

MANAGEMENT AGREEMENT

CAIRNS REGIONAL COUNCIL

("Council")

**THE ROMAN CATHOLIC TRUST CORPORATION FOR
THE DIOCESE OF CAIRNS TRADING THROUGH ST
ANDREW'S CATHOLIC COLLEGE
ABN 42 498 340 094**

("St Andrew's")

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Our Ref: MRS:Hannah Chow:64375

MANAGEMENT AGREEMENT

THIS AGREEMENT is the made the 27 day of MAY 2008.

PARTIES:

CAIRNS REGIONAL COUNCIL

("Council")

**THE ROMAN CATHOLIC TRUST CORPORATION FOR THE DIOCESE OF
CAIRNS TRADING THROUGH ST ANDREW'S CATHOLIC COLLEGE**

("St Andrew's")

RECITALS:

- A. St Andrew's is a non-State education institution established on the Land under the Education (General Provisions) Act 1989 and is owned by RCTC.
- B. Public Sports Facilities have been developed on the Land by Council, funded partially by Council and partially by RCTC.
- C. RCTC owns the Land and has leased the Land to Council by a Lease dated .
- D. Council and St Andrew's have agreed to enter into this Management Agreement to allow joint management of the Public Sports Facilities.

THE PARTIES COVENANT AND AGREE:

1. DEFINITIONS

1.1 "Address for Service" means in relation to each party:-

Council - PO Box 359, Cairns Qld 4870

St Andrew's Catholic College Redlynch Valley - PO Box 150, Redlynch
QLD 4870;

1.2 "Agreement" means this Agreement and any other agreement, including schedules expressed to be supplemental to this Agreement and all amendments to those documents;

1.3 "Board of Management" means the Board of Management established in accordance with Clause 3;

1.4 "Committee" means the Advisory Committee established in accordance with Clause 4;

1.5 "Council" means Cairns Regional Council;

1.6 "Councillor" has the meaning contained in the Local Government Act 1993;

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- 1.7 "Land" means that part of Lot 2 on SP 178261 situated in the County of Nares Parish of Cairns contained in Title Reference No. 50576830 as outlined in the plan attached to the Lease;
- 1.8 "Lease" means the lease entered into between Council and RCTC with respect to the Land dated ;
- 1.9 "Maintenance Plan" means the Maintenance Plan outlined in Schedule One detailing the management obligations of each party;
- 1.10 "Members" means the Board Members and Committee Members;
- 1.11 "Public Sports Facilities" means the facilities to be developed by Council on the Land;
- 1.12 "RCTC" means the Roman Catholic Trust Corporation for the Diocese of Cairns;
- 1.13 "St Andrew's" means St Andrew's Catholic College, the non-State education institution established on the Land under the Education (General Provisions) Act 1989 and owned by RCTC;
- 1.14 "Usage Plan" means the Usage Plan outlined in Schedule 2 detailing the usage of the Public Sports Facility.

2. INTERPRETATION

- 2.1 In this Agreement unless inconsistent with the context or subject matter:
 - (a) A reference to a person includes any other legal entity;
 - (b) A reference to a legal entity includes a person;
 - (c) Words importing the singular number include the plural number;
 - (d) Words importing the plural number include the singular number;
 - (e) The masculine gender must be read as also importing the feminine or neuter gender;
 - (f) A reference to a party includes the party's heirs, executors, successors and permitted assigns;
 - (g) Clause headings are for reference purposes only and must not be used in interpretation;
 - (h) Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
 - (i) A reference to a statute includes all regulations and subordinate legislation and amendments;

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- (j) References to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and fax;
- (k) A reference to a monetary amount is a reference to an Australian currency amount;
- (l) An obligation of two or more parties binds them jointly and each of them severally;
- (m) An obligation incurred in favour of two or more parties is enforceable by them severally;
- (n) References to time are to local time in Queensland;
- (o) Where time is to be reckoned from a day or event, the day or the day of the event must be excluded;
- (p) A reference to a business day means any day on which trading banks are open for business in Queensland;
- (q) If any time period specified in this Agreement expires on a day which is not a business day, the period shall expire at the end of the next business day;
- (r) A reference to a month means a calendar month.

3. ESTABLISHMENT OF THE BOARD OF MANAGEMENT

3.1 A Board of Management ("the Board") to oversee and to undertake the executive administrative decisions with respect to managing the operation of the Public Sports Facilities shall be formed on the date of this Agreement and will consist of the persons holding the following positions from Council, St Andrew's and RCTC or their appointed delegate:

- (a) The Mayor of the Council;
 - (b) The Chief Executive Officer of the Council;
 - (c) The Roman Catholic Bishop of the Diocese of Cairns;
 - (d) The Principal of St Andrew's,
- (collectively called "the Board Members").

4. ESTABLISHMENT OF THE ADVISORY COMMITTEE

4.1 The Board may appoint a committee to manage the day to day operation of the Public Sports Facilities as well as to exercise any delegations from the Board. The committee shall be formed when declared by the Board and will consist of the following representatives from Council, St Andrew's and RCTC:

- (a) Two (2) representatives from St Andrew's;

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- (b) One (1) representative from RCTC;
 - (c) The Councillor for the division in which the Land is located;
 - (d) Two (2) community members to be appointed by majority resolution of the Board,
 - (e) One (1) Council Officer,
- (collectively called "the Committee Members").

This committee will be known as the Advisory Committee.

- 4.2 The names of the Committee Members will be noted by the standing secretary at the first meeting of the Board. No other representatives of Council, St Andrew's or RCTC will be permitted to attend or vote at any meeting of the Advisory Committee, except by proxy.
- 4.3 If a party to this Agreement wishes to change its representatives on the Advisory Committee, it must advise the Board of any change either at a meeting of the Board or in writing to the standing secretary of the Board. The standing secretary will then amend the list of Committee Members.

5. PROXY

- 5.1 A Member who cannot attend a meeting of the Board or Advisory Committee (as the case may be) may appoint a proxy.
- 5.2 A proxy will have the same voting rights as the Member they represent.
- 5.3 A proxy must be an employee, officer or member of the same party to this Agreement as the member they represent.

6. STANDING SECRETARY

- 6.1 One Board Member shall be appointed to the office of standing secretary. Initially the standing secretary will be the Chief Executive Officer of Council.
- 6.2 The office of the standing secretary will be vacated every six months and a new standing secretary will be appointed by the Board.
- 6.3 The office of the standing secretary shall rotate six monthly between the Principal of St Andrew's and the Chief Executive Officer of Council, in that order, so that a representative of each organisation will not hold the office of standing secretary for more than six months in every twelve months.

7. MEETINGS OF THE BOARD

- 7.1 A meeting of the Board shall be held in February and August in each year, unless otherwise agreed by the Board.
- 7.2 Additional meetings may be called by any one of the Board Members at any time by the giving of the notice required by clause 8.1 to the Board Members.

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8. NOTICE OF BOARD MEETINGS

- 8.1 Upon receipt of request from a Board Member or otherwise, the standing secretary of the Board shall give not less than seven (7) days written notice of each meeting to the Board Members.
- 8.2 Notice of each Board meeting shall be accompanied by an agenda and relevant papers and accounts.

9. TIME AND PLACE OF BOARD MEETINGS

- 9.1 The time and place of meetings will be determined by the Board from time to time.
- 9.2 The standing secretary will nominate the time and place of the first meeting.

10. BOARD CHAIRPERSON

- 10.1 The Board will elect one of its members to act as Chairperson at the start of each meeting of the Board.

11. MINUTES OF BOARD MEETINGS

- 11.1 The minutes of all business transacted at meetings of the Board shall be recorded and kept in a form to be determined by the Board from time to time, and shall be kept in the custody of the standing secretary but be available for inspection and copy by all Board Members by reasonable appointment.
- 11.2 A copy of the draft minutes of each Board meeting shall be provided by the standing secretary to all Board members within fourteen (14) days of the date of the meeting.

12. DECISIONS OF THE BOARD

- 12.1 Unless specified otherwise in this Agreement, any decision of the Board must be made by a majority resolution of the Board.
- 12.2 All parties to this Agreement agree to abide by any validly made majority resolution of the Board.

13. BOARD QUORUM

- 13.1 A quorum at a meeting of the Board consists of three (3) Board Members, being one representative of St Andrew's, one representative of RCTC and one representative of Council.

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14. BOARD MANAGEMENT OBLIGATIONS

- 14.1 The Board shall administer the Public Sports Facilities in accordance with the terms and conditions set out in this Agreement and in accordance with any management principles or directions resolved by the Board and in accordance with the Maintenance Plan set out in Schedule One of this Agreement and in accordance with the terms and conditions of the Lease.

15. USAGE OF PUBLIC SPORTS FACILITIES

- 15.1 The Board shall be responsible for co-ordinating the usage of the Public Sports Facilities by St Andrew's and the public on the Land generally in accordance with the Usage Plan.

16. DAMAGE TO PROPERTY

- 16.1 St Andrew's shall pay to Council such costs as are determined by Council (acting reasonably) to be necessary to effect repairs sustained by or caused to the Public Sports Facilities, which damage in the opinion of the Council, is as a result of, the activities of St Andrew's, its agents, members or patrons.
- 16.2 The costs to be borne by St Andrew's under the preceding sub-clause shall include the costs incurred by Council (acting reasonably) in repairing damage to building structures, vegetation, rock formations and facilities.
- 16.3 This clause will survive the termination of this Agreement.

17. COSTS AND CHARGES

17.1 Maintenance of Public Sports Facilities

St Andrew's and Council are jointly responsible for the costs of:

- (a) undertaking and carrying out its assigned obligations pursuant to the Maintenance Plan set out in Schedule One;
- (b) maintaining the Public Sports Facilities on a day-to-day basis.

17.2 Refurbishments

Council shall be responsible for the costs of undertaking and carrying out its assigned obligations pursuant to the Maintenance Plan set out in Schedule One. The costs of any refurbishments required to the Public Sports Facilities from time to time, including carrying out maintenance and repairs to the buildings, fixtures and fittings due to fair wear and tear will be borne by the parties as set out in the Maintenance Plan in Schedule One.

18. INDEMNITY

- 18.1 St Andrew's will indemnify and keep indemnified Council, from and against all claims, demands, actions, suits, costs and expenses in respect of any injury (including death) to any person or any loss or damage to property howsoever sustained arising out of or in any way incidental to:

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- (a) Anything done or purporting to be done or omitted to be done under the authority of or in pursuance of the rights granted by this Agreement; or
- (b) Any breach of or default by St Andrew's of the provisions of this Agreement

except to the extent any such claim demand action suit cost or expense is caused by the act, omission, negligence or default of the Council or the Council's employees, contractors or agents.

19. AMENDMENTS TO THIS AGREEMENT

- 19.1 Any amendments to this Agreement must be agreed to in writing, signed by each of the parties to this Agreement.

20. TERM OF AGREEMENT

- 20.1 This Agreement commences on the date it is executed and expires on the expiry date of the Lease or the final date of any renewal or extension of the Lease or earlier termination of the Lease (or such other date as the parties agree).
- 20.2 Council will have the option of renewing this Agreement for four (4) terms each for a period of ten (10) years, commencing from the expiration of the term of the Lease on such terms and conditions as mutually agreed between the parties except this clause for renewal which will be deleted upon the exercise of the third and final option to renew. This option for renewal will be exercisable only by notice in writing given to St Andrew's not less than six (6) calendar months prior to the Expiry Date of the Lease.
- 20.3 In the absence of the Lease, Council may in its absolute discretion renew or extend this Agreement on terms agreed upon between the parties.

21. DISPUTES

- 21.1 A party will not start arbitration or Court proceedings in respect of a dispute arising out of this Agreement unless it has complied with this clause.
- 21.2 A party claiming that a dispute has arisen must notify the other party, giving written details of the dispute.
- 21.3 During the twenty-one (21) day period after a notice is given under the preceding clause (or such longer period agreed to in writing by the parties to the dispute) (called the "Initial Period") each party to the dispute (called "Disputant") must use its best efforts to resolve the dispute.
- 21.4 If the Disputants are unable to resolve the dispute within the Initial Period, each Disputant agrees that the dispute must be referred for mediation at the request of the Disputant, to:
 - (a) A mediator agreed on by the Disputants; or
 - (b) If the Disputants are unable to agree on a mediator within seven (7) days after the end of the Initial Period, a mediator who is an

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independent person agreed between the parties from a panel suggested by the President of the Queensland Bar Association, or failing agreement, a mediator will be appointed by the President of the Queensland Bar Association.

21.5 The role of any mediator is to assist in negotiating a resolution of the dispute. The mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.

21.6 Any information or documents disclosed by a Disputant under this clause:

- (a) Must be kept confidential;
- (b) May not be used except to attempt to resolve the dispute.

21.7 Each Disputant must bear its own costs of complying with this clause and the Disputants must bear equally the costs of any mediator engaged.

22. BINDING ON SUCCESSORS

22.1 This Agreement inures for the benefit of and is binding upon the parties and their heirs, executors, successors and permitted assigns.

23. GOVERNING LAW

23.1 This Agreement is governed by the laws of Queensland and the Commonwealth of Australia which are enforced in Queensland.

23.2 The parties submit to the jurisdiction of the Courts of Queensland, relevant federal Courts and the Courts competent to hear appeals from them.

24. NOTICES

24.1 Procedure

All notices authorised or required under this Agreement to be given by a party to the other shall be in writing sent by facsimile or delivered personally or sent by pre-paid registered mail and in each case addressed to the party at that party's address set forth hereunder or as the case may be at such other address that the party may from time to time notify to the others.

24.2 Proof of Receipt of Notice

- (a) The following shall constitute proof of receipt:
 - i) Proof of posting by registered mail; or
 - ii) Proof of dispatch by facsimile.
- (b) Receipt of a notice given under this Agreement will be deemed to occur:
 - i) In the case of a communication sent by pre-paid registered mail on the third business day after posting;

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- ii) In the case of facsimile on the business day immediately following the day of dispatch.

24.3 Address for Service

The initial addresses of the parties for service shall be as set out in the definition of Address for Service.

25. FURTHER ASSURANCES

- 25.1 The parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under this Agreement.

26. ENTIRE UNDERSTANDING

- 26.1 This Agreement contains the entire understanding and agreement between the parties as to the subject matter of this Agreement.
- 26.2 All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect.
- 26.3 No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.

27. WAIVER

- 27.1 No waiver by a party of a provision of this Agreement is binding unless made in writing.

28. SEVERANCE

- 28.1 If a provision of this Agreement is void or unenforceable it must be severed from this Agreement and the provisions that are not void or unenforceable are unaffected by the severance.

29. CUMULATIVE RIGHTS

- 29.1 The rights and remedies of a party to this Agreement are in addition to the rights or remedies conferred on the party at law or in equity.

30. LIABILITY OF PARTIES

- 30.1 If any party to this Agreement consists of more than one person then the liability of those persons in all respects under this Agreement is a joint liability of all those persons and a separate liability of each of those persons.

31. COUNTERPARTS AND FAX

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31.1 This Agreement may be executed in any number of counterparts and when executed communication of the fact of execution to the other parties may be made by sending evidence of execution by fax.

32. ATTORNEYS

32.1 Where this Agreement is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.

33. COSTS

33.1 The parties must bear their own costs of and incidental to the negotiation, preparation and execution of this Agreement.

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EXECUTED AS AN AGREEMENT.

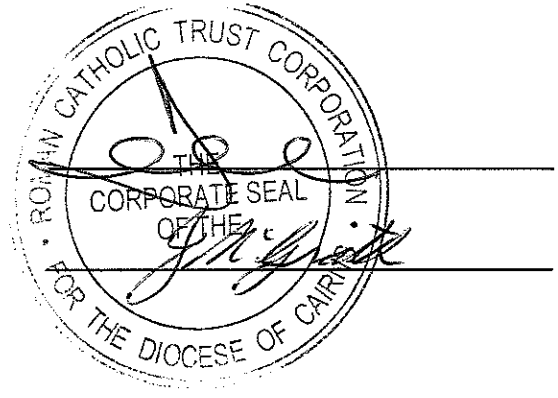
GIVEN under the COMMON SEAL of CAIRNS REGIONAL COUNCIL in pursuance of the Council's Local Laws and in the presence of and the Mayor and Chief Executive Officer of the Council respectively who have hereunto subscribed their names:

Witness x A. Simpson

THE COMMON SEAL of THE ROMAN CATHOLIC TRUST CORPORATION FOR THE DIOCESE OF CAIRNS TRADING THROUGH ST ANDREW'S CATHOLIC COLLEGE ABN 42 498 340 094 was hereunto affixed in the presence of:

Witness M. Shroy

VS x [Signature] Mayor
NS x [Signature] Chief Executive Officer



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SCHEDULE ONE Maintenance Plan

Responsibility	Examples of repairs and maintenance details	Responsible Party
1. Buildings: Existing and future includes residence, carports and sheds	Touch up painting General repair Windows Door frames Gutter cleaning Door handles and locks Plumbing	St Andrew's
	Cleaning and supervision against deliberate acts of vandalism	St Andrew's
	Programmed asset management - repainting, re-roofing, floor coverings etc	Council and St Andrew's
2. Water	Water consumption and supply charges	Council
3. Plumbing	Blocked/faulty toilets Drainage maintenance Washers/leaks etc	St Andrew's
	Water supply maintenance	Council
4. Grounds	Mowing, trimming, weeding etc Tree and landscaping maintenance Rectification of damage to lawn and trees Minor sprinkler maintenance and programming Cleaning	St Andrew's
	Turf refurbishment, top dressing and specialist treatments (programmed) Major irrigation repair and upgrades	Council
5. Shade Cloths and Supports	Cleaning, minor repairs Removal prior to major storm events	St Andrew's
	Replacement and major repairs	Council
6. Sanitary Box	Installation and rent	Council
7. Fire Extinguisher	Rent and maintenance	St Andrew's
8. Rodents and Vermin	Treatment of buildings and structures	St Andrew's
9. Rubbish Removal	Provision of sufficient bins	St Andrew's
10. Electricity	All installation and initial connection fees	Council
	Payment of all charges	St Andrew's
	Testing and tagging of all electrical	St Andrew's

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	equipment	
11. Lighting	Replacement of bulbs, starters etc	St Andrew's
12. Hot Water Systems	Repair and maintenance	St Andrew's
	Replacement at end of economic life	Council
13. Gates and Fences	Repair and maintenance	St Andrew's
	Replacement at end of economic life	Council
14. Signs (including notice boards)	Maintenance and repairs	St Andrew's

SCHEDULE TWO

USAGE PLAN – Redlynch Joint Facilities Precinct (St Andrew’s College)

The proposed precinct will have considerable use upon opening and that demand for access to the sporting fields and amenities will continue to increase as the catchments population grows and the schools’ populations grow. In general terms, usage will be separated between school hours (School Use) and non-school hours (Community Use), unless otherwise determined by the Advisory Committee. The primary focus of the Advisory Committee is to ensure fair, equitable and ongoing usage of all the facilities for St Andrew’s College, the Redlynch Community and surrounding areas.

Summary of School Use

The facility will be available exclusively during school hours for use as part of normal school activities conducted by St Andrew’s College. Examples of such use include regular Physical Education classes, school sport competition, inter-house and inter-school competitions, training for school teams and other events from time to time. These activities will generally take place between 8.00am and 4.00pm on school days. Other uses during school hours is subject to the approval of the Principal of St Andrew’s College, unless to enable Council to meet its obligations under the lease (e.g. Maintenance), noting that such approval will not unreasonably be withheld as a means of optimising the use of the facility. Sharing arrangements with other schools will also be encouraged where such use does not impact on the usual activities of St Andrew’s College.

Summary of Community Use

The facilities will be well utilised outside of school hours by community based organisations (via formal hire arrangements) and the general public. Whilst such use will generally be in the form of training sessions and club competitions being run on afternoons and nights during the week, and fixtures and training being held on weekends, the facility will also be used to host carnivals and tournaments (via formal hire arrangements). Such use will be managed in accordance with the Lease, Management Agreement and any direction of the Advisory Committee and prevailing Council Local Laws as appropriate.

Other

In support of the proposed uses, Council, St Andrew’s College and approved hirers will be permitted to use such equipment and fit-out the premises (temporarily unless otherwise approved in the case of hirers) as normally associated with such uses.