

MEMORANDUM OF AGREEMENT ("the agreement") made this ?? Day of ??

1. PARTIES

BETWEEN BARCADDINE REGIONAL COUNCIL of 71 Ash Street, Barcaldine
in the State of Queensland, ("Council")

AND ("the Operator").

2. PROPERTY

The Barcaldine Swimming Complex is located at 2 Pine Road, Barcaldine, on part of the land described as Lot 42 on SP243970.

The parties agree that the Barcaldine Regional Council owns the property.

3. DEFINITIONS

Authorised Person The Chief Executive Officer of Barcaldine Regional Council or delegate.

Operator The signatory to this Agreement and the person who is required to personally operate the Swimming Pool Complex

4. TERM

4.1 The term of this agreement is for three years covering the swimming seasons from 1 September to 30 April.

4.2 The Council may vary the dates of the swimming season subject to agreement by both the Authorised Person and the Operator.

4.3 The agreement may be terminated by the Operator at any time by giving a minimum of six (6) weeks written notice to Council.

4.4 The agreement may be terminated by Council as per Clause 24 and in the case that Council are successful with grant funding to carry upgrades to the pool facility and it is required to close the facility.

4.5 The Operator shall leave the property in good repair and condition at the end of the lease term.

4.6 The operator shall surrender the keys to the property to Council at the end of the term.

4.7 There is no offer to renew this Agreement at the end of the term. Council may, after a successful performance review conducted at the end of the term, offer to extend this Agreement for a further 2 years.

5. PAYMENT

5.1 Council will pay the Operator the monthly sum of:
\$TBA (GST exclusive if applicable) in swimming season, 1 September to 30 April.

5.2 Council will obtain and pay for the public liability insurance on behalf of the Operator and deduct this amount from the above payments.

- 5.3 All money collected from admission fees and hire charges shall be retained by the Operator.
- 5.4 All money collected from the kiosk shall be retained by the Operator.
- 5.5 The Operator must provide the Council with a tax invoice to facilitate remuneration payments. All payments will be made by electronic funds transfer.

6. COUNCIL RESPONSIBILITIES

- 6.1. Utilities on the property
- Electricity
 - Telephone landline rental and calls up to the value of \$50 per month
 - Council rates including water and waste collection
- 6.2 Plant/Buildings/Chemicals
- All chemicals for the operation of the pool
 - Cleaning equipment and materials (including toilet paper and hand towel)
 - Pool vacuum cleaner and hand cleaning equipment
 - Maintenance of buildings
 - Maintenance of plant
 - Rubbish bins
 - Microbiology tests of the pool water
 - Required signage
 - Maintenance of the filtration and chlorination plant
 - Electrical repairs and maintenance
 - Pool water balance test kits
 - Test and tagging of Council supplied electrical equipment
 - Supply and restocking of first aid kits
 - Fire extinguishers and maintenance
 - Supply and maintenance of resuscitation equipment
 - Work conducted in confined spaces
- 6.3 Gardens
- A push lawnmower including maintenance
 - Hoses and sprinklers
 - Plants and other consumables for the gardens
- 6.4 All purchases of goods and services must be made under Council's Procurement Policy and will require a purchase order prior to purchase.

7. OPERATING

The operator shall:

- 7.1 Operate the pool in accordance with Royal Life Saving Society of Australia (RLSSA) Guidelines and Workplace Health and Safety Queensland Codes of Practice.
- 7.2. Perform the procedures required by Council to maintain water quality standards.
- 7.3. Endeavour to minimise water consumption and to avoid water wastage.
- 7.4 Immediately notify the Council of any unsatisfactory operation of equipment or any defects constituting a risk to safety and either close off the section with the defect or put in place appropriate signage warning of the defect.

- 7.5 Participate in an inspection of the facility at the end of the season to formulate a list of off season maintenance items.
- 7.6 Close the pool when it is deemed to be unsafe (eg during thunderstorms).
- 7.7 Not alter, adjust, or remove any equipment, fittings, appliances etc without the prior consent of Council.
- 7.8 Install/remove the temporary pool steps as and when required.
- 7.9 Not bring or allow to be brought into the complex or use or allow to be used in the complex any inflatable device, without the express permission of the Chief Executive Officer.
- 7.10 Not allow alcohol to be consumed on the premises at any time.
- 7.11 Maintain the whole of the swimming pool complex as a smoke free area.
- 7.12 Not allow glassware or glass containers to be brought into the pool grounds.

8. RECORD KEEPING/REPORTING

The Operator shall:

- 8.1 Record the daily total of persons (adults and children) entering the swimming pool complex.
- 8.2 Maintain a daily record of all water tests and inspections performed.
- 8.3 Permit the Council or its authorised officers at all times to inspect and take copies of and extract from any book or form containing records required to be kept by the Operator.
- 8.4 Submit to the Council during the first week of every month, a report showing the number of persons admitted to the pool during the previous month and any incidents occurring during the previous month.
- 8.5 Record the name of any person expelled from the property giving the reason for such expulsion and the period of time such expulsion is to be in effect.

9. MAINTENANCE

The operator shall:

- 9.1 Thoroughly clean the pool on a daily basis to remove algae, grime, body fats and other debris.
- 9.2 Carry out preventative measures as established by the Council for the control of algae on the walls of the pool.
- 9.3 Keep the grounds within the fenced area in a neat and tidy appearance and keep the lawn areas properly mowed.
- 9.4 Maintain all concrete paths, pool surrounds, pathways, and passageways in a safe and clean condition.
- 9.5 Maintain and clean the tiled area of the pool above the water line.

- 9.6 Maintain and clean the amenities daily.
- 9.7 Keep spectator areas clean and tidy.
- 9.8 Generally keep the buildings and grounds in a safe, clean, neat and tidy manner to help prevent injury or harm to any person.

10 ATTENDANCE

The Operator:

- 10.1 Shall be in attendance at all times during which the Pool is open, including private or other functions or ensure that the pool is at all times under the supervision of a person over the age of eighteen (18) years and who holds the qualifications specified in clause 20.
- 10.2 Shall effectively control and manage the pool and pool area and all persons entering therein, in accordance with the requirements of this Agreement and any Acts, Regulations and Local Laws pertaining thereto.
- 10.3 Shall exercise control over the behaviour of persons in the Pool area.
- 10.4 Shall not permit any unseemly, improper or indecent dress or unsafe behaviour or conduct on the premises.
- 10.5 May exclude from the premises, for a maximum of 48 hours, any person who has acted in a manner that the Operator considers unseemly, improper or indecent or has created a nuisance or annoyance to patrons or displays unsafe behaviour. Must advise the Council, and the School and the Club (where applicable), of such action within 24 hours or on the next business day. Persons excluded from the Pool under this item are automatically excluded from public, Swimming Club and School swimming sessions for the exclusion period.
- 10.6 Shall not admit any person who is, in their opinion, under the influence of any liquor or drugs and shall not allow any person to carry alcohol or drugs onto the premises.
- 10.7 Is not required to be in attendance at the Pool during times when the pool is being exclusively used by a School or Swimming Club. A separate agreement with Schools and the Barcaldine Amateur Swimming Club will clearly outline the respective responsibilities for this item.
- 10.8 Provide access to the pool for the School at the advised times.
- 10.9 Not close down or leave the pool unattended without prior notification to Council of the closedown or absence.

11 SECURITY

The Operator shall:

- 11.1 Be responsible for securing and locking of all gates, grills, windows, doors etc during non-admission hours.
- 11.2 Take reasonable precautions to prevent loss of property by theft, accident or other means.
- 11.3 Take reasonable precautions to prevent unauthorized access to the facility.

11.4 Be advised of all persons holding a key to the Property.

12 KIOSK

12.1 Council will provide the unfurnished kiosk at the Pool.

12.2 All costs associated with the operation of the kiosk shall be paid by the Operator.

12.3 The Operator is entitled to place in the kiosk furniture and appliances appropriate for the operation of a kiosk. The operator is responsible for testing and tagging any equipment placed in the kiosk.

12.4 The Operator shall retain the sole trading rights at the Pool for the sale of kiosk drinks and food except as state elsewhere in this Agreement. All takings from the kiosk shall be retained by the Operator.

12.5 The kiosk shall be maintained in a clean and serviceable condition at all times.

12.6 Glass containers shall not be sold from the kiosk.

12.7 No alcoholic beverages or tobacco products are to be made available from the kiosk at any time.

12.8 No other business shall be conducted from the premises.

12.9 If the Swimming Club or a School chooses not to cater for any of their events, then the Operator has the next exclusive option to cater for that event.

13 COACHING

13.1 The Operator shall have the right to negotiate coaching and teaching access (excluding School and Swimming Club related sessions).

13.2 The Barcaldine Amateur Swimming Club shall have the right to appoint its own coaches.

13.3 Admission fees shall apply to all swimming classes including Schools.

13.4 If the Operator provides coaching, it shall in no way interfere with the general supervision and control of the public and the Pool.

14 RIGHT OF ENTRY

14.1 The Authorised Person shall have the right of entry to the Pool area at all times for any purpose including the carrying out of inspections. This may be for the purpose of testing chlorine and pH content of the water, to take water samples of the pool water or other tests or inspections as the Officers consider necessary.

15 GENERAL

The operator shall:

15.1 Bear all costs and expenses incurred in complying with the conditions, agreements and stipulations of this Agreement.

15.2 Not sell, transfer, sub-let the land or premises as specified in this Agreement.

- 15.3 Notify Council forthwith of any accidents or incidents of a safety nature that have occurred within the grounds of the complex.
- 15.4 Present themselves in a clean manner and maintain a courteous manner to users of the Pool. The operator shall be appropriately attired whilst in attendance at the pool.
- 15.5 Undertake regular hazard inspections.
- 15.6 Undertake a workplace health and safety induction with Council's Workplace Health and Safety Officer at the commencement of the agreement.

16 ADMISSION

- 16.1 The Operator shall maintain a record of the number of patrons attending the pool on a daily basis.
- 16.2 Admission fees are as determined by Council at its annual budget meeting.
- 16.3 All admission fees collected shall be retained by the Operator.
- 16.4 Children under the age of 10 years are not permitted access to the pool complex unless they are accompanied and in the care of a responsible person over the age of 16 years.

17 SCHOOLS

- 17.1 Barcaldine State School and St Joseph's School (the School) have the right to use the Pool for school swimming lessons.
- 17.2 The School or the students are required to pay the Operator the normal admission fees.
- 17.3 The School must advise the Operator at the start of each season of all required swimming times.
- 17.4 During School swimming sessions, the safety and care of the students and supervisors is the sole responsibility of the School. All School supervisors are to hold the designated qualifications as required by Education Queensland.
- 17.5 The School must obtain key access to the Pool from the Operator.
- 17.6 The School shall have exclusive use of the Pool complex for up to two (2) days per annum for the conduct of its annual swimming carnivals. The School is to give the Operator a minimum of four (4) weeks notice of these events.
- 17.7 The Pool shall not be open to the public while the carnival is in progress.
- 17.9 The School shall have sole rights for the sale of food and drinks at its annual swimming carnivals. The School may negotiate to share some or all of these rights with the Operator.

18 SWIMMING CLUB

- 18.1 The Barcaldine Amateur Swimming Club (the Club) shall have exclusive use of the Pool complex for one day per annum for the conduct of its annual swimming carnival. The Club is to give the Operator a minimum of four (4) weeks notice of this event.

- 18.2 The pool shall not be open to the public on that day.
- 18.3 The Club shall have exclusive use of the Pool complex from 6.00pm to 9.00pm each Wednesday, free of charge, for the conduct of its weekly Club night.
- 18.4 The Club shall have exclusive use of 2 lanes (3 lanes if more than 10 swimmers) between 6.00am and 7.00am and 3 lanes between 5.15pm and 7.00pm each weekday for the purpose of swimming training.
- 18.5 The appointment of coaches for training during the above hours is the sole right of the Club.
- 18.6 The Club shall have sole rights for the sale of food and drinks on Club nights.
- 18.7 The Club shall have sole rights for the sale of food and drinks at its annual swimming carnival and on Club nights. The Club may negotiate to share some or all of these rights with the Pool Operator.
- 18.8 Council provides the Club with exclusive use of the Swimming Clubhouse throughout the year. The Club has exclusive access to the Clubhouse.
- 18.9 The Club will be provided with keys to the Clubhouse and the gate adjacent to the Clubhouse, 2 keys for Coaches and 2 keys for Canteen Coordinators. The keys are not to be provided to any other person or organisation. The names of all key holders will be recorded by Council.
- 18.10 During Club sessions and carnivals, the safety and care of all persons at the Pool is the sole responsibility of the Club.
- 18.11 All other uses of the pool complex outside of this Agreement are to be negotiated between the Operator and the Club.

19 HOURS OPEN

- 19.1 The Operator shall open the pool to the public seven (7) days per week with the minimum session times:

WEEKDAY	HOURS OPEN	
MONDAY	6am – 9am	2pm to 7pm
TUESDAY	6am - 9am	2pm to 7pm
WEDNESDAY	6am - 9am	2pm to 5.30 pm
THURSDAY	6am - 9am	2pm to 7pm
FRIDAY	6am - 9am	2pm to 7pm
SATURDAY		2pm to 6pm
SUNDAY		2pm to 6pm

- 19.2 The Operator may only vary the public hours with the express agreement of Council.
- 19.3 The Operator may open the Pool outside these hours for special events or private hire.
- 19.4 The Pool will be closed on Christmas and Anzac Day.

20 QUALIFICATIONS

The Operator shall:

- 20.1 Obtain and maintain the following qualifications (or equivalent) or enter into arrangements, satisfactory to Council, for the attainment of such qualifications:-
 - (i) Swimming Pool Plant Operator's Certificate; and
 - (ii) Pool Lifeguard Certificate issued by the Royal Life Saving Society Qld; and
 - (iii) First Aid and CPR Certificate; and
 - (iv) Children & Young People Employment Screening – Positive Notice.
- 20.2 Copies of qualifications of the Operator and assistants shall be submitted at the beginning of each swimming season or upon request of Council.
- 20.3 Be responsible for arranging a relief person to operate the pool during his/her absence and ensure the relief operator/s have the qualifications outlined above and are over 18 years of age.

21 PRIVATE HIRE

- 21.1 The Operator may hire the pool and grounds out to community organisations with public liability insurance (minimum of 10 million dollars), schools or to private groups/individuals.
- 21.2 The Operator shall retain all hire fees charged.
- 21.3 The Operator shall make the premises available to the Council (if required), for up to two (2) days per season, at no cost to the Council (eg Australia Day, triathlon etc).
- 21.4 An appropriately qualified person must be in attendance and provide supervision at all times during the private hire of the Property.

22 EMPLOYMENT

- 22.1 Under no circumstances shall Council be deemed to be an employer of any person engaged in the management, operation and control of the swimming pool, whether under a contract of employment or in an honorary capacity. The Operator shall be deemed to be the employer of all such persons. The Operator shall not be classed as an employee of Council.
- 22.2 The Operator shall be responsible for all employment requirements including workers compensation and tax obligations in respect of persons employed by the Operator at the pool or carrying out duties at the pool.
- 22.3 The Operator shall be liable for and shall indemnify Council in respect of all liability loss claim or proceedings due to personal injury or death of any person employed by the Operator at the pool or carrying out duties on the Operator's behalf.
- 22.4 The Operator has a duty to ensure full observance and compliance by all parties of the provisions of the Work Health and Safety Act and Regulations for all persons whilst on the premises.

23 INSURANCE

- 23.1 The Operator shall immediately upon signing the Agreement, take out and maintain during the term of the Agreement, a public risk policy in terms approved by the Council and with cover to the extent of at least \$20,000,000.00 in order to insure the Operator against any actions, suits, claims or demands by any person

or persons in respect of or arising out of any injury suffered by any person or persons (whether the Claimant or otherwise) in, on or about the land described in Clause 2 of this Agreement.

- 23.2 The Operator will be required to have his/her own insurance to cover any event that may occur if the Operator undertakes coaching, learn to swim or any other organised activity that the Operator should be in control of.

24 BREACH OF AGREEMENT

- 24.1 If the Operator fails to observe or perform any covenant or condition contained in this Agreement, then Council may without prejudice to any other right or remedy conferred on it by the said Agreement or any Act, Regulation or Local Law, do all things that may be necessary to make good such default and all expenses incurred by Council in making good such default shall be repaid to Council by the Operator forthwith.
- 24.2 The Operator, and any employees of the Operator, shall abide by Council's Employee Code of Conduct.
- 24.3 Council has the right to terminate this Agreement in the event of a significant breach of the Agreement, or Council's Code of Conduct, by the Operator.

25 PRIVACY

The Operator shall ensure that the requirements of the *Information Privacy Act 2009* are adhered to, particularly in regard to the use of surveillance cameras. Further information is available at the Office of the Information Commissioner's website.

26 SIGNATORIES

I hereby agree to be bound by this Agreement for the Barcaldine Swimming Pool, which we now enter into:

EXECUTED AS AN AGREEMENT on the date on page one.

SIGNED AND DELIVERED by)

(Insert Name)

In the presence of:)

Witness

(Print Name)

GIVEN under the hands of the)
Acting Chief Executive Officer)
of the Barcaldine Regional)
Council in the presence of)

Chief Executive Officer

In the presence of:)

Witness

(Print Name)