is the later.

"**Council Assets**" means all Council property and equipment brought onto the Licence Area for the purpose of meeting its obligations under this Agreement.

"**Equipment**" means all equipment located in the Licence Area and any new or replacement equipment supplied by DET during the Term.

"**Expiry Date**" means 19 April 2020.

"Guidelines" means the guidelines listed in Schedule 1 to this Agreement (as amended or replaced from time to time).

"JDA" means the Joint Development Agreement entered into by DET and Council in relation to the construction of the Pool, which was signed by DET on 3 May 2007.

"Land" means the land located at the corner of High Street and Burrows Street, Russell Island described as lots 135, 136 and 137 on Registered Plan 130091, County of Stanley, Parish of Russell, Certificates of Title reference numbers 14673108, 14673109 and 14673110.

"Licence Area" means the Pool (including the Equipment) and all structures and buildings located on that part of the Land outlined in blue on the Plan.

"Outgoings" means all rates, charges, garbage collection fees, water rates, electricity charges, gas charges and any other service or utility cost for the provision of services to the Licence Area excluding Telecommunication Charges.

"Participants" means all persons participating in the swimming activities set out in the Permitted Use.

"Permitted Use" means the management and operation of the Pool, the Pool kiosk, the provision of swimming coaching, learn to swim classes, aqua aerobics, general recreational swimming and community use.

"Personal Information" means information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

"Personnel" means Council officers, employees, contractors and agents and all other persons authorised by Council.

"Plan" means the Plan contained in Schedule 2 to this Agreement.

"Pool" means the swimming pool located on the Licence Area.

"Principal" means the Principal of the School.

"School" means Russell Island State School operated by DET on the property adjacent to the Land, Macleay Island State School and any other school operated by DET in the local area.

"School Day" means each day that the School is open for attendance by students and excludes public holidays and gazetted school holidays.

"School Term" means one of the four terms in the school calendar year.

"School Use" means:

- (i) every Thursday in the first School Term;
- (ii) every Thursday and Friday in the fourth School Term; and

- (iii) such other School Days as may be agreed by the Principal and Council from time to time.

“Telecommunication Charges” means all costs associated with the supply and use of telecommunication services, equipment and internet access within the Licence Area.

“Term” means the period commencing on the Commencement Date and expiring on the Expiry Date.

- 1.2 A reference to a person includes a reference to corporations and other entities recognised by law.
- 1.3 In this Agreement the headings to the clauses have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.
- 1.4 A reference to a statute, regulation, ordinance or local law must be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them.
- 1.5 The singular includes the plural and vice versa.
- 1.6 Words importing one gender must include a reference to all other genders.
- 1.7 A covenant or agreement on the part of two or more persons must be deemed to bind them jointly and severally.
- 1.8 A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Agreement and includes any amendments to them made in accordance with this Agreement.
- 1.9 Where under or pursuant to this Agreement the day on or by which any act, matter or things is to be done is not a business day, such an act, matter or thing may be done on the next business day.

2. Council's Rights and Obligations

2.1 Licence to Use

DET grants to Council and Council accepts a licence to use the Licence Area during the Term for the Permitted Use.

2.2 Operation and Cleaning

Council will at its own cost:

- (a) manage and operate the Pool for the Permitted Use in accordance with the Guidelines and as otherwise directed by DET from time to time (acting reasonably);
- (b) promote within the community the use of the Pool and the services provided by Council at the Licence Area;
- (c) undertake all routine cleaning of the Pool, including:
- (i) regular testing of the water quality of the Pool;

- (ii) recording all water quality testing and water treatment in a log book; and
- (iii) supplying all chemicals to treat and maintain the water quality of the Pool;
- (d) keep and maintain the Pool and all buildings and structures within the Licence Area in a clean, tidy and hygienic condition;
- (e) mow all grassed areas and maintain all gardens within the Licence Area in a tidy condition;
- (f) dispose of all rubbish and refuse;
- (g) ensure all Equipment is used, stored and maintained in accordance with the manufacturers' recommendations;
- (h) ensure all chemicals for use at the Licence Area are stored safely in locked facilities in accordance with the manufacturer's instructions;
- (i) make good any damage caused to the Equipment, the Pool or the Licence Area as a result of:
 - (i) the Council using the Licence Area; or
 - (ii) the negligent or malicious acts or omissions of any person other than DET's employees or agents.

2.3 Notice of Damage

Council must notify DET promptly of any damage to or defects in the Licence Area or the malfunctioning of the Equipment immediately after Council is aware of or should have been aware of it.

2.4 Council's Assets

- (a) On or before the Commencement Date Council will provide a list of the Council's Assets.
- (b) Council is responsible for the care, maintenance and insurance of Council's Assets.
- (c) Upon the expiry or termination of this Agreement, Council must remove Council's Assets and make good any damage caused to the Licence Area.
- (d) If Council does not remove all or any of Council's Assets within 30 days of the expiry or termination of this Agreement, they will be deemed abandoned and DET may remove them at Council's cost.

2.5 Responsibility to Persons

- (a) During the Term Council is responsible for:
 - (i) supervision and control of Personnel, visitors and Participants;
 - (ii) the conduct and actions of Personnel, visitors and Participants; and

- (iii) the health and safety of Personnel, visitors and Participants.
- (b) Council must ensure a sufficiently stocked first aid kit is available on the Licence Area.
- (c) Council must notify DET immediately of any injury to any person occurring on the Licence Area.

2.6 Personnel Qualifications

- (a) During the Term Council must ensure that all Personnel are appropriately qualified and hold as a minimum qualification:
 - (i) a current blue card issued by the Public Safety Business Agency in accordance with the *Working with Children (Risk Management and Screening) Act 2000(Qld)*;
 - (ii) if engaged in a teaching capacity – a current AUSTSWIM certificate for the teaching of swimming and water safety;
 - (iii) a current first aid certificate issued by St John's Ambulance (Qld);
 - (iv) if engaged in a lifeguard capacity – a current Pool Lifeguard Award issued by the Royal Life Saving Society Australia; and
 - (v) any other current qualifications or certificates required in order to properly undertake their duties.
- (b) Council must provide documentary evidence of compliance with this clause within a reasonable time of being requested to do so by DET.

2.7 Access and Security

- (a) Council must, at the end of each use:
 - (i) close and lock all gates, windows and doors at the Licence Area and, if required, arm all security panels;
 - (ii) securely store the Equipment in the store room;
 - (iii) securely store all keys;
 - (iv) place any pool blanket over the Pool surface; and
 - (v) turn off all water and gas taps, lights, fans, air conditioners and other electrical equipment used at the Licence Area.
- (b) Council must ensure that the Pool safety gates are kept closed at all times.
- (c) Council must not duplicate or provide keys and security codes to another person without DET's consent.

2.8 Telecommunication Charges

Council is responsible for the connection of telephone and internet services to the Licence Area and must pay all Telecommunication Charges directly to the supplier of those services.

2.9 Insurance

- (a) During the Term, Council will obtain and keep in full force and effect the following insurance policies:
 - (i) public liability insurance for a minimum of \$20 million per occurrence or any higher limit that DET reasonably requires from time to time; and
 - (ii) worker's compensation insurance in accordance with the *Workers Compensation and Rehabilitation Act 2003 (Qld)*.
- (b) All Council insurance policies required by this Agreement will be taken out with insurers authorised and licensed to operate in Australia. Certificates of currency for each insurance policy will be delivered by Council to DET within 7 days of being requested to do so.

2.10 Nuisance

- (a) Council must not cause a nuisance, or interfere with the reasonable peace, comfort or privacy of the Russell Island State School or neighbours of the Licence Area.
- (b) Council must take all reasonable steps to ensure that Personnel, visitors or Participants do not use foul or obscene language, consume alcohol, drugs or smoke on the Licence Area.

2.11 Advertising and Signs

Council must not erect or display any signs or advertising material at the Licence Area without DET's prior written approval, which will not be unreasonably withheld.

2.12 Personal Information

If Council collects or has access to Personal information in order to carry out its obligations under this Agreement, Council must:

- (a) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009 (Qld)* as if Council were DET;
- (b) ensure that Council's sub-contractors who have access to Personal Information comply with the same obligations as this clause;
- (c) if requested by DET, obtain from Personnel engaged in relation to this Agreement an executed deed of privacy in a form acceptable to DET; and
- (d) notify DET immediately on becoming aware of a breach of this clause.

2.13 Comply with all Laws

Council must comply with all relevant laws and the requirements of any Authority while using the Licence Area.

2.14 Return of Licence Area

Upon the expiry or termination of this Agreement, Council will leave the Licence Area clean and tidy and in the same condition as at the Commencement Date, subject to fair wear and tear.

3. DET's Rights and Obligations

3.1 Use of the Pool by the School

Council acknowledges and agrees that:

- (a) during the times nominated for School Use, DET's employees, agents contractors and students may use the Pool and the Licence Area for swimming and other sporting activities of the School;
- (b) during such other times as Council and the Principal agree, the School may use the Pool and the Licence Area for swimming carnivals and other School activities;
- (c) during School Use and any other times the Pool and Licence Area is being used by the School, such use will be exclusive to the School and the Pool and Licence Area will not be available for use by the Council's invitees or members of the public; and
- (d) no cost or fee will be imposed on DET or the School for the use of the Pool and Licence Area.

3.2 DET's Right to Access the Licence Area

Council acknowledges and agrees that:

- (a) at any time DET, its employees, contractors and agents may enter upon the Licence Area, with equipment, for the purpose of:
 - (i) repairing and maintaining the Licence Area;
 - (ii) testing the water quality of the Pool; and
 - (iii) inspecting the Licence Area to ensure compliance with this Agreement.
- (b) In exercising its rights under this clause 3.2, DET will take all reasonable steps to minimize any disturbance to the Council and its use of the Licence Area.

3.3 DET's Right to Close the Pool

- (a) DET reserves the right to close the Pool and Licence Area in the event of an emergency or where it considers such action is necessary for the safety of any person or property and may keep the Pool and Licence Area closed until the emergency or danger has been remedied to DET's satisfaction.

- (b) No compensation for loss of anticipated earnings will be paid to Council in respect of closure of the Pool and Licence Area in the event of an emergency or dangerous situation as noted in clause 3.3(a) above.

3.4 DET to Repair and Maintain

Subject to the Council's obligations under this Agreement, DET will repair, maintain and upgrade the Pool, the Equipment and the Licence Area to a standard DET considers reasonable or as required by law.

3.5 DET to Pay Outgoings

DET will pay all Outgoings in relation to the Licence Area.

3.6 DET to Insure

Council acknowledges that the Pool, the Equipment and the buildings and structures located in the Licence Area are insured by the Queensland Government Insurance Fund. DET will provide a copy of the certificate of currency of insurance if requested to do so by Council.

3.7 Performance Management Meetings

During the Term, DET may convene meetings with Council to assess compliance with this Agreement. DET and Council will each nominate an officer to attend those meetings on their behalf.

4. Interruption of Services

4.1 DET will not be liable for any loss or damage suffered by Council as a result of:

- (a) any malfunction, failure to function or interruption of or to the water, gas, electricity or telecommunication services in the Licence Area; or
- (b) any other interruption to Council's use of the Licence Area whatsoever,

unless that loss or damage is caused by the negligent act or omission of DET's employees or agents.

5. No Warranty

5.1 DET does not warrant that the Property is free from defect or that it is safe for the intended purpose and it is a condition of this Licence that DET will not incur any liability whatsoever for any loss damage or injury occurring to any person or vehicle of any description or any thing in any way arising out of the occupation of the Licence Area.

6. Indemnity

6.1 Council will indemnify and keep indemnified DET from and against all actions, suits, proceedings, claims, costs, damages, expenses and demands whatsoever brought prosecuted or made against DET for or on account of loss of life or damage to persons or property or any consequential loss suffered or sustained in consequence of any act, omission, neglect or default of Council or its servants, contractors or agents arising out of the Council's use and occupation of the Licence Area.

7. Assignment

- 7.1 Council must not assign, sub-license or in any manner part with the use and occupation of the Licence Area.

8. Termination

- 8.1 Either DET or the Council may terminate this Licence by giving not less than 3 month's notice in writing.
- 8.2 If Council breaches any clause of this Deed and does not remedy the breach within 30 days from delivery of written notice from DET to Council, DET may terminate this Licence by notice in writing to Council which will take effect on the day the notice of termination is received by Council.

9. Costs

- 9.1 Each party must pay their own costs of and incidental to the negotiation, preparation and execution of this Deed.

10. Notices

- 10.1 Notices under this Deed may be delivered by hand, mail or by facsimile to the addresses specified in clause 10.3 or to any substitute address as may have been notified in writing by one party to the other from time to time.
- 10.2 Notice will be deemed given:
- (a) 3 business days after being posted;
 - (b) when delivered by hand; or
 - (c) if sent by facsimile, upon apparently successful transmission being notified by the sender's facsimile machine.

- 10.3 The address for each party is:

- (a) DET:

Infrastructure Advisor, Department of Education & Training, Robina Regional Office - South East Region, Lakehouse Corporate Space, Building 2, 34-36 Glenferrie Drive, Robina Qld 4226 (PO Box 557, Robina DC Qld 4226). Ph 0439 737 611 Fax: (07) 5656 6725

- (b) Council:

The Chief Executive Officer, Redland City Council, 91-93 Bloomfield Street, (PO Box 21), Cleveland Qld 4163. Ph (07) 3829 8647 Fax: (07) 3829 8765

11. Severability

If any term, covenant or condition in this Deed or the application of them to any person or circumstances shall be or become invalid or unenforceable, the remaining term, covenants

and conditions shall not be affected and each remaining term, covenant and condition for this Deed shall be valid and enforceable to the fullest extent permitted by law.

Released under the RTI Act by DoE

Schedule 1

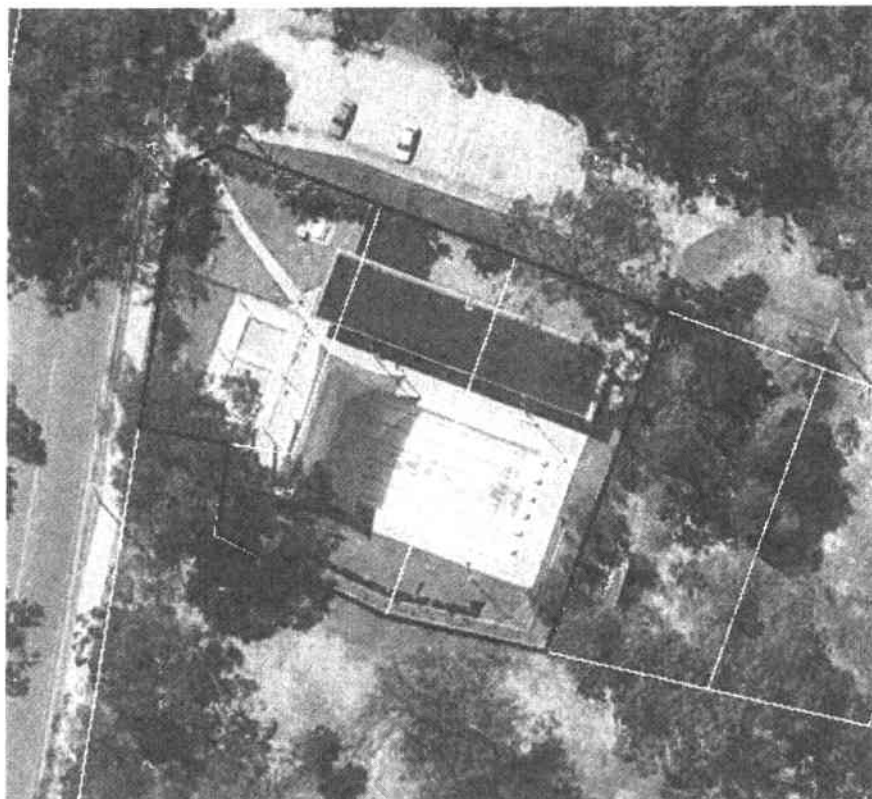
Guidelines

<i>Queensland Health Swimming and Spa Pool Water Quality and Operational Guidelines (October 2004)</i> - published by the Queensland Department of Health.
<i>School Swimming Pools – Operation and Management</i> - published by the Department of Education and Training.
<i>Guidelines for Water Safety – Commercial Learn to Swim and School Pools</i> – published by the Royal Life Saving Society Australia.
<i>Guidelines for Safe Pool Operations</i> – published by the Royal Life Saving Society Australia.
<i>Managing Drowning Risks at Publicly Accessible Pools</i> – published by Workplace Health and Safety Queensland

Released under the RTI Act by DOE

Schedule 2

Plan



Released under

Executed as an Agreement by the Parties on the Dates Appearing Below.

SIGNED SEALED and DELIVERED for and on behalf of the State of Queensland (represented by the Department of Education and Training)

this 7 day of MARCH 2016

by Laise Stolz (full name)

Executive Director (designation)

who is a duly authorised officer in the presence of:

Angela Jean Evans (witness)

Angela Jean Evans
Commissioner for Declarations
No.5601

SIGNED SEALED and DELIVERED for an on behalf of the Redland City Council

this 28th day of OCTOBER 2015

by GARY SOUTH (full name)

GENERAL MANAGER INFRASTRUCTURE AND OPERATIONS (designation)

who is a duly authorised officer in the presence of:

[Redacted] (witness)

Tim Gowerd (name of witness)

[Signature]

[Signature]

Released under the RTI Act by DoE

s47(3)(b) - Contrary to Public Interest

11/01/2010

Between

State of Queensland
(Represented by the Department of Education)

And

Redland City Council

Released under the RTI Act by DOE

DAY ISLANDS AQUATIC CENTRE

CONTENTS

1. Interpretations

2. Council's Rights and Obligations

- 2.1 Licence to Use
- 2.2 Operation and Cleaning
- 2.3 Notice of Damage
- 2.4 Council's Assets
- 2.5 Responsibility to Persons
- 2.6 Personnel Qualifications
- 2.7 Access and Security
- 2.8 Telecommunication Charges
- 2.9 Insurance
- 2.10 Nuisance
- 2.11 Personal Information
- 2.12 Comply with all Laws
- 2.13 Holding Over
- 2.14 Return of Licence Area

3. DoE's Rights and Obligations

- 3.1 Use of the Pool by the School
- 3.2 DoE's Right to Access the Licence Area
- 3.3 DoE's Right to Close the Pool
- 3.4 DoE to Repair and Maintain
- 3.5 DoE to Pay Outgoings
- 3.6 DoE to Insure
- 3.7 Performance Management Meetings

4. Interruption of Services

5. No Warranty

6. Indemnity

7. Termination

8. Costs

9. Notices

10. Severability

Schedule 1- Guidelines

Schedule 2 – Plan

11. Deed Execution

THIS Deed is made this day _____ of _____ 2020.

BETWEEN: State of Queensland represented by the Department of Education of 30 Mary Street, Brisbane in the State of Queensland.
("DoE")

AND: Redland City Council of 91-93 Bloomfield Street, Cleveland in the State of Queensland.
("Council")

RECITALS

A. DoE has agreed to grant to Council the right to manage, operate and use the Aquatic Centre for the Term in accordance with this Deed.

NOW THE PARTIES AGREE AS FOLLOWS –

1. Interpretation

1.1 In this Deed, unless the context otherwise requires or the contrary intention appears, the following terms shall have the meanings assigned to them –

"Aquatic Centre" means all pools and ancillary facilities located within the licensed area.

"AUSTSWIM" means the Australian Council for the Teaching of Swimming and Water Safety.

"Authority" means any court or tribunal of independent jurisdiction, or any Commonwealth, State or Territory or municipal government or body.

"Commencement Date" means 20 April 2020.

"Council Assets" means all Council property and equipment brought onto the Licence Area for the purpose of meeting its obligations under this Deed.

"Deed" means this Deed and all Schedules to the Deed.

"Equipment" means all equipment located in the Licence Area and any new or replacement equipment supplied by DoE during the Term.

"Expiry Date" means 28 May 2022.

"Guidelines" means the guidelines listed in Schedule 1 to this Deed (as amended or replaced from time to time).

"Land" means the land located at the corner of High Street and Burrows Street, Russell Island described as lots 135, 136 and 137 on Registered Plan 130091, County of Stanley, Parish of Russell, Certificates of Title reference numbers 14673108, 14673109 and 14673110.

"Licence Area" means the Pool (including the Equipment) and all structures and buildings located on that part of the Land outlined on the Plan.

"Outgoings" means all rates, charges, garbage collection fees, water rates, electricity charges, gas charges and any other service or utility cost for the provision of services to the Licence Area, excluding Telecommunication Charges.

"Participants" means all persons participating in the swimming activities set out in the Permitted Use.

"Permitted Use" means the management and operation of the Pool, the Pool kiosk, the provision of swimming coaching, learn to swim classes, aqua aerobics, general recreational swimming and community use.

"Personal Information" means information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

"Personnel" means Council officers, employees, contractors and agents and all other persons authorised by Council.

"Plan" means the Plan contained in Schedule 2 to this Deed.

"Pool" means the swimming pool located on the Licence Area.

"Principal" means the Principal of the School.

"School" means Russell Island State School operated by DoE on the property adjacent to the Land, Macleay Island State School and any other school operated by DoE in the local area.

"School Day" means each day that the school is open for attendance by students and excludes public holidays and gazetted school holidays.

"School Term" means one of the four terms in the school calendar year.

"School Use" means days agreed with DoE / Schools and Council before the beginning of each swim season.

"Telecommunication Charges" means all costs associated with the supply and use of telecommunication services, equipment and internet access within the Licence Area.

"Term" means the period commencing on the Commencement Date and expiring on the Expiry Date.

- 1.2 A reference to a person includes a reference to corporations and other entities recognised by law.
- 1.3 In this Deed the headings to the clauses have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Deed.
- 1.4 A reference to a statute, regulation, ordinance or local law must be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them.
- 1.5 The singular includes the plural and vice versa.
- 1.6 Words importing one gender must include a reference to all other genders.
- 1.7 A covenant or agreement on the part of two or more persons must be deemed to bind them jointly and severally.
- 1.8 A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Deed and includes any amendments to them made in accordance with this Deed.

- 1.9 Where under or pursuant to this Deed the day on or by which any act, matter or things is to be done is not a business day, such an act, matter or thing may be done on the next business day.

2. Council's Rights and Obligations

2.1 Licence to Use

DoE grants to Council and Council accepts a licence to use the; Licence Area during the Term for the Permitted Use.

2.2 Operation and Cleaning

Council will at its own cost:

- (a) Manage and operate the Aquatic Centre for the Permitted Use in accordance with the Guidelines and as otherwise directed by DoE from time to time (acting reasonably);
- (b) Promote within the community the use of the Aquatic Centre and the services provided by Council at the Licence Area;
- (c) Undertake all routine cleaning of the Aquatic Centre, including:
 - (i) Regular testing of the water quality of the Aquatic Centre;
 - (ii) Recording all water quality testing and water treatment in a log book; and
 - (iii) Supplying all chemicals to treat and maintain the water quality of the Aquatic Centre;
- (d) Keep and maintain the Aquatic Centre and all buildings and structures within the Licence Area in a clean, tidy and hygienic condition;
- (e) Mow all grassed areas and maintain all gardens within the Licence Area in a tidy condition;
- (f) Dispose of all rubbish and refuse;
- (g) Ensure all Equipment is used, stored and maintained in accordance with the manufacturers' recommendations;
- (h) Ensure all chemicals for use at the Licence Area are stored safely in locked facilities in accordance with the manufacturer's instructions;
 - (i) Make good any damage caused to the Equipment, the Pool or the Licence Area as a result of:
 - (i) The Council using the Licence Area; or
 - (ii) The negligent or malicious acts or omissions of any person other than DoE's employees or agents.

2.3 Notice of Damage

Council must notify DoE promptly of any damage to or defects in the Licence Area or the malfunctioning of the Equipment immediately after Council is aware of or should have been aware of it.

2.4 Council's Assets

(a) On or before the Commencement Date Council will provide a list of the Council's Assets.

(b) Council is responsible for the care, maintenance and insurance of Council's Assets.

(c) Upon the expiry or termination of this Deed, Council must remove Council's Assets and make good any damage caused to the Licence Area.

(d) If Council does not remove all or any of Council's Assets within 30 days of the expiry or termination of this Deed, they will be deemed abandoned and DoE may remove them at Council's cost.

2.5 Responsibility to Persons

(a) During the Term Council is responsible for:

- (i) Supervision and control of Personnel, visitors and Participants;
- (ii) The conduct and actions of Personnel, visitors and Participants; and
- (iii) The health and safety of Personnel, visitors and Participants.

(b) Council must ensure a sufficiently stocked first aid kit is available on the Licence Area.

(c) Council must notify DoE immediately of any injury to any person occurring on the Licence Area.

2.6 Personnel Qualifications

(a) During the Term Council must ensure that all Personnel are appropriately qualified and hold as a minimum qualification:

- (i) A current blue card issued by the Public Safety Business Agency in accordance with the *Working with Children (Risk Management and Screening) Act 2000(Qld)*;
- (ii) If engaged in a teaching capacity - a current AUSTSWIM certificate for the teaching of swimming and water safety;
- (iii) A current first aid certificate;
- (iv) If engaged in a lifeguard capacity - a current Pool Lifeguard Award issued by the Royal Life Saving Society Australia; and
- (v) Any other current qualifications or certificates required in order to properly undertake their duties.

(b) Council must provide documentary evidence of compliance with this clause within a reasonable time of being requested to do so by DoE.

2.7 Access and Security

(a) Council must, at the end of each use:

- (i) Close and lock all gates, windows and doors at the Licence Area and, if required, arm all security panels;
- (ii) Securely store the Equipment in the store room;
- (iii) Securely store all keys;
- (iv) Place any pool blanket over the Pool surface; and
- (v) Turn off all water and gas taps, lights, fans, air conditioners and other electrical equipment used at the Licence Area.

(b) Council must ensure that the Aquatic Centre safety gates are kept closed at all times.

(c) Council must not duplicate or provide keys and security codes to another person without DoE's consent.

2.8 Telecommunication Charges

Council is responsible for the connection of telephone and internet services to the Licence Area and must pay all Telecommunication Charges directly to the supplier of those services.

2.9 Insurance

(a) During the Term, Council will obtain and keep in full force and effect the following insurance policies:

- (i) Public liability insurance for a minimum of \$20 million per occurrence or any higher limit that DoE reasonably requires from time to time; and
- (ii) Worker's compensation insurance in accordance with the *Workers Compensation and Rehabilitation Act 2003 (Qld)*.

(b) All Council insurance policies required by this Deed will be taken out with insurers authorised and licensed to operate in Australia. Certificates of currency for each insurance policy will be delivered by Council to DoE within 7 days of being requested to do so.

2.10 Nuisance

(a) Council must not cause a nuisance, or interfere with the reasonable peace, comfort or privacy of the Russell Island State School or neighbours of the Licence Area.

(b) Council must take all reasonable steps to ensure that Personnel, visitors or

Participants do not use foul or obscene language, consume alcohol, drugs or smoke on the Licence Area.

2.11 Personal Information

If Council collects or has access to Personal information in order to carry out its obligations under this Deed, Council must:

- (a) Comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009 (Qld)* as if Council were DoE;
- (b) Ensure that Council's sub-contractors who have access to Personal Information comply with the same obligations as this clause;
- (c) If requested by DoE, obtain from Personnel engaged in relation to this Deed an executed deed of privacy in a form acceptable to DoE; and
- (d) Notify DoE immediately on becoming aware of a breach of this clause.

2.12 Comply with all Laws

Council must comply with all relevant laws and the requirements of any authority while using the Licence Area.

2.13 Holding Over

If Council remains in occupation of the Licence Area after the end of this Deed with the consent of DoE, it will do so from month to month during which the conditions of this Deed will continue to apply.

2.14 Return of Licence Area

Upon the expiry or termination of this Deed, Council will leave the Licence Area clean and tidy and in the same condition as at the Commencement Date, subject to fair wear and tear.

3. DoE's Rights and Obligations

3.1 Use of the Aquatic Centre by the School

Council acknowledges and agrees that:

- (a) During the times nominated for School Use, DoE's employees, agents contractors and students may use the Aquatic Centre and the Licence Area for swimming and other sporting activities of the School;
- (b) During such other times as Council and the Principal agree, the School may use the Aquatic Centre and the Licence Area for swimming carnivals and other School activities;
- (c) During School Use and any other times the Aquatic Centre and Licence Area is being used by the School, such use will be exclusive to the School and the Aquatic Centre and Licence Area will not be available for use by the Council's invitees or members of the public; and
- (d) No cost or fee will be imposed on DoE or the School for the use of the Aquatic Centre and Licence Area.

3.2 DoE's Right to Access the Licence Area

Council acknowledges and agrees that:

(a) At any time DoE, its employees, contractors and agents may enter upon the Licence Area, with equipment, for the purpose of:

- (i) Repairing and maintaining the Licence Area;
- (ii) Testing the water quality of the Aquatic Centre; and
- (iii) Inspecting the Licence Area to ensure compliance with this Deed.

(b) In exercising its rights under this clause 3.2, DoE will take all reasonable steps to minimise any disturbance to the Council and its use of the Licence Area.

3.3 DoE's Right to Close the Aquatic Centre

(a) DoE reserves the right to close the Aquatic Centre and Licence Area in the event of an emergency or where it considers such action is necessary for the safety of any person or property and may keep the Aquatic Centre and Licence Area closed until the emergency or danger has been remedied to DoE's satisfaction.

(b) No compensation for loss of anticipated earnings will be paid to Council in respect of closure of the Aquatic Centre and Licence Area in the event of an emergency or dangerous situation as noted in clause 3.3(a) above.

3.4 DoE to Repair and Maintain

Subject to the Council's obligations under this Deed, DoE will repair, maintain and upgrade the Aquatic Centre, the Equipment and the Licence Area to a standard DoE considers reasonable or as required by law.

3.5 DoE to Pay Outgoings

DoE will pay all Outgoings in relation to the Licence Area.

3.6 DoE to Insure

Council acknowledges that the Aquatic Centre, the Equipment and the buildings and structures located in the Licence Area are insured by the Queensland Government Insurance Fund. DoE will provide a copy of the certificate of currency of insurance if requested to do so by Council.

3.7 Performance Management Meetings

During the Term, DoE may convene meetings with Council to assess compliance with this Deed. DoE and Council will each nominate an officer to attend those meetings on their behalf.

4. Interruption of Services

4.1 DoE will not be liable for any loss or damage suffered by Council as a result of:

(a) Any malfunction, failure to function or interruption of or to the water, gas, electricity or telecommunication services in the Licence Area; or

(b) Any other interruption to Council's use of the Licence Area whatsoever, unless that loss or damage is caused by the negligent act or omission of DoE's employees or agents

5. No Warranty

- 5.1 DoE's not warrant that the Property is free from defect or that it is safe for the intended purpose and it is a condition of this Licence that DoE will not incur any liability whatsoever for any loss damage or injury occurring to any person or vehicle of any description or anything in any way arising out of the occupation of the Licence Area.

6. Indemnity

- 6.1 Council will indemnify and keep indemnified DoE from and against all actions, suits, proceedings, claims, costs, damages, expenses and demands whatsoever brought prosecuted or made against DoE for or on account of loss of life or damage to persons or property or any consequential loss suffered or sustained in consequence of any act, omission, neglect or default of Council or its servants, contractors or agents arising out of the Council's use and occupation of the Licence Area.

7. Assignment

- 7.1 Council must not assign, sub-license or in any manner part with the use and occupation of the License Area.

8. Termination

- 8.1 Either DoE or the Council may terminate this Licence by giving not less than 3 months' notice in writing.
- 8.2 If Council breaches any clause of this Deed and DoE's not remedy the breach within 30 days from delivery of written notice from DoE to Council, DoE may terminate this Licence by notice in writing to Council which will take effect on the day the notice of termination is received by Council.

9. Costs

- 9.1 Each party must pay their own costs of and incidental to the negotiation, preparation and execution of this Deed.

10. Notices

- 10.1 Notices under this Deed may be delivered by hand, mail or by email to the addresses specified in clause 10.3 or to any substitute address as may have been notified in writing by one party to the other from time to time.
- 10.2 Notice will be deemed given:
- (a) Three (3) business days after being posted;
 - (b) When delivered by hand; or
 - (c) If sent by email, upon successful transmission being notified by the sender's email server.

10.3 The address for each party is:

(a) DoE:
Infrastructure Advisor, Department of Education
Hope Island Regional Office - South East Region
Phone: 0439 737 611
Email: megan.vanwanrooy@qed.qld.gov.au

(b) Council:
The Chief Executive Officer
Redland City Council
91-93 Bloomfield Street
PO Box 21, Cleveland Qld 4163
Phone: (07) 3829 8999
Email: rcc@redland.qld.gov.au

11. Severability

If any term, covenant or condition in this Deed or the application of them to any person or circumstances shall be or become invalid or unenforceable, the remaining term, covenants and conditions shall not be affected and each remaining term, covenant and condition for this Deed shall be valid and enforceable to the fullest extent permitted by law.

Released under the RTI Act 2009

Schedule 1

Guidelines

Queensland Health Water Quality Guidelines
-for Public Aquatic Facilities published by the Queensland Department of Health.

School Swimming Pools - Operation and Management - published by the Department of Education and Training.

Guidelines for Water Safety - Commercial Learn to Swim and School Pools - published by the Royal Life Saving Society Australia.

Guidelines for Safe Pool Operation – Aquatic Supervision – effective 1 September 2019 - published by the Royal Life Saving Society Australia.

Managing Drowning Risks at Publicly Accessible Pools - published by Workplace Health and Safety Queensland

A Guide to 'Water Safety Essentials for Local Governments – published by the Australian Water Safety Council.

Released under the RTI Act by DOE

Schedule 2

Plan

 Bay Islands Swimming Pool

 Bay Islands Pool Area

 25m Pool

 Kids Play Pool

 BBQ Area

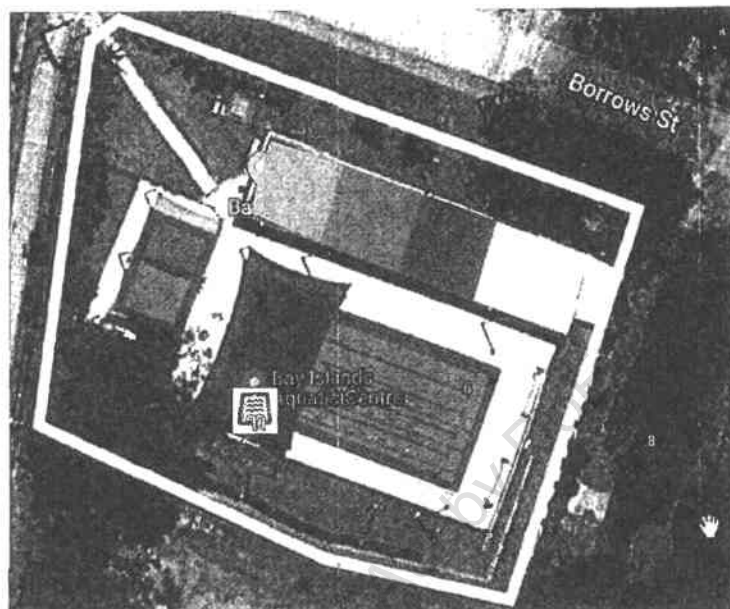
 Kiosk

 Storage

 Toilets

 Plant Room

 Sheds



Released under the RTI

12. Deed Execution

Executed as a Deed by the parties on the dates appearing below.

SIGNED, SEALED and DELIVERED for and on behalf of the State of Queensland (represented by the Department of Education) on this:

26th day of March 2021

by:

JOHN NORFOLK
(Full name)
REGIONAL DIRECTOR
(Designation)

This who is a duly authorised officer in the presence of:

NATHALIE TREE
(Name of witness)

SIGNED, SEALED and DELIVERED for an on behalf of the Redland City Council on this:

9 day of March 2021

by:

SMERBY CLARKE
(Full name)
GROUP MANAGER CITY OPS
(Designation)

s47(3)(b) - Contrary to Public Interest

This who is a duly authorised officer in the presence of:

JILL
(Name of witness)