



HopgoodGanim

LAWYERS

# Deed of Licence

Shire of Wyndham East Kimberley

---

COPY

Contact – Karen Browne, Partner, [k.browne@hopgoodganim.com.au](mailto:k.browne@hopgoodganim.com.au)

## PERTH

Level 27, Allendale Square, 77 St Georges Terrace  
Perth WA 6000 Australia

**T** +61 8 9211 8111  
**F** +61 8 9221 9100

PO Box Z 5312, St Georges Terrace, Perth WA 6831 Australia

**E** [contactus@hopgoodganim.com.au](mailto:contactus@hopgoodganim.com.au)

## BRISBANE

Level 8, Waterfront Place, 1 Eagle Street  
Brisbane Qld 4000 Australia

**T** +61 7 3024 0000  
**F** +61 7 3024 0300

PO Box 7822, Waterfront Place Qld 4001 Australia

[www.hopgoodganim.com.au](http://www.hopgoodganim.com.au)

# Table of Contents



1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	2
2.	The licence	2
2.1	Licence	2
2.2	No exclusive possession	3
2.3	Personal rights only	3
2.4	No dealing	3
2.5	Holding over	3
3.	Licence Fee	3
3.1	Payment of Licence Fee	3
3.2	Interest	3
4.	Licensee's obligations	3
	Lease provisions	3
5.	Insurances, indemnities and releases	4
5.1	Licensee accepts risk	4
5.2	Insurance	4
5.3	Indemnity	4
5.4	Release	4
6.	Default	4
7.	Licence ends	5
7.1	Events	5
7.2	Early termination of deed	5
7.3	Licensee to vacate	5
7.4	Failure to vacate	5
8.	General	5
8.1	Notices	5
8.2	Governing law	5
8.3	Jurisdiction	6
8.4	Expenses	6
8.5	Indemnity	6
8.6	Licensee's Employees	6
8.7	Cause	6
8.8	Changes by legislation	7
8.9	Right to rectify	7
8.10	Amendments	7
8.11	Counterparts	7
8.12	Waiver	7
8.13	Further acts and documents	7
8.14	Consents	7
8.15	Severance	7
9.	GST	8
9.1	Definitions and interpretation	8
10.	Reimbursements	8
11.	GST payable	8
12.	Variation	9
13.	Penalties	9
	Schedule 1 - Reference Schedule	10

# Deed of Licence



## Date

---

**Parties** **Shire of Wyndham East Kimberley ABN 004 085 616** of 20 Coolibah Drive, Kununurra, Western Australia (**Licensor**)

**Western Australian Police and Community Youth Centres Incorporated (Registration Number AO410007J) of 115 Coolibah Drive, Kununurra, Western Australia (Licensee)**

## Background

- A. The Licensor has the care, management and control of the Land.
- B. The Licensee leases part of the Land pursuant to the Lease.
- C. The Licensee is currently unable to access a common ablutions block on the Reserve during its business hours or on an unrestricted basis as it does not form part of the premises demised under the Lease.
- D. The Licensee has requested the Licensor grant the Licensee a licence over the community ablutions to run concurrently with the term of the Lease.
- E. The Licensor has agreed to grant the licence subject to this deed.

## 1. Definitions and interpretation

---

### 1.1 Definitions

In this deed:

**Commencement Date** means the date in Item 2.

**Expiry Date** means the date in Item 3.

**GST** includes amounts defined as "GST" under the GST law and:

- (a) amounts payable on account of a notional liability under Division 177 of the GST Act; and
- (b) "GST equivalents" payments under the Intergovernmental Agreement Implementation (GST) Act 2000 (NSW) (or similar payments under corresponding legislation of any other State or Territory).

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999.

**GST law** has the same meaning as in the GST Act.

**Land** means the land specified in Item 1.

**Lease** means the lease between the Licensor and Licensee of the Kununurra Youth Hub on the Land.

**Licence Fee** means the yearly amount in Item 4.

**Licensed Area** means that part of the Reserve specified in Item 5.

**Licensee's Employees** means the Licensee's employees, officers, consultants, agents, contractors and invitees or any of them.

**Permitted Use** means the use specified in Item 6.

**Reserve** means Lot 510 Ron Hodnett Drive, Kununurra.

**Term** means the term of the licence granted under this deed, beginning on same day as the Commencement Date and ending on the same day as the Expiry Date of the Lease.

## 1.2 Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "**includes**" in any form is not a word of limitation;
- (k) a reference to "\$" or "**dollar**" is to Australian currency; and
- (l) a reference to an item is to an item in the reference schedule to this deed.

## **2. The licence**

---

### **2.1 Licence**

The Lessor grants the Licensee a non-exclusive licence for the Term of the Lease to use the Licensed Area for the Permitted Use, subject to this deed.

### **2.2 No exclusive possession**

- (a) This deed does not confer on the Licensee any right of exclusive possession of any part of the Licensed Area;
- (b) The Lessor may at any time in its absolute discretion exercise all its rights including its right to enter and use the whole or any part of the Licensed Area;
- (c) The Licensee must not restrict the Lessor's access to the Licensed Area in any way;
- (d) The Licensee acknowledges that the Licensed Area is accessed and used by the community of Wyndham East Kimberley generally, other organisations and clubs (Community) including when social and sporting activities take place on the Kununurra Town Oval. The Licensee must not restrict the Community's access to the Licensed area in any way.

### **2.3 Personal rights only**

The rights conferred on the Licensee by this deed are personal rights in contract only and do not create any tenancy or any estate or interest in the Licensed Area.

### **2.4 No dealing**

The Licensee cannot sublicense or part with or share possession of the Licensed Area or assign, novate or otherwise transfer any of its rights or obligations under this deed.

### **2.5 Holding over**

If the Lessor has not granted the Licensee a new licence of the Licensed Area or an extension to the Lease or a new Lease and the Licensee continues to use the Licensed Area after the Expiry Date with the Lessor's consent, the Licensee uses the Licensed Area under a monthly licence that:

- (a) subject to clause 7.1, either party may terminate on 1 month's notice ending on any day; and
- (b) is on the terms and at the licence fee the Lessor specifies, but if the Lessor does not specify terms or a licence fee, then the monthly licence is on the same terms as this deed.

## **3. Licence Fee**

---

### **3.1 Payment of Licence Fee**

The Licensee must pay the Licence Fee to the Lessor, annually in advance. The Licensee must pay the first instalment on the Commencement Date.

### **3.2 Interest**

If the Licensee does not pay an amount when it is due, it must pay interest on that amount on demand from when the amount becomes due until it is paid in full. Interest is calculated at 6% per annum.

## **4. Licensee's obligations**

---

### **Lease provisions**

So far as the same can apply to the Licensee's use of the Licensed Area, the Licensee must comply with clauses of the Lease as if the word "Premises" were read as "Community Ablutions".

## **5. Insurances, indemnities and releases**

---

### **5.1 Licensee accepts risk**

The Licensee enters the Land and uses the Licensed Area at its own risk.

### **5.2 Insurance**

The Licensee must not do anything that could:

- (a) prejudice any insurance of the Land or the Licensed Area; or
- (b) increase the premium for that insurance, without the Licensors consent;

### **5.3 Indemnity**

The Licensee is liable for and indemnifies the Licensors against all liability, loss, costs and expenses arising from or incurred in connection with:

- (a) anything (including damage, loss, injury and death) caused or contributed to by the act, omission, negligence or default of the Licensee or the Licensee's Employees or the Licensee's use of the Licensed Area;
- (b) anything occurring on, originating in, or coming from, the Licensed Area caused or contributed to by the act, omission, negligence or default of the Licensee or the Licensee's Employees or the Licensee's use of the Licensed Area;
- (c) the Licensee's default under this deed;
- (d) the termination of this deed (including the Licensors loss of the benefit of the Licensee complying with the Licensee's obligations under this deed from the date this deed is terminated until the Expiry Date) if this deed is terminated because of the Licensee's default under this deed or the Licensee's repudiation of this deed.

### **5.4 Release**

The Licensee releases the Licensors from all, and agrees that the Licensors is not liable for any, liability, loss, costs and expenses arising from or incurred in connection with:

- (a) anything (including damage, loss, injury and death); and
- (b) the Licensors doing anything the Licensors is permitted or obliged to do under this deed.

## 6. Default

---

The Licensee is in default under this deed and the Licensors may terminate this deed if:

- (a) the Licensee does not pay the Licence Fee as required by this deed and that default continues for at least 14 days; or
- (b) the Licensee does not comply with any other obligation under this deed and does not remedy that default within 14 days after the Licensors give the Licensee a notice requiring the Licensee to remedy the default; or
- (c) the Licensee assigns its property for the benefit of creditors; or
- (d) the Licensee becomes an externally-administered body corporate within the meaning of the *Corporations Act 2001*.

## 7. Licence ends

---

### 7.1 Events

This deed ends on the earliest to occur of:

- (a) the Expiry Date of the Lease (but if the Licensee holds over under the Lease with the Licensors's consent, the date the holding over ends); and
- (b) the date this deed is terminated, howsoever terminated.

### 7.2 Early termination of deed

- (a) The Licensors may terminate this deed in accordance with the Licensors's rights to terminate under the Lease provided that terminations of this Licence and the Lease are notified to the Licensee in writing (**Termination Notice**).
- (c) If the Licensors give a Termination Notice then this deed will be at an end on the expiry of the Termination Notice and the Licensee must comply with the provisions of clause 7.3.

### 7.3 Licensee to vacate

When this deed ends, the Licensee must:

- (a) vacate the Licensed Area and leave it in good order and condition to the Licensors's reasonable satisfaction;
- (b) make good, if requested by the Licensors, any damage caused or contributed to by the act, omission, negligence or default of the Licensee or the Licensee's Employees or the Licensee's use of the Licensed Area; and
- (c) provide to the Licensors all keys in the custody and control of the Licensee used to access the Licensed Area.

### 7.4 Failure to vacate

- (a) If the Licensee does not comply with its obligations under clause 7.3 on time, the Licensors may comply with these obligations (if necessary, in the Licensee's name) at the Licensee's risk and expense; and

- (b) The Licensee must pay the Licensor on demand as liquidated damages a sum equal to the cost to the Licensor of complying with that clause.

## **8. General**

---

### **8.1 Notices**

Any notice to be given under this deed must be served in accordance with the provisions of, and to the addresses specified, in the Lease.

### **8.2 Governing law**

This deed is governed by and must be construed according to the law applying in Western Australia.

### **8.3 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.3(a).

### **8.4 Expenses**

- (a) Each party will pay its own costs in connection with the negotiation, preparation and execution of this deed.
- (b) The Licensee must:
  - (1) pay promptly for everything it must do under this deed unless this deed expressly says otherwise; and
  - (2) reimburse the Licensor on demand for, and indemnify the Licensor against:
    - (A) all expenses (including legal fees, costs and disbursements) reasonably incurred in connection with any consent, agreement, approval, waiver or amendment relating to this deed; and
    - (B) all expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process and whether incurred by or awarded against the Licensor) incurred in connection with exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this deed.

### **8.5 Indemnity**

- (a) Each indemnity by the Licensee in this deed is a continuing obligation, separate and independent from the other obligations of the Licensee and survives termination or expiry of this deed.



- (b) It is not necessary for Licensor to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) The Licensee must pay on demand any amount it must pay under an indemnity in this deed.

#### **8.6 Licensee's Employees**

The Licensee must ensure that the Licensee's Employees comply, if appropriate, with the Licensee's obligations under this deed.

#### **8.7 Cause**

If this deed says that the Licensee must not do something, the Licensee must not do anything that could result in that thing happening.

#### **8.8 Changes by legislation**

If the Licensee's rights or obligations under this deed are changed by legislation so that the Licensor's rights or obligations are adversely affected, the Licensee waives its rights under that legislation to the extent that it is not prohibited by that or any other legislation.

#### **8.9 Right to rectify**

The Licensor may do anything that the Licensee should have done under this deed but that the Licensee has not done or that the Licensor reasonably considers the Licensee has not done properly.

#### **8.10 Amendments**

This deed may only be varied by a deed executed by or on behalf of each party.

#### **8.11 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

#### **8.12 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

#### **8.13 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

#### 8.14 Consents

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

#### 8.15 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

### 9. GST

---

#### 9.1 Definitions and interpretation

In this clause 9:

- (a) **Agreed Price** means the amount the Recipient is required to pay under any provision of this deed (except this clause 9) for a supply;
- (b) **Supplier** means a party who makes a supply whether on behalf of another entity or otherwise;
- (c) a reference to a supply is a supply under this deed;
- (d) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member; and
- (e) words and phrases used that are also used in the GST Act have the same meaning as in that Act, except that:
  - (i) "GST" has the meaning given in clause 1.1;
  - (ii) **Recipient** means a party who provides or is liable to provide consideration under this deed for a supply; and
  - (iii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply for the purposes of this clause.

### 10. Reimbursements

---

Any payment or reimbursement required to be made under this deed that is calculated by reference to an amount paid or incurred is limited to the total amount less any input tax credit to which an entity is entitled for an acquisition to which the amount relates.

### 11. GST payable

---

Despite the other provisions of this deed, if the Supplier is or becomes liable to pay GST in respect of any supply:

- (a) the Agreed Price for that supply is exclusive of GST;
- (b) the Recipient must pay an additional amount equal to the GST in connection with that supply;
- (c) the Supplier must issue a valid tax invoice to the Recipient in respect of that supply; and
- (d) the additional amount payable under clause 11(b) must be paid at the same time as the first part of any consideration is provided for that supply or on receipt of a valid tax invoice for the taxable supply to which the additional amount relates, whichever is the later.

COPY

## **12. Variation**

---

If the amount the Supplier recovers from the Recipient on account of GST on a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Recipient must pay to the Supplier on demand (or the Supplier must credit the Recipient with) the amount of that difference. If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note within 14 days after the date of the adjustment event.

## **13. Penalties**

---

If the Recipient does not comply with its obligations under this deed or with its obligations under the GST law in connection with this deed and because of this the Supplier becomes subject to penalties or interest for late payment of GST, then the Recipient must pay the Supplier on demand an amount equal to the amount of the penalties and interest.

COPY

## Schedule 1 - Reference Schedule

---

Item 1	<b>Land</b> Part Lot 510 Ron Hodnett Drive, Kununurra
Item 2	<b>Commencement Date</b> The date of commencement of the Lease
Item 3	<b>Expiry Date</b> The date of expiry of the Lease
Item 4	<b>Licence Fee</b> \$1.00 per annum
Item 5	<b>Licensed Area</b> That part of the Land identified as Community Ablutions on the Reserve
Item 6	<b>Permitted Use</b> The use of the Community Ablutions

COPY



## Signing Page

---

**Executed** as a deed.

**Signed, sealed and delivered** by

in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of witness

**Signed, sealed and delivered** by

in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of witness