



Department of
Education

LICENCE FOR THIRD PARTY USE OF SCHOOL PROPERTY

"Approved Purpose" Sail Training Programs

"School" John Tonkin Coll - Pt B'vard Maritime Centre (2024)

"Licensee" Port Bouvard Recreation & Sporting Club Inc

Completing this Document

This Document forms a **Licence** for third party use of school property, facilities and resources.

Please read the instructions carefully inserting all information and attach required documents before signing.

This document has four parts:

- Part 1 – Introduction
- Part 2 – Signatures
- Part 3 – Details of Licence
- Part 4 – Terms and Conditions

1. Email CommercialServices.LicenceAgreements@education.wa.edu.au a completed electronic version for review **before** signing.
2. Once reviewed both parties must sign and give one original version to the Licensee.
3. Email CommercialServices.LicenceAgreements@education.wa.edu.au a scanned copy of the **signed** Licence.

Hover the mouse over the fillable boxes for instructions.

**LICENCE
FOR THE USE OF SCHOOL PROPERTY**

Part 1 - INTRODUCTION

THIS LICENCE is made on the date on which the last Party executes this Agreement

between

MINISTER FOR EDUCATION, being the body corporate described in section 214 of the *School Education Act 1999 (WA)* of 151 Royal Street, East Perth, Western Australia, through the Principal of the School.

for John Tonkin Coll - Pt B'vard Maritime Centre (2024) **(School)**

ABN: 80950418415

and Port Bouvard Recreation & Sporting Club Inc

(Licensee)

ABN **or ACN** **or Association** **Number:** 97674029265

Section 218 of the *School Education Act 1999 (WA)* provides the Minister for Education with the authority to grant a non-government entity a Licence for the use of School Property providing that use does not interfere with the normal operations of the School.

The Minister has delegated the authority provided by Section 218 to the Director General of Education who has in turn sub-delegated the authority to the Principal of the School to enter into a licence for an allowed period of up to two (2) years.

The Licensee has requested the Principal grant a Licence to the Licensee for it to use School Property to provide services to or conduct activities for the Approved Purpose to the Licensee's clients. In respect to the Approved Purpose, the Licensee has exclusive responsibility and control of:

- (a) the safe conduct of activities, the provision of services and the collection and/or payment of fees;
- (b) the quality, standard and statutory compliance of the activities and/or services; and
- (c) the conduct and actions of any employee, member, visitor, agent, contractor or representative of the Licensee.

The Principal, for and on behalf of the Minister and the School, has agreed to Licence the use the School Property for a fee. The Licensee has agreed to pay the Licence fee.

THIS LICENCE is signed as an Agreement and consists of Part 1, 2, 3 and 4.

Part 2 – SIGNATURE

LICENSEE

SCHOOL


This the day of 20 23

This the 30 day of NOV 20 23

Executed by: its authorised officer(s)

Executed by: the Principal

.....
Signed by the Licensee (Officer 1)


.....
Signed by Principal as the delegate of the Minister

Kim Savins

Name of person signing above

Name of Principal signing above

Position held by Officer 1

.....
Signature of Witness


.....
Signature of Witness

Name of Witness


Name of Witness

.....
Signed by the Licensee (Officer 2)

Name of person signing above

Position held by Officer 2

.....
Signature of Witness

Name of Witness

Note: The Parties must also initial and date the Plan attached to this Licence at Schedule 1.

Part 3 – Details of Licence

Item 1 – Licensee Details

Licensee Name: Port Bouvard Recreation & Sporting Club Inc

ABN or ACN or Association Number: 97674029265

Address: 1 Thisbe Drive Dawesville 6210

Contact Person: Mike Storey

Item 2 – Approved Purpose

This Licence is granted for the school property to be used for the conduct of the following activities and services: (Collectively 'Approved Purpose').

Licensee conducts sail training programs & regattas during holiday periods & w'ends & uses JTC building for ablutions, & access to class room to provide instruction to trainees / participant

Item 3 – Property to be Used by Licensee

(a) **Land** [describe the school land through reference to street address, description of boundaries and school grounds as necessary]

Centre is located in a fenced compound at 4 Thisbe Dr, Dawesville (collocated in the compound with some sheds maintained by PBRSC). The brick & colourbond building is JTC's.

(i) **Access to the Premises** [describe how the Licensee and its clients will access the Premises]

Licensee has been issued with keys & alarm code for the building, and has gate access fobs which was installed & maintained by the licensee.

(ii) **Parking** [detail any parking arrangements that will be associated with the use of the Premises]

Car park inside the security fence on the northern side of the JTC building will provide an adequate amount of parking for training & regattas.

(b) **Premises**

(i) **Buildings or rooms to be used** [classrooms, covered assembly area, sports hall, library or other]

The Licensee will utilise the class room, ablutions, and boat storage room.

- (ii) Amenities to be used [toilets, playground areas or other]

The Licensee will utilise the class room, ablutions, and the boat storage room.

[A Plan is to be attached as Schedule 1 to clearly set out the Land and Premises to be used and dated and initialed by both parties]

- (c) **Equipment** [nominate the equipment that will be made available to the Licensee to use]

Equipment by negotiation, at least 2 weeks prior to events.

Note: The Land, Premises and Equipment constitute the 'Property' to be used for the Licence.

Item 4 – Permitted Use and Times of use

- (a) The Licensee is permitted to use the Property for the Approved Purpose (Permitted Use).
- (b) The Licensee is authorised to undertake the Permitted Use during the following times:
- (i) Time before School day commences - Nil
 - (ii) Time after School day concludes - Nil
 - (iii) Time for School student free day - Nil
 - (iv) Times and days for School holidays - Email confirmation 2 weeks prior to events.
 - (v) Times for weekends - Email confirmation 2 weeks prior to events.
 - (vi) Time during School day – Nil

Note: if Time during School day applies schools must contact Commercial Services before signing the agreement.

(Collectively 'Authorised Times') – Any use outside the Authorised Times must be agreed to in writing by the Principal prior to that use. The School may charge the Licensee for use outside of the Authorised Times.

Item 5 – Licence Period (Expiration Date)

This Agreement:

- (a) commences on 01 January 2024 (Commencement Date); and
- (b) expires on the 31 December 2024 (Expiration Date), a date that must not be more than two (2) years after the Commencement Date.

The preferred date for the expiry of the agreement is 31 December within the two (2) year period. If no dates are specified, then the Commencement Date is the date the last party signs the agreement and the Expiration Date is 31 December immediately following the Commencement Date.

A new Licence must be entered into by the parties for the Licensee to use the Property after the Expiration Date.

Item 6 – Licence Fee

- (a) **Licence Fee Amount to be Paid** (The Licence is for a maximum of two (2) years. The fee for the School year is to be paid on or before 1 February of each year unless specifically agreed otherwise in this clause. The Licence Fee includes the cost of utilities, cleaning and other services provided by the Licensor.)

\$30 per annum (including GST).

(The Licence Fee should stipulate the period that the fee is applicable to, e.g. per month or per year, and whether GST is included or excluded in the Licence Fee).

If at any time the Licensee requests the School to allow the Licensee to change the Permitted Use or Authorised Times, the School may, as a condition of agreeing to that request, require the Licence Fee to be increased from a date (after the Licensee's request) stipulated by the School.

Item 7 – Licensee Clients

The Licensee is responsible for its clients and Approved Purpose.

The Licensee will ensure:

- (a) all its clients are aware that the Licensee is a distinct and separate entity to the School and that any and all activities associated with the Approved Purpose are not to be considered as being an activity of or facilitated by the School; and
- (b) any and all complaints from its clients related to the Approved Purpose provided at the School Property are received and resolved by the Contact Person identified in Item 1 – Licensee's Details.

Part 4 – Terms and Conditions

The Parties agree as follows:

1. Grant of Licence

The School grants to the Licensee a licence to use the Property on the terms and conditions contained in this Licence. This Licence:

- (a) does not create an interest in the Land, Premises or Equipment;
- (b) shall confer no right of exclusive occupation of the Property to the Licensee and the School may at any time and at all times and from time to time exercise all of its rights in respect of the Property including the rights to use and possess and enjoy the whole or any part of the Property save only in so far as such rights shall:
 - (i) prevent the operation of the Licence and rights with respect to the Property; and
 - (ii) be inconsistent with the express provisions of this Licence;
- (c) is granted subject at all times to the right of the School to utilise the Property for the purposes of the School;
- (d) is not transferrable; and
- (e) cannot be sub-licensed by the Licensee.

2. School's Obligations and Rights

(a) Allow use

The School will allow the use of the Property for the Approved Purpose during the Authorised Times and for the Term, in accordance with this Licence, for the payment of the Licence Fee.

(b) School not liable

The School is not liable for any cost, expense, loss or other liability resulting from any accident, loss of life, injury, damage, malfunction or other event in, or affecting, the Property unless caused by the negligence of the School or any employee of the School.

(c) No warranty by School

The School does not give any warranty of any kind that the Property is suitable for any purposes for which the Licensee intends to use it. To the extent permitted by law, any warranty in relation to the Property which is implied by law is excluded and does not apply to the Licence.

(d) Enter the Premises

The School may at any time:

- (i) inspect the state of repair and condition of the Property;
- (ii) maintain, repair or alter the Services;

- (iii) carry out works to the Property required by an Authority; and
 - (iv) remove harmful substances,
- without affecting the Licensee's obligations under the Licence.

3. Licensee Obligations

(a) Use and Fee

The Licensee will use the Property for the Authorised Purpose during the Authorised Times in accordance with this Licence and will pay the Licence Fee to the School. The cost of water, electricity and gas consumption will be included in the Licence Fee and will be paid by the School.

(b) Authorised Time during School day

For the Purposes of this sub-clause:

- "Screening Unit" means the Screening Unit of the Department of Education.
 - NCCHC means the Nationally Coordinated Criminal History Check Clearance performed through the Screening Unit.
- (i) If the Authorised Times for the Authorised Purpose include Time During the School day, the Licensee must strictly ensure that:
 - a. all Licensee's Members and Licensee's Personnel complete a Nationally Coordinated Criminal History check (NCCHC) with the Screening Unit and receive a Screening Clearance Number (SCN);
 - b. the SCN must be obtained and submitted to the school prior to entering the Property but no more than six months before first entering the Property;
 - c. all Licensee's Visitors must enter the Property through the Administration Office; and
 - d. all fees payable for the NCCHC shall be paid by the Licensee.
 - (ii) Notwithstanding any sub-clause, the School may require, at its absolute discretion that any of the Licensee's Members or Licensee's Employees undertake a NCCHC at any time during the Term.
 - (iii) If any Licensee's Member or Licensee's Employees is charged or convicted of an offence during the Term, the Licensee is required to immediately inform the School of the circumstances of the offence.

4. General Obligations

(a) The Licensee must:

- (i) ensure that all services provided and activities conducted are lawful and safe and fully comply with all statutory acts, regulations and codes;
- (ii) not interfere in any way with the operation of the School, with records, materials or equipment of the School, with its staff or students and in particular not use any machinery or equipment on the Property unless expressly authorised to do

so by the Principal;

- (iii) not remove the Equipment or the School's Property or any part of it from the Land and ensure that the Property and the School's Property is left as found;
- (iv) leave the Property including all routes of access and exit in a clean and tidy condition at the end of each of the Authorised Times;
- (v) vacate and lock up the Property as necessary at the end of each of the Authorised Times;
- (vi) notify the Principal immediately in writing of any harm or injury to any person occurring on the Property during the Authorised Times and provide written statements from witnesses and the injured person as the Principal may require;
- (vii) immediately notify the School if the Licensee becomes aware of any threat to the Property and comply with the School's directions for the purpose of protecting property or any person on the Property;
- (viii) comply with fire drills and emergency procedures when requested by the School; and
- (ix) abide by and comply with any rules that the School may make from time to time.

(b) Prohibitions

In connection with the Property, the Licensee must not, and must not allow anyone else to:

- (i) do anything which is offensive, illegal or a nuisance;
- (ii) engage in any activity which is considered by the Principal to be inconsistent with the values of public education or the School's purpose and goals;
- (iii) locate any signs, notices or advertisements or undertake any works, or make alterations to the Property without the School's consent; or
- (iv) not without the prior written consent of the School install any electrical equipment on the Property that overloads the cables switchboards or sub-boards through which electricity is conveyed to the Property.

(c) Supervision of Property

The Licensee shall ensure that at all times the Property is in use by the Licensee, a person authorised by the Licensee shall supervise use of the Property and the Licensee accepts responsibility for the behaviour of the Licensee and the Licensee's Visitors.

(d) Security Procedures

The Licensee:

- (i) will comply with all aspects of the security procedures applicable to the Property which may include arming the security panels each time it

leaves the Property;

- (ii) will on demand pay to the School, the cost of any alarm call out fees resulting from an act or omission of the Licensee or any of the Licensee's Visitors;
- (iii) is prohibited from duplicating or providing keys and security codes to another person without the express written permission of the Principal of the School; and
- (iv) The Licensee is required to return all keys to the School on termination or expiry of the Licence and pay to replace any lost keys.

(e) Compliance with School Policy

The Licensee shall, when attending the Property:

- (i) comply with all reasonable directions and procedures relating to student and staff occupational health (including the smoke free work place policy) and safety and security in effect for the Property as notified by the School. This may include any relevant conduct policies applicable to staff at the School; and
- (ii) comply with all policy requirements of the School, and any subsequent amendments or variations.

(f) Promotional Rights and Obligations

The Licensee will ensure that no publication or promotional material referring to the School shall injure, bring into disrepute, ridicule or lessen the public image of the School, nor claim in any way that the School or the Department promotes or endorses the business of the Licensee.

(g) School's Assets

The Licensee must treat and operate all of the Property in a professional manner and maintain the Equipment to the condition it was provided at the commencement date.

(h) Use of Utilities, Equipment and Materials

The Licensee shall:

- (i) not use any more electricity, water or gas than is reasonably necessary and shall ensure that all electric lights, water and gas taps and appliances are turned off immediately after use;
- (ii) ensure that all of its equipment and materials used in the operation of the Approved Purpose are fit for purpose and comply with relevant laws including, but not limited to, requirements relating to residual current devices (tagged to Australian Standards);
- (iii) ensure that all detergents and disinfectants used by the Licensee in its operation have the appropriate pH factor compatible with the use for which they are intended;

- (iv) ensure that all of its equipment used in its operation is safely stored away from access by unauthorised persons when not in use; and
- (v) provide at its own cost and expense all labour, materials (including bin liners and other consumables), additional plant and equipment and everything necessary for the proper and complete operation of the Approved Purpose.

(i) Licensee's Invitees

The Licensee in providing the Approved Purpose at the Property must:

- (i) strictly ensure that prior to entering the Property, all Licensee's Invitees who will undertake "child-related work" (as that term is defined in Section 6 of the *Working with Children Criminal Record Checking Act 2004 (WA)*) have the appropriate assessment notice under that Act, at all times comply with the provisions of that Act and at all times maintain their authority under that Act to be engaged in 'child related work';
- (ii) make its Licensee Invitees familiar with all terms and conditions of this Licence which are relevant to them; and
- (iii) ensure all Licensee's Invitees do not smoke or consume alcohol on or around the Land or behave in a manner inconsistent with a school environment.

(j) Compliance with laws and requirements

The Licensee must:

- (i) comply with all requirements of any Authority and all laws in connection with the Property, the Licensee's Property and the Licensee's business and will at its expense obtain any approvals or permits required to use the Property for the Approved Purpose;
- (ii) promptly notify the School if the Licensee is prosecuted for a breach of any Act or associated Regulations for the Approved Purpose or if its applicable accreditation is revoked; and
- (iii) effect and maintain throughout the Term all authorities and approvals required to provide the Approved Purpose on a School site and will, if required to do so by the School, provide copies of such to the School.

(k) Insurances

- (i) The Licensee must take out and maintain the following insurance policies with reputable and solvent insurers which carry on insurance business in Australia and are authorised in Australia to operate as insurance companies:
 - a. Public Liability Insurance covering the legal liability of the Licensee, its employees and agents in connection with the Approved Purpose of this licence for an amount not less than \$10,000,000 for any one occurrence and unlimited in the number of occurrences happening during the period of insurance.

The insurance policy must be extended to indemnify the Minister

for Education as principal to the extent of their vicarious liability arising out of the negligent acts of the or omissions of the Licensee and the Licensee's personnel in connection with the Approved Purpose of this Licence.

- b. Workers' Compensation insurance in accordance with the provisions of the Workers Compensation and Injury Management Act 1981 (WA) including cover for common law liability for an amount of not less than \$50,000,000 for any one occurrence in respect of the Licensee's personnel. The insurance policy must cover any claims and liability that may arise pursuant to section 175(2) of the Workers Compensation and Injury Management Act 1981 (WA).
- (ii) The existence of insurance cover as required under this clause shall not, in any way, limit the obligations or responsibilities of the Licensee under the Licence.
 - (iii) In respect of those insurances the Licensee must:
 - a. within five (5) working days after the Commencement Date and each time those insurance policies are renewed or varied, provide to the School certificates of currency or alternative evidence (in a form acceptable to the School) of the existence of those insurances;
 - b. at any other time provide a copy of the relevant insurance upon request; and
 - c. give notice to the School immediately if an event occurs which may give rise to a claim under any of the insurances or which could adversely affect any of them or if any insurance is cancelled.
 - (iv) The Licensee is not to have any exclusion in the affected Insurance that relates to dealing with children or other relevant business or service operations.

5. Indemnities and Exclusions

- (a) The Licensee indemnifies and keeps indemnified the School against any cost, expense, loss or other liability resulting from:
 - (i) any damage to the Property, or Services; or
 - (ii) the death of, or injury to, that person,
to the extent caused or contributed to by:
 - (iii) any breach of the Licence; or
 - (iv) the use or occupation of the Property by the Licensee or the Licensee's Visitors under the Licence; or
 - (v) any work carried out by or on behalf of the Licensee under the Licence; or
 - (vi) the Licensee's activities, operations, business or other use of the Property of any kind under this Licence; or

- (vii) any act, negligent omission or default of the Licensee or the Licensee's Visitors while using or occupying the Property under the Licence; or
- (viii) any danger created by the Licensee or the Licensee's Visitors while using or occupying the Property under the Licence.

6. Suspension and Termination

- (a) At any time the School has the right to immediately suspend or terminate this Licence in the event of:
 - (i) an emergency where the Property is urgently needed to house students or provide accommodation during disaster periods;
 - (ii) a federal, state or local election or a referendum;
 - (iii) where the Property or any part becomes unsafe;
 - (iv) where an essential School need arises requiring exclusive use of the Property;
 - (v) where the School is closed and the Land is scheduled for disposal;
 - (vi) situations where the activity engaged in by the Licensee or the conduct of the Licensee or the Licensee's Invitees, is detrimental to the School and its students;
 - (vii) a breach of sub-clause 3(b) or 4(a)(i) of Part 4; or
 - (viii) where there has been a material breach or repeated breaches of this Licence.
- (b) Either party may terminate this Licence at any time by giving the other two weeks' notice in writing. Should there be no default by the Licensee at the date of suspension or termination, any fees paid for the period of the suspension or for a period beyond the termination will be refunded.

7. Licensee's obligations on termination and holding over

(a) Use of Property

- (i) The Licensee's rights to use the Property cease on the Termination Date, and the Licensee shall not use the Property for any purpose, or occupy the Property after that date.
- (ii) The Licensee must remove the Licensee's Property immediately on the termination of the Licence except that when the termination is before the end of the Term, the Licensee must remove the Licensee's Property within three (3) days after the termination.

(b) Licensee to leave property required by School

The obligation to remove the Licensee's property in clause (7)(a)(ii) does not apply to any buildings, improvements or other fixtures that the School requires, by notice to the Licensee, not to be removed.

(c) Risk

The Licensee's Property remains at the Licensee's risk at all times before and after the termination of the Licence, except for any property which the School requires not to be removed under clause (7)(b), which is at the School's risk after termination of the Licence.

(d) Condition of the Property

On termination of the Licence, the Licensee must leave the Property in good repair and in a clean and tidy condition in accordance with the obligations of the Licensee under the Licence.

(e) Survive Termination

The Licensee's obligations contained in this clause shall survive termination of the Licence.

8. School Education Act 1999 remains unaffected

Nothing in the Licence shall affect or be deemed to affect any right power authority or duty conferred or imposed upon the Minister under the *School Education Act 1999* (WA).

9. Definitions and Interpretation

(a) Definitions

In the Licence:

Approved Purpose means the activities and services conducted by the Licensee specified in Item 2 of Part 3.

Authorised Times means the times specified in Item 4(b) of Part 3.

Authority means any governmental or other public body, local authority or other authority of any kind.

Commencement Date means the date the Licence commences specified at Item 5 of Part 3.

Equipment means any equipment the subject of the Licence as described in the schedule.

Expiration Date means the date the Licence expires specified in Item 5 of Part 3.

Land means the land specified in Item 3(a) of Part 3.

Licence means this licence relating to the use of the Property which incorporates the Terms and Conditions, as that licence or agreement is varied, supplemented, replaced or extended as permitted by that licence, and includes every deed varying that licence.

Licence Fee means the licence fee for the Property specified in Item 6 of Part 3.

Licensee means the person specified at Item 1 of Part 3.

Licensee's Property means all plant, equipment goods or other property belonging to the Licensee, or any person on the Property with the authority of

the Licensee, brought onto the Property.

Licensee's Invitees means each of the Licensee's Members, Licensee's Visitors and Licensee's Personnel.

Licensee's Members means any member of the Licensee or any person who regularly enters the Property with the consent of the Licensee to participate in the Approved Purpose.

Licensee's Personnel means the Licensee, any employee, contractor, sub-contractor, officer or agent of the Licensee that the Licensee (or any contractor of the Licensee) allows to enter the Property.

Licensee's Visitors means each of the Licensee's customers, clients and other visitors who at any time is on the Property with the consent or under the authority of the Licensee.

Premises means the premises the subject of the Licence (including additions) as described in Item 3 of Part 3 together with the School's Property in, or forming part of, those premises.

Principal means the principal or acting principal of the School.

Property means the Land, Premises and Equipment defined as Property at Item 3 of Part 3.

School means the school specified in Part 1 of the Licence.

School's Property means all the plant, equipment, goods or other property belonging to the School, on or brought onto the Property, including the Property as that term is defined and listed in Item 3 of Part 3.

Services means all services running through, or servicing, the Property including electricity, water, sewerage, gas and telecommunications.

Term means the period between the Commencement Date and the Termination Date.

Termination Date means the Expiration Date or the sooner determination of the Term in accordance with this Licence.

Schedule 1 – Plan / Map of School

