

4. Renewal of Lease: Parker Street, Bega

Mumbulla School have leased the unformed section of Parker Street between their two campuses for a playground. This report recommends renewal of the lease for a period of five years.

Acting Group Manager, Infrastructure Waste & Water

BACKGROUND

This report was originally presented to Council meeting at the meeting of 16 June 2009 and deferred pending discussions regarding the Development Application for the nearby Spenco site. Those discussions have now been concluded and this report is presented for consideration.

The lease of the unformed part of Parker Street north of Bega Street by the Mumbulla School is due for renewal. A copy of the lease is attached. Clauses 5 D, E, F and G are considered appropriate to address access and or adjoining land development issues.

A period of exhibition of the intent to lease the land has been carried out. One objection and one letter of support for the lease was received.

ISSUES

Legal

The required period of exhibition was conducted. One objection and one letter of support were received.

A letter was sent to the objecting party indicating that any development of the adjoining Spenco site would trigger a termination clause within the lease and that parties to the lease and the DA are made aware of the termination clause.

Social / Cultural

The playground facilities on the site are complimentary to the running of the school and the leased area connects the two campuses of the school.

Economic

No adverse economic impacts are anticipated by renewing the lease. Suitable termination clauses will be incorporated into the lease to protect future development of the adjoining Spenco site. The lease will fully conform to the requirements of Section 153 of the Roads Act.

Consultation

Adjoining property owners were notified advising them of the intention to lease the land. The public advertisement and consultation regarding the proposed lease was undertaken in accordance with Section 153 of the Roads Act.

Financial

An amount of \$300 per year is received by Council for lease of the land.

CONCLUSION

There are no adverse impacts in renewing the lease of the unformed section of Parker Street to the Mumbulla School for a playground for a period of five years. It is considered that suitable clauses within the lease ensure that the development potential of adjoining land is protected.

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RECOMMENDATION

1. That a lease for a period of five years be drawn up in favour of the Mumbulla School.
2. That the Mayor and General Manager be given authority to execute the lease documents.

Attachment 1**LEASE**

THIS LEASE made the day of Two Thousand and Nine **BETWEEN** the
50 **COUNCIL OF THE SHIRE OF BEGA VALLEY** of Council Chambers, Zingel Place, Bega
("the Lessor") **AND THE MUMBULLA SCHOOL FOR RUDOLPH STEINER**
EDUCATION ABN 30 003 437 081 of 37 Bega Street, Bega ("the Lessee") of the other
part.

WHEREAS the Lessor has resolved to grant to the Lessee a lease of a section of Parker
Street Bega for playground purposes pursuant to *Section 153 of the Roads Act 1993* and
the Lessor has complied with the provisions of *Section 154 of the Roads Act 1993*.

AND the Lessee acknowledges that the provisions of the *Roads Act 1993* apply in respect
of this Lease and desires to take a lease from the Lessor of **ALL THAT** piece or parcel of
roadway edged in red on the plan annexed hereto and marked with the letter "A" being
60 part of Parker Street, Bega (hereinafter referred to as "the Leased Premises" for the
purpose of a playground **TO HOLD** the same for a term of Five Years from the First day
of June 2009 yielding and paying during this said term an annual rental of Three Hundred
Dollars (\$330.00) inclusive of GST payable annually in advance during the said term at
the Council Chambers, Bega, subject to the following covenants and restrictions:-

1. The Lessee will pay the rent hereby reserved at the time and in the manner
hereinbefore mentioned without any deduction whatsoever.
2. That the Lessee will during the continuance of this lease keep the said land in a
clean and tidy condition free from accumulation of rubbish, fire hazards and
noxious weeds and will keep all fences and gates and structures now or hereafter
70 erected on the leased premises in good repair and condition in all respects to the
satisfaction of the Lessor and will keep clean and open any drains on the leased
premises.

3. That the Lessee will permit the Lessor or his agents at all reasonable times to enter upon the said land and that the Lessee will make good all defects of which notice shall be given him by the Lessor within one month of giving such notice.

4. **AND** the Lessee hereby covenants with the Lessor:-

(a) The Lessee will indemnify and keep indemnified the Lessor against all actions, suits, claims, debts, obligations and other liabilities arising out of the Lessee's use and occupation of the Premises during the continuance of this Lease.

(b) The Lessee must, in connection with the Premises, maintain with insurers on terms approved by the Lessor (who may not unreasonably withhold its approval) in the names of the Lessor and the Lessee:

(i) public liability insurance for at least \$20million (or as varied by notice from the Lessor to the Lessee);and

(ii) workers' compensation insurance; and

(iii) all other insurances which are required by law or which in the Lessor's reasonable opinion a prudent Lessee would take out including those in connection with the Lessee's works on the Premises.

(c) The Lessee must give the Lessor evidence that it has complied with clause 4(b) when asked to do so.

(d) The Lessee must notify the Lessor immediately if an insurance policy required by the clause 4(b) is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy in connection with the a Premises, the Building or property in or on them.

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- (e) The Lessee shall take out and maintain an appropriate level of contents insurance.
 - (f) The Lessee may not enforce, conduct, settle or compromise claims under any insurance policy required by this Lease even if that policy also covers other property, if the Lessor gives the Lessee a notice that the Lessor wishes to enforce, conduct, settle or compromise claims under an insurance policy.
 - (g) The Lessee may not do anything which may affect rights under any insurance or which may increase an insurance premium payable in connection with the Premises, the building or property in them.
 - (h) The Lessee is liable for and indemnifies the Lessor against liability or loss arising from, and cost incurred in connection with:
 - (i) damage, loss, injury or death caused or contributed to by the act, negligence or default by the Lessee; and
 - (ii) the Lessor doing anything which the Lessee must do under the Lease but has not done or which the Lessor considers the Lessee has not done properly provided that the Lessor has acted reasonably and has not been negligent or committed any wilful act.
 - (i) The Lessee releases the Lessor from, and agrees that the Lessor is not liable for, liability or loss arising from, and cost incurred in connection with:
 - (i) damage, loss, injury or death unless it is caused by the Lessor's act, negligence or default; and
 - (ii) anything the Lessor is permitted or required to do under this Lease.
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- 120 (j) Each indemnity is independent from the Lessee's other obligations and continues under this Lease and after it expires or is terminated. The Lessor may enforce an indemnity before incurring expense.
- (k) **THAT** the Lessee will at its own expense comply with the requirements of any notice (whether as to abatement of nuisance or otherwise or whether addressed to the Lessor or Lessee) issued by the Local Government Authority of the area, Statutory Authority or Government Department, the necessity for which may arise by reason of the nature of the business carried on upon the demised premises.
- (l) **THAT** the Lessee acknowledges that the *Roads Act 1993* provides that
130 the Lease can be terminated by the Lessor at any time and for any reason, and that any structure erected on the land is of a kind that can be easily demolished or removed.

5. **PROVIDED ALWAYS AND IT IS HEREBY MUTUALLY AGREED** between the Lessor and the Lessee:-

- (a) **THAT** if the Lessee shall make any default in complying with any of the covenants herein contained involving the carrying out of any work it shall be lawful for but not obligatory upon the Lessor and without prejudice to any other rights and remedies of the Lessor upon giving to the Lessee fourteen (14) days notice in writing of his intention so to do at any time
140 thereafter to enter upon the leased premises with or without workmen and other vehicles and carry out all or any of such work at the cost and expense of the Lessee without being answerable to the Lessee for any act deed matter or thing reasonably done by the Lessor his workmen and others in the premises and the amount of the expense incurred by or on behalf of the Lessor in so doing shall be paid by the Lessee to the Lessor on demand as and for liquidated damages.

150 (b) **THAT** any demand or notice to be given by the Lessor to the Lessee shall be deemed to be duly made if given in writing signed by the Lessor or his agent and delivered to the Lessee personally or sent by post addressed to the Lessee at the demised premises or to the last known address of the Lessee.

160 (c) **THAT** if and whenever the rent hereby reserved or any part thereof shall be in arrears for one calendar month next after the same shall have become due (whether any formal or legal demand shall have been made or not) or if the Lessee shall fail or neglect to perform comply with or observe any of the stipulations agreements and conditions herein contained or if the Lessee while any part of the lands hereby leased shall remain vested in him shall become bankrupt or enter into any composition with his creditors then and in any such case it shall be lawful for the Lessor or any person duly authorised to re-enter the said land and thereupon the term hereby granted shall absolutely cease and determine but without any prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach of any of the covenants agreements stipulations and conditions herein contained.

(d) **THAT** when access from Bega Street Bega to property owned by Bega Commercial Pty Ltd its heirs or successors in Title cannot be provided because of flooding, the Lessee shall permit access over the leased premises which shall ensure the continuance of the day to day business activity of that Company.

170 (e) **THAT** in the event that the land to the east of the section of the Road the subject of this lease be subdivided and access is required the Lessor Reserves the right to resume any part of the land which may be required to provide access to this subdivided land upon which event the rental shall

be reduced in proportion to the land resumed to the total area of land leased

180 (f) **THAT** in the event that a section of the Road the subject of this lease be required for access to the land to the west and a written request is made by the owner at that time Lessor reserves the right to resume any part of the land which may be required to provide access upon which event the rental shall be reduced in proportion to the land resumed to the total area of land leased and in such event the provisions of Section 153 (3) of the *Roads Act 1993* shall apply.

(g) **THAT** in any other event, this Lease may be terminated by either party upon the giving of one months notice in writing.

6. In the interpretation of this Lease it is agreed that except to the extent to which such interpretation shall be excluded by or be repugnant to the context whenever the same is used the word "Lessor" and the word "Lessee" shall mean and include the executors and administrators of the Lessor and the Lessee and where the Lessor or the Lessee is a company shall mean and include the successors of the company, the word "month" shall mean calendar month, words importing the singular number or plural number shall include the plural number and singular number respectively and words importing the masculine gender shall include the feminine gender and neuter gender.

190 7. From the date when the Lessor becomes liable for goods and services tax in respect of rent, outgoings or any other services or facilities provided by the Lessor to the Lessee under this lease, the Lessor shall be entitled to include as outgoings for which the Lessee is liable for 100 per cent under this lease the tax paid or payable by the Lessor during each annual period for which outgoings are calculated.

7 July 2009

200 IN WITNESS whereof the parties hereto have hereunto set their hands and affixed their seals on the day and year first herein written.

The SEAL of **THE COUNCIL OF**

THE SHIRE OF BEGA VALLEY

was hereto affixed pursuant to _____ Mayor

a resolution of Council

passed on the _____ General Manager

day of 2009

210 in the presence of:

SIGNED SEALED AND DELIVERED

on behalf of the RUDOLPH STEINER

SCHOOL.

in the presence of: