

DATED

15 SEPTEMBER 2025

JOINT USE AGREEMENT

BETWEEN

MINISTER FOR EDUCATION, TRAINING AND SKILLS

AND

**STRATHALBYN AND DISTRICTS ^{8/23} BASKETBALL ASSOCIATION
INCORPORATED**

ABN 98 274 025 128



**Government
of South Australia**

**CROWN SOLICITOR
Level 11 Education Centre
31 Flinders Street, Adelaide SA 5000**

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AGREEMENT dated

15 SEPTEMBER

2025

PARTIES:

MINISTER FOR EDUCATION, TRAINING AND SKILLS a body corporate by operation of the *Administrative Arrangements Act 1994* of 31 Flinders Street Adelaide South Australia 5000 (**Minister**)

AND

STRATHALBYN AND DISTRICTS BASKETBALL ASSOCIATION INC (ABN 98 274 025 128) of c/- PO Box 235 Strathalbyn South Australia 5255 (**Association**)

BACKGROUND

- A. The Minister is the registered proprietor of the whole of the Land on which the Facility is constructed.
- B. The Facility, which is used for various educational, recreational and sporting activities, was constructed in or about 1981. The School and the Association have been using the Facility since that time.
- C. A previous agreement governing the parties' use of the Facility has expired and the parties now wish to enter into a new agreement.
- D. The Minister and the Association have agreed to use the Facility on the terms and conditions set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Agreement, unless the context otherwise requires:

- 1.1 **Association's Representative** means the person or persons nominated in writing to the Minister by the Association as the Association's Representative;
- 1.2 **Canteen** means the area shaded in yellow on the Plan of the Facility in Schedule 1;
- 1.3 **Commencement Date** means 1 December 2024;
- 1.4 **Expiry Date** means 30 November 2029;
- 1.5 **Facility** means the sports centre constructed on the Land shaded in green on the Plan of the Eastern Fleurieu R-6 Campus in Schedule 1;
- 1.6 **Land** means the land owned by the Minister and comprised and described in Certificate of Title Volume 5695 Folio 909;

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- 1.7 **Minister's Representative** means the person or persons nominated in writing to the Association by the Minister as the Minister's Representative;
- 1.8 **Operating Costs** means all charges applicable to or payable in respect of the Facility, including, without limitation, ground maintenance, water, rubbish removal and security, but excluding the cost of graffiti removal;
- 1.9 **Principal** means the Principal of the Eastern Fleurieu R-12 School;
- 1.10 **School** means the Eastern Fleurieu R-12 School;
- 1.11 **School Day** mean Monday to Friday during the School Term, except public holidays;
- 1.12 **School Term** means such periods designated by the Minister as the school term for South Australian government schools;
- 1.13 **Storerooms** means the areas shaded in pink on the Plan of the Facility in Schedule 1;
- 1.14 **Term** means the term specified in clause 2;
- 1.15 **User** means any member of the public, any student, employee, contractor, agent or invitee of the Minister or any other body or group which uses the Facility with the consent of the Association;
- 1.16 any word importing the plural includes the singular and vice versa;
- 1.17 any word importing a gender includes all other genders;
- 1.18 a reference to a body corporate includes a natural person and vice versa;
- 1.19 a reference to a recital, party, clause or schedule is a reference to a recital, party, clause or schedule of this Agreement;
- 1.20 the captions, headings, section numbers and clause numbers appearing in this Agreement are inserted only as a matter of convenience and in no way affect the construction of this Agreement; and
- 1.21 a reference to a statute includes all statutes amending, consolidating or replacing the statute referred to.

2. TERM

- 2.1 Subject to any early termination of this Agreement, this Agreement will be for an initial term of five years commencing on the Commencement Date and expiring on the Expiry Date.
- 2.2 The Minister will, upon the written request of the Association made not later than six months before the expiration of the initial term, and if at that time the Association is not in breach of this Agreement, grant an extension of this Agreement to the Association for a further term of five years on the same terms and conditions as are contained in this Agreement excluding this option for renewal.

3. LICENCE

- 3.1 The Minister will retain exclusive use of the Facility during the following times:
- 3.1.1 during the hours of 6.30 am to 5.00 pm on each School Day; and

- 3.1.2 on such other days when the Facility is required for specific school activities, provided that the Principal has given 28 days' written notice to the Association's Representative.
- 3.2 Subject to clause 3.1, the Minister grants to the Association an exclusive licence to use the Facility and the Canteen:
- 3.2.1 from 5.00pm pm to midnight on each School Day for scheduled games and training on each such day;
- 3.2.2 on one day of every weekend during the School Term for a maximum of six hours on each such day.
- 3.3 If the Association wishes to use the Facility at times other than those specified in clause 3.2, it must negotiate such use with the School.
- 3.4 The Minister has exclusive use of the Storerooms at all times.
- 3.5 The Principal or the Principal's delegate and the Association's Representative must meet on or before 31 January in each year to determine the use of the Facility by the parties for the rest of that calendar year.
- 3.6 Issues relating to the use of the Facility by the Association will be determined by the Principal or the Principal's delegate and the Association's Representative who will meet on at least two occasions per year. If the Principal and the Association's Representative are unable to reach agreement on the use of the Facility by the parties, the issue will then be determined in accordance with the provisions of clause 19.
- 3.7 The Minister grants a non-exclusive licence to the Association and to all persons lawfully authorised by the Association to use the access-ways and entrances on the Land at all times during the Term in common with the Minister, for the sole purpose of ingress to and egress from the Facility.
- 3.8 The Minister and the Association hereby acknowledge, agree and declare that the rights, powers and privileges granted to or vested in the Association under this Agreement are contractual only, and do not create, give rise to or vest any estate, interest or right of a proprietary nature in the Land or the Facility in the Association.

4. LICENCE FEE

The Association must pay a licence fee to the Minister of \$1.10 (inclusive of GST) each year during the Term if demanded by the Minister.

5. PERMITTED USE

- 5.1 The Association and all persons lawfully authorised by it to use the Facility pursuant to this Agreement (including, but not limited to any User) must use the Facility only for the purposes of recreational and sporting activities and for all purposes reasonably incidental to those purposes.
- 5.2 The Association must not do or permit to be done in, upon or about the Facility:
- 5.2.1 anything which is or is likely to become a nuisance or annoyance to the persons occupying premises adjoining or in the vicinity of the Facility; or
- 5.2.2 any noisy, noxious, noisome or offensive trade, business or occupation.

6. CHILD SAFETY

6.1 Additional Definitions

- 6.1.1 **Association's Personnel** means the Association's employees, agents, volunteers and other persons employed or engaged by the Association;
- 6.1.2 **Child Safety Act** means the *Children and Young People (Safety) Act 2017 (SA)*;
- 6.1.3 **Prescribed Offence** has the meaning given in the Prohibited Persons Act;
- 6.1.4 **Prescribed Position** has the meaning given in the Prohibited Persons Act;
- 6.1.5 **Presumptive Disqualification Offence** has the meaning given in the Prohibited Persons Act;
- 6.1.6 **Prohibited Person** has the meaning given in the Prohibited Persons Act;
- 6.1.7 **Prohibited Persons Act** means the *Child Safety (Prohibited Persons) Act 2016 (SA)*;
- 6.1.8 **Prohibition Notice** has the meaning given in the Prohibited Persons Act;
- 6.1.9 **Working with Children Check** has the meaning given in the Prohibited Persons Act.

6.2 Fundamental Term

Despite any other clause, the parties acknowledge that the rights and obligations under this clause are fundamental to this Agreement.

6.3 No Prohibited Persons

- 6.3.1 The Association must:
 - (a) comply with the obligations of employers under Division 2 Part 4 of Prohibited Persons Act in relation to Association Personnel employed in Prescribed Positions and who will be present at the Facility;
 - (b) as required by the Principal, verify that a Working with Children Check has been conducted in relation to the Association Personnel employed in Prescribed Positions and who will be present at the Facility;
 - (c) subject to clause 6.3.3, immediately procure the ongoing exclusion from the Facility of any Association Personnel that are employed in Prescribed Positions if they are found to be a Prohibited Person; and
 - (d) immediately suspend access to the Facility of any Association Personnel that are employed in Prescribed Positions if they are the subject of any allegation, arrest, charge or conviction for a Prescribed Offence or a Presumptive Disqualification Offence (whilst not being the subject of a Prohibition Notice), until such time as:
 - (i) the relevant Association Personnel is found to be a Prohibited Person (in which case clause 6.3.1(c) will apply); or

- (ii) the Minister consents in writing to the suspension being revoked, such that the relevant Association Personnel may return to the Facility.

6.3.2 Unless such notification causes the Association to be in breach of the Prohibited Persons Act the Association must promptly notify the Principal if it becomes aware that Association Personnel employed in Prescribed Positions who are or have been present at the Facility:

- (a) is a Prohibited Person; or
- (b) is the subject of any allegation, arrest, charge or conviction for a Prescribed Offence or a Presumptive Disqualification Offence (whilst not being the subject of a Prohibition Notice).

6.3.3 The Association will not be in breach of its obligation under clause 6.3.1(c) where the Association has complied with its obligations under the Prohibited Persons Act and the central assessment unit has failed to provide notification to the Association in accordance with section 41(1) of the Prohibited Persons Act.

6.3.4 As often as reasonably requested by the Minister, the Association must give the Minister evidence satisfactory to the Minister of the Association's compliance with the obligations of employers under Division 2 Part 4 of Prohibited Persons Act.

6.4 Imposing Obligations on Association Personnel

The Association must ensure that:

6.4.1 Association Personnel are aware of and act in a manner consistent with the Association's obligations under this clause 6 at all times;

and

6.4.2 Association Personnel (not being the Association) immediately inform the Association if the Association Personnel is the subject of any allegation, arrest, charge or conviction for a Prescribed Offence.

6.5 Child Safe Environment

In addition to all other obligations under this Agreement, where the Association is an organisation to which section 114 of the Child Safety Act applies, the Association must:

6.5.1 **(policies and procedures)**: have in place appropriate policies and procedures to ensure that, as required by the Child Safety Act:

- (a) safe environments for children and young people are established and maintained; and
- (b) appropriate reports of child abuse and neglect are made;

6.5.2 **(lodge statement)**: lodge the statement required by section 114 of the Child Safety Act about the Association's child safe policies and procedures with the Chief Executive of the Department for Human Services, or such other government agency as the State or South Australian Government publicly notifies (**Successor Agency**), within 10 Business Days after putting in place those policies and procedures; and

6.5.3 **(response)**: respond, as soon as reasonably practicable (and in any event within 10 Business Days), to any written request by Department for Human Services, Successor Agency or the Minister for information relating to the Association's compliance with the requirements of this clause 6.

6.6 Compliance with Child Safety Practices and Procedures

The Association must at all times comply with any practices, policies and procedures in relation to child safe environments notified in writing by the Principal.

6.7 Effect of Non-Compliance

If the Association does not strictly, fully and immediately comply with any or all of its obligations under clauses 6.3.1 and 6.3.2, then such failure to comply will constitute a fundamental breach of the Agreement entitling the Minister to terminate the agreement immediately upon giving notice in writing to the Association.

7. HIRE OF FACILITY

7.1 The Minister, through the School, may hire the Facility to third parties and will determine at what times and for how long, having regard to clause 3.

7.2 The Minister will give priority to the Association's requirements over a third party hiring the Facility.

8. OPERATING COSTS

The Minister will, throughout the Term, pay all Operating Costs applicable to or payable in respect of the Facility.

9. MAINTENANCE AND REPAIR OF DAMAGE

9.1 Subject to clause 9.3, the Minister must, during the Term, arrange for the routine maintenance of the Facility and keep it in good and tenable repair and condition provided that the Association's Representative and the Minister's Representative will agree on a program for the conduct of maintenance and repair work with the exception of routine maintenance.

9.2 Each party will pay the whole cost of repair of any damage to the extent that such damage is caused or contributed to by any wilful act, neglect, default or omission of that party or of that party's agents, employees, officers, contractors, or invitees.

9.3 The Association is responsible for the cost of regular cleaning and maintenance of the floor surface of the Facility.

10. LINE MARKINGS

The Association will bear the cost of maintaining the line markings on the courts within the Facility and must ensure that the court markings comply with Commonwealth Government regulations.

11. SECURITY

The Minister will, in consultation with the Association, establish and maintain at all times during the Term adequate security measures to minimise the risk of theft, damage and/or vandalism to the Facility or any equipment in it.

12. ALTERATIONS AND ADDITIONS

- 12.1 The Association must not make, or permit to be made, any alterations or additions to the Facility or any part of it without the prior written consent of the Minister and must, in the course of any alterations or additions made with the consent of the Minister, observe and comply with all reasonable requirements of the Minister.
- 12.2 Upon the expiration or earlier termination of this Agreement, any alterations or additions made by the Association pursuant to this clause will remain or become the property of the Minister.

13. WORKS BY THE MINISTER

The Association will permit the Minister and any architect, officer, employee, agent or contractor of the Minister to enter into the Facility or any part of it at all reasonable times during the Term upon reasonable notice being given to the Association (unless in an emergency when no notice is required), and with all necessary materials and appliances for the purpose of carrying out any cleaning, alterations, repairs or works, whether for the purpose of exercising the powers and authorities of the Minister under this Agreement or otherwise, provided that such cleaning, alterations, repairs or works will be carried out without unnecessary interference to the occupation and use of the Facility by the Association.

14. INSURANCE

- 14.1 The Minister will insure the Facility against all usual and necessary risks against which an owner can and ordinarily does insure for full replacement value during the term of this Agreement.
- 14.2 The Minister and the Association will each insure the Facility against liability for public risk in a sum not less than \$20,000,000 in respect of any one claim.
- 14.3 The Minister warrants that it is entitled to the benefits of the South Australian Government Insurance and Risk Management arrangements administered by the South Australian Government by the South Australian Government Financing Authority in respect of its operations under this Agreement.

15. RELEASE AND INDEMNITIES**15.1 Release**

Each party will use and occupy the Facility at their own risk in all things and they will each release the other party, in the absence of any default, neglect or omission by the other party, its agents, employees, contractors or invitees, to the fullest extent permitted by law, from all and any claims, demands and damage of every kind resulting from any loss of life, accident, injury to persons or damage to property whatsoever and howsoever occurring in, upon or in any other way connected with the use of the Facility by the party (including loss or damage to any of the party's fixtures or fittings or to any personal property of the party or of any person lawfully authorised by the party to use the Facility pursuant to this Agreement).

15.2 Indemnities

- 15.2.1 The Association agrees to indemnify the Minister and keep the Minister indemnified from and against any actions, costs, claims,

charges and expenses which may be brought against the Minister in connection with any loss of life, personal injury and/or loss of or damage to property arising from or out of or in connection with the use by the Association of the Facility or any part of it (including, but not limited to, any loss of or damage to personal property of the Association, its agents, employees, contractors or invitees), except where such loss of life, personal injury and/or loss of or damage to property is occasioned by any neglect, default or omission by the Minister or the Minister's agents, employees, contractors or invitees.

- 15.2.2 The Minister agrees to indemnify the Association and keep the Association, its employees, servants and agents and each of them indemnified from and against any actions, costs, claims, charges and expenses which may be brought against the Association in connection with any loss of life, personal injury and/or loss of or damage to property arising from or out of in connection with the use by the Minister of the Facility or any part of it (including, but not limited to, any loss of or damage to personal property of the Minister, or the Minister's agents, employees, contractors or invitees), except where such loss of life, personal injury and/or loss of or damage to property is occasioned by any neglect, default, or omission by the Association or its agents, employees, contracts or invitees.

16. **NO WARRANTY**

The Minister gives no warranty as to the state and condition or fitness for purpose of the Facility or of any fixtures, fittings or improvements situated in or on the Facility, and any implied warranties are expressly excluded.

17. **YIELDING UP**

The Association must, upon the expiration of the Term or the earlier termination of this Agreement, peaceably yield up possession of the Facility to the Minister in a neat and tidy condition, to the reasonable satisfaction of the Minister.

18. **DELEGATION**

Any request, approval, consent or any notice or any other thing which is either required to be given, done or performed or is permitted to be given, done or performed by either party pursuant to this Agreement may be so given, done or performed by the relevant representative of the party.

19. **DISPUTE RESOLUTION**

19.1 If a dispute arises between the Minister and the Association as to the terms of or operation of this Agreement, or as to the rights and obligations of the parties under this Agreement, then;

- 19.1.1 the dispute will be referred to the Chief Executive of the South Australian Department for Education and the Chief Executive of the Association (or their nominees), with a view to making a recommendation to the parties for the purposes of resolution of the dispute; and

19.1.2 if the dispute remains unresolved, the dispute may be referred to an independent mediator mutually agreed by the parties for resolution.

19.2 Failing resolution of the dispute by the means set out in clause 19.1, either the Minister or the Association may have the dispute determined according to law (including, if appropriate, by reference to a court).

20. DAMAGE OR DESTRUCTION OF THE FACILITY

20.1 If the Facility or any part of it is damaged or destroyed so as to be unfit for use, the Minister may, in consultation and with the agreement of the Association, resolve to reinstate the Facility, in which case this Agreement will continue to operate.

20.2 If the Minister resolves to reinstate the Facility pursuant to this clause 20, then the Minister must apply any insurance moneys received under any insurance policy effected in respect of the Facility to the reinstatement of the Facility.

20.3 If the Minister resolves not to reinstate the Facility pursuant to this clause 20, then the Minister will immediately terminate this Agreement after the date of such damage or destruction by written notice to the Association and there will be no obligation on the Minister to repair or reinstate the Facility in the event of such damage.

21. TERMINATION

21.1 Either party may terminate this Agreement by giving to the other party at least six months' written notice.

21.2 The Minister may terminate this Agreement immediately by notice in writing to the Association if:

21.2.1 the Association commits or permits any breach or default of the obligations imposed on the Association by this Agreement, and following the giving by the Minister of written notice of such breach or default, the Association fails to rectify such breach or default within a reasonable time, having regard to the nature and circumstances of such breach or default; or

21.2.2 the Association commits or permits any further breach or default of the obligations imposed on the Association by this Agreement for which the Minister has previously given notice in writing of such breach or default pursuant to clause 21.2.1, notwithstanding rectification of the previous breach or default.

21.3 Notwithstanding any other provisions in this Agreement, this Agreement will terminate automatically if:

21.3.1 the Minister ceases to operate the School;

21.3.2 the Minister sells, transfers or otherwise disposes of or leases the Land or the Minister contracts to sell, transfer or otherwise dispose of or lease the Land; or

21.3.3 subject to any limitation at law, the Association suffers any form of insolvency administration.

22. AUDITOR-GENERAL

Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

23. SEVERANCE

If any term or condition of this Agreement is for any reason unlawful, void or invalid or unenforceable then the offending term or condition will be severed without affecting the validity or enforceability of the remainder of this Agreement.

24. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties in respect of its subject matter and the parties agree that this Agreement supersedes all prior arrangements, understandings and negotiations in respect of the matters dealt with in this Agreement.

25. MODIFICATION

No variation, addition to or modification of any provision of this Agreement will be binding upon the parties, unless such variation, addition or modification is made in writing and is signed by each party.

26. WAIVER

26.1 A waiver of any provision of this Agreement must be in writing and be signed by the parties or by persons duly authorised to sign such a document on a party's behalf.

26.2 No waiver by a party of a breach of a term or condition contained in this Agreement will operate as a waiver of any breach of the same or any other term or condition contained in this Agreement.

26.3 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party.

27. NOTICES

27.1 Notices may be served by delivering them personally, by mail, facsimile transmission or email and must be:

27.1.1 in writing addressed to the parties at their respective addresses as set out in this Agreement;

27.1.2 signed by the party sending the notice, by the party's representative or by a person duly authorised in that regard by the party sending the notice;

27.1.3 deemed to be duly served or made in the following circumstances:

(a) if delivered, upon delivery;

(b) if sending by mail, upon posting;

(c) if sent by facsimile transmission, upon the sender's facsimile producing a transmission report that the facsimile was sent in its entirety to the addressee's facsimile number;

- (d) if sent by email:
 - (i) when the relevant email appears in the sender's sent log with properties disclosing an appropriate routing; and
 - (ii) the sender does not receive a message from the system operator to the effect that the relevant email was undeliverable.

but if delivery is not made before 5.00 pm on any day it will be deemed to be received at 9.00 am on the next day in that place.

27.2 A party may modify its address, facsimile number or email from time to time by giving written notice to the other party.

28. COSTS

Each party will bear its own costs incurred in respect of the preparation, perusal, negotiation and execution of this Agreement.

29. RELATIONSHIP BETWEEN THE PARTIES

29.1 The parties acknowledge and agree that nothing in this Agreement constitutes any relationship of employer and employee, principal and agent, or partnership, between the parties.

29.2 No party has any authority to bind the other party in any manner whatsoever except with the express approval by notice in writing of the other party.

30. DISCLOSURE OF AGREEMENT

30.1 The Association agrees to disclosure of this Agreement in either printed or electronic form and either generally to the public, or to a particular person as a result of specific request.

30.2 Nothing in this clause derogates from:

30.2.1 the Association's obligations under any other provision of this Agreement; or

30.2.2 the provisions of the *Freedom of Information Act 1991*.

Executed as an agreement

THE COMMON SEAL of the **MINISTER**)
FOR EDUCATION, TRAINING AND SKILLS)
was affixed to this Agreement with the authority)
of the Minister in the presence of:)



.....
Witness

[Print name *Eleni Kalogerini*.....]

Bel **THE COMMON SEAL** of **STRATHALBYN AND**)
DISTRICTS BASKETBALL ASSOCIATION)
INCORPORATED was affixed to this Agreement)
in the presence of:)



.....
President

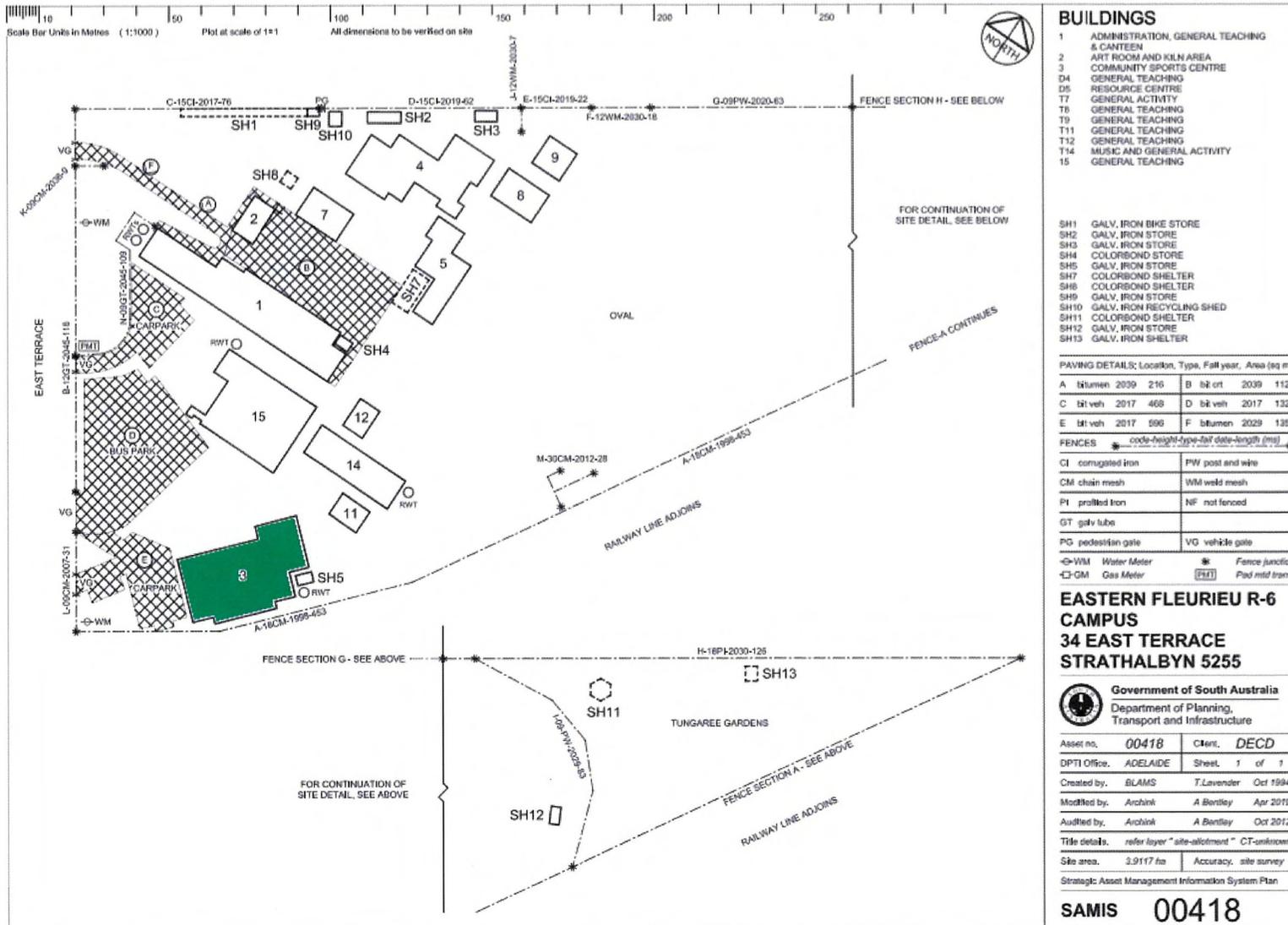
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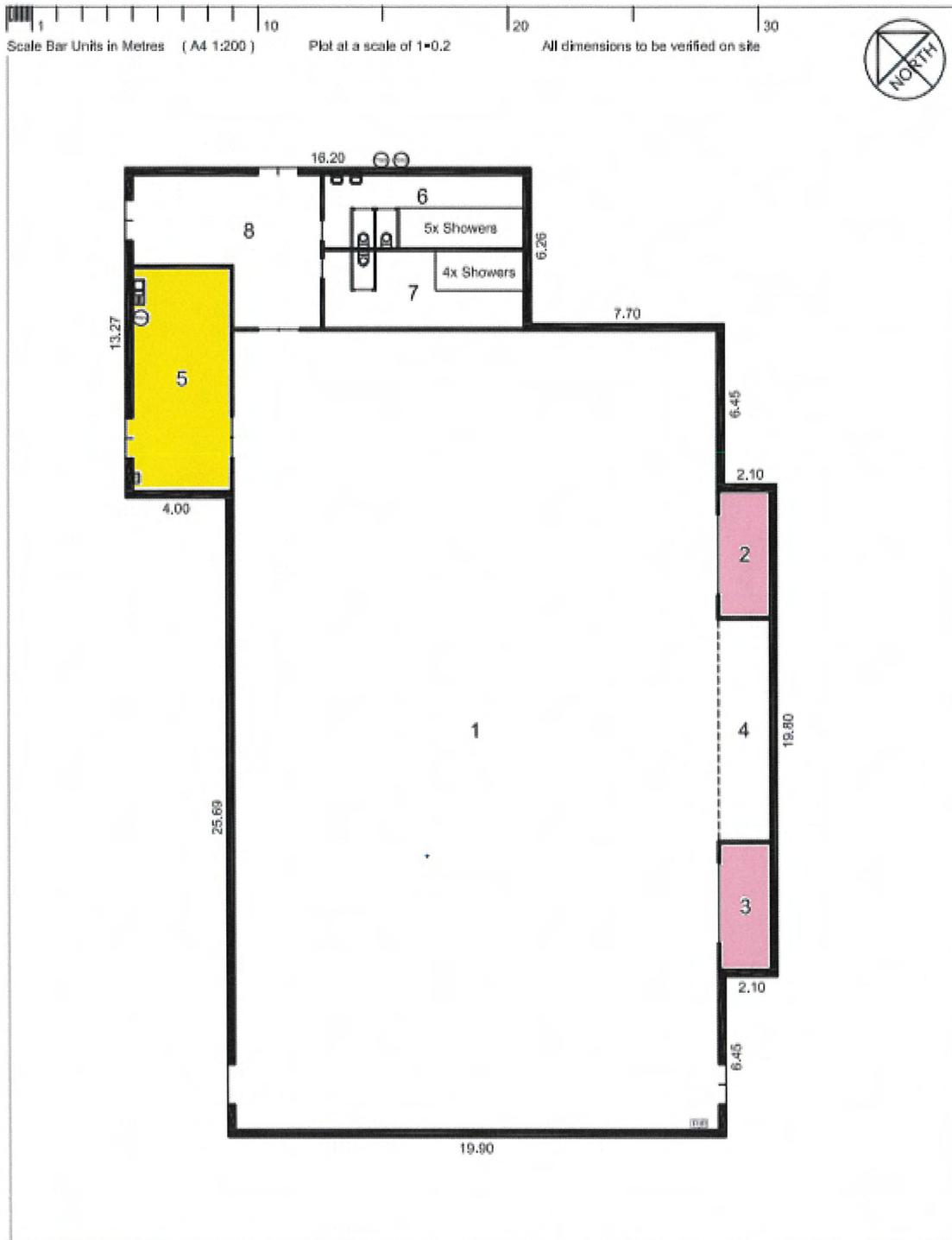
.....
Secretary

[Print name *Sheree Beque*.....]

SCHEDULE 1
PLANS

1. Plan of Eastern Fleurieu R-6 campus of the School (Facility shaded in green).
2. Plan of Facility.





Asset Name	EASTERN FLEURIEU SCHOOL STRATHALBYN R-6 CAMPUS					 Government of South Australia Department of Planning, Transport and Infrastructure
Building Use	GYMNASIUM					
Created by.	Bauer Dev	Drawn	M S	Date	Dec 1997	Strategic Asset Management Information System Plan
Modified by.	Archink	Drawn	M Curnow	Date	Oct 2012	
Bldg area m ²	822	Ver area m ²	-	Plan ref.	-	
SAMIS 00418-03-1						

