

**Date**

**Draft 07/02/2024**

Property Lawyers  
Alcaston House  
Suite 4.5, 2 Collins Street  
Melbourne Victoria 3000  
Australia

Telephone +61 3 7038 5680  
[www.alcastonpartners.com.au](http://www.alcastonpartners.com.au)

## **Agreement to Lease**

**Premises: Chelsworth Park, Ivanhoe**

**Banyule City Council**

and

**The Ivanhoe Grammar School ACN 004 083 247**

## **Contents**

<b>1.</b>	<b>DEFINITIONS .....</b>	<b>4</b>
1.1	Definitions .....	4
<b>2.</b>	<b>LEASE CONDITIONAL ON PLANNING PERMIT .....</b>	<b>5</b>
<b>3.</b>	<b>SURRENDER OF EXISTING LEASE .....</b>	<b>6</b>
<b>4.</b>	<b>NO ASSIGNMENT OR SUBLETTING .....</b>	<b>6</b>
<b>5.</b>	<b>NO CAVEAT .....</b>	<b>6</b>
<b>6.</b>	<b>NEW LEASE OF PREMISES .....</b>	<b>6</b>
6.1	Grant of New Lease .....	6
6.2	Commencement Date .....	6
6.3	Authority to complete Lease .....	6
6.4	New Lease binding on the parties .....	7
<b>7.</b>	<b>COSTS .....</b>	<b>7</b>
<b>8.</b>	<b>DEFAULT BY TENANT .....</b>	<b>7</b>
<b>9.</b>	<b>GST .....</b>	<b>7</b>
9.1	Definitions .....	7
9.2	GST exclusive .....	8
9.3	Increase in consideration .....	8
9.4	Payment of GST .....	8
9.5	Tax invoice .....	8
9.6	Reimbursements .....	8
9.7	Adjustment events .....	8
<b>10.</b>	<b>GENERAL .....</b>	<b>8</b>
10.1	Notices .....	8
10.2	Entire understanding .....	8
10.3	Waiver .....	9
<b>11.</b>	<b>INTERPRETATION .....</b>	<b>9</b>
11.1	Governing law and jurisdiction .....	9
11.2	Persons .....	9

11.3	Joint and several.....	9
11.4	Legislation.....	9
11.5	Clauses and headings .....	9
11.6	Severance.....	9
11.7	No relationship.....	10
11.8	Number and gender.....	10
11.9	Counterparts .....	10
11.10	Electronic execution.....	10
<b>SCHEDULE.....</b>		<b>11</b>
<b>ATTACHMENT 1 – CONCEPT PLANS .....</b>		<b>12</b>
<b>ATTACHMENT 2 – PREMISES PLAN.....</b>		<b>13</b>
<b>ATTACHMENT 3 – NEW LEASE.....</b>		<b>14</b>

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## Agreement to Lease

Dated

2024

### PARTIES

<b>Name</b>	<b>Banyule City Council</b>
<b>Address</b>	1 Flintoff Street, Greensborough
<b>Short name</b>	<b>Council</b>

<b>Name</b>	<b>The Ivanhoe Grammar School ACN 004 083 247</b>
<b>Address</b>	The Ridgeway, Ivanhoe
<b>Short name</b>	<b>IGS</b>

### BACKGROUND

- A. Council owns the Land and IGS leases the Premises pursuant to the Existing Lease.
- B. Council and IGS have agreed to significant changes to the Existing Lease and have entered into the Head of Agreement to record their intention to enter into this Agreement and the New Lease.
- C. Pursuant to the Heads of Agreement:
  - 1. Council has complied with its statutory obligations under Section 115 of the LGA; and
  - 2. Council and IGS have finalised their negotiations in respect of this Agreement and have each resolved to enter into this Agreement.
- D. The parties have entered into this Agreement to record their respective intentions and expectations in regard to the New Lease and to outline the process and documentation required to enter into the New Lease.

### The Parties Agree

#### 1. DEFINITIONS

##### 1.1 Definitions

In this Lease unless expressed or implied to the contrary:

**Agreement** means this Agreement for Lease.

**Business Day** means a day that is not Saturday or Sunday or public holiday in Melbourne.

**Commencement Date** means the date of commencement of the New Lease as determined under clause 2.

**Concept Plans** means the plans for the new pavilions to be constructed by IGS on the Premises, attached to this Agreement as Attachment 1.

**Council** means the party named in Item 1 and includes Council's successors and assigns and where it is consistent with the context, includes Council's employees and agents.

**Existing Lease** means the Lease dated 23 March 2015 between Council as landlord and IGS as tenant in respect of the Premises.

**Heads of Agreement** means the heads of agreement dated [insert] entered into by Council and IGS.

**Insolvency Event** means in relation to a person, any of the following:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person assigns any of its property for the benefit of creditors or any class of them;
- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up; and
- (e) the holder of a Security Interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale.

**IGS** means the party named in Item 2 and includes IGS's successors and assigns and where it is consistent with the context, includes IGS's employees, agents, invitees and persons IGS allows on the Land.

**Item** means an item in the Schedule.

**LGA** means the *Local Government Act 2020*.

**Land** means the land contained in Certificate of Title volume 5883 folio 571 and volume 7926 folio 113 and known as Chelsworth Park, Ivanhoe.

**New Lease** means the form of lease attached to this Agreement as Attachment 3.

**Planning Permit** means a planning permit authorising the use and development of the Premises in accordance with the Concept Plans on terms and conditions satisfactory to IGS, acting reasonably.

**Premises** means the premises described in Item 3.

**Premises Plan** means the Plan attached to this Agreement as Attachment 2.

**Schedule** means the schedule to this Agreement.

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## 2. LEASE CONDITIONAL ON PLANNING PERMIT

- (a) IGS agrees to lodge an application for a Planning Permit (**Application**) consistent with the Concept Plans within 3 months of the date of this Agreement.

- (b) If IGS obtains the Planning Permit within 18 months of lodging the Application (**Planning Approval Date**), the New Lease will commence on the day following the issue of the Planning Permit.
- (c) If IGS does not obtain the Planning Permit by the Planning Approval Date, either party may terminate this Agreement by notice in writing to the other, provided that the Planning Permit has not issued prior to such notice being given.

---

### **3. SURRENDER OF EXISTING LEASE**

- (a) The parties agree that the Existing Lease will be surrendered the day following the issue of the Planning Permit, immediately prior to commencement of the New Lease (**Surrender Date**).
- (b) From the Surrender Date, each party will release the other party from any future liability in respect of the Existing Lease but reserves their respective rights under the Existing Lease in respect of any loss, claim or action arising prior to the Surrender Date.

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### **4. NO ASSIGNMENT OR SUBLETTING**

IGS must not assign or purport to assign any of its rights or obligations under this Agreement without the prior written consent of the Council.

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### **5. NO CAVEAT**

IGS must not lodge a caveat on the title to the Land.

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### **6. NEW LEASE OF PREMISES**

#### **6.1 Grant of New Lease**

With effect from the Commencement Date, the Council agrees to grant the New Lease to IGS and IGS agrees to accept the grant of the New Lease.

#### **6.2 Commencement Date**

The Commencement Date will be the date described in clause 2(b).

#### **6.3 Authority to complete Lease**

Once the Commencement Date has been determined, the Council must prepare the New Lease and complete the New Lease by insertion of:

- (a) the Commencement Date; and
- (b) any other relevant details necessary to complete the New Lease, including affixing any plans to the New Lease,

and then submit the Lease to IGS for execution. IGS must execute the New Lease within 10 Business Days and return it to Council for execution, which Council must do within 20 Business Days.

#### **6.4 New Lease binding on the parties**

On and from the Commencement Date, even if the New Lease is not executed by the parties to this Agreement, the New Lease will be deemed to have commenced and the terms of the New Lease are binding as if the New Lease had been executed by Council and IGS.

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### **7. COSTS**

- (a) IGS must pay to the Landlord within 7 days of demand:
  - (i) Council's reasonable costs in giving any consent or approval under this Agreement; and
  - (ii) Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Agreement by IGS.
- (b) Each party will pay its own costs for preparing, negotiating and finalising this Agreement and the New Lease and any other document in connection with this Agreement.

---

### **8. DEFAULT BY TENANT**

If:

- (a) an Insolvency Event occurs in relation to IGS; or
- (b) IGS does not remedy any breach of this Agreement within 14 days of receiving written notice from Council,

Council may, without prejudice to any other rights or remedies of Council, terminate this Agreement by written notice to IGS and:

- (c) Council may will not be obliged to grant the Lease to IGS; and
- (d) IGS will pay to the Council damages of whatever kind or nature arising directly or indirectly from the default of IGS.

The determination of this Agreement will be without prejudice to the obligations of the IGS to pay to Council any money which has become due and owing by IGS as at the date of determination whether such money has then been quantified or not.

---

### **9. GST**

#### **9.1 Definitions**

In this clause:

- (a) words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) GST Law has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## **9.2 GST exclusive**

Except as otherwise provided by this Agreement, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

## **9.3 Increase in consideration**

If GST is payable in respect of any supply made by a supplier under this Agreement (GST Amount), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

## **9.4 Payment of GST**

Subject to clause 9.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

## **9.5 Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 9.4.

## **9.6 Reimbursements**

If this Agreement requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

## **9.7 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this Agreement:

- (a) the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and
- (b) any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

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## **10. GENERAL**

### **10.1 Notices**

Any notice required to be served under this Agreement must be in writing and must be served by post or hand delivered to:

- (a) the Tenant at its address set out in this Agreement, the Tenant's registered office address or the last known address of the Tenant; and
- (b) the Landlord at its address set out in this Agreement or any other address notified in writing to the Tenant by the Landlord.

### **10.2 Entire understanding**

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations



and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

### **10.3 Waiver**

If the Landlord does not exercise or delays exercising any of the Landlord's rights under this Agreement, it will not be a waiver of the breach of this Agreement by the Tenant or of the Landlord's rights under this Agreement.

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## **11. INTERPRETATION**

### **11.1 Governing law and jurisdiction**

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria and waives any right to object to proceedings being brought in those Courts.

### **11.2 Persons**

In this Agreement, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

### **11.3 Joint and several**

If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

### **11.4 Legislation**

In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

### **11.5 Clauses and headings**

In this Agreement:

- (a) a reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Agreement; and
- (b) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement.

### **11.6 Severance**

In this Agreement:

- (a) if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and
- (b) if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

**11.7 No relationship**

No party to this Agreement has the power to obligate or bind any other party. Nothing in this Agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between the Landlord and the Tenant. Nothing in this Agreement will be deemed to authorise or empower the Tenant to act as agent for or with the Landlord.

**11.8 Number and gender**

In this Agreement, a reference to:

- (a) the singular includes the plural and vice versa; and
- (b) a gender includes the other genders.

**11.9 Counterparts**

This Agreement may be executed in counterparts, all of which taken together constitute one document.

**11.10 Electronic execution**

Each party consents to the signing of this Agreement by electronic means. The parties agree to be legally bound by this Agreement signed in this way.

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**SCHEDULE**

<b>1.</b>	<b>Council:</b>	Banyule City Council of 1 Flintoff Street, Greensborough
<b>2.</b>	<b>IGS:</b>	The Ivanhoe Grammar School ACN 004 083 247
<b>3.</b>	<b>Premises:</b>	That part of the Land delineated as the premises on the Premises Plan

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ATTACHMENT 1 – CONCEPT PLANS

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Existing Site Plan

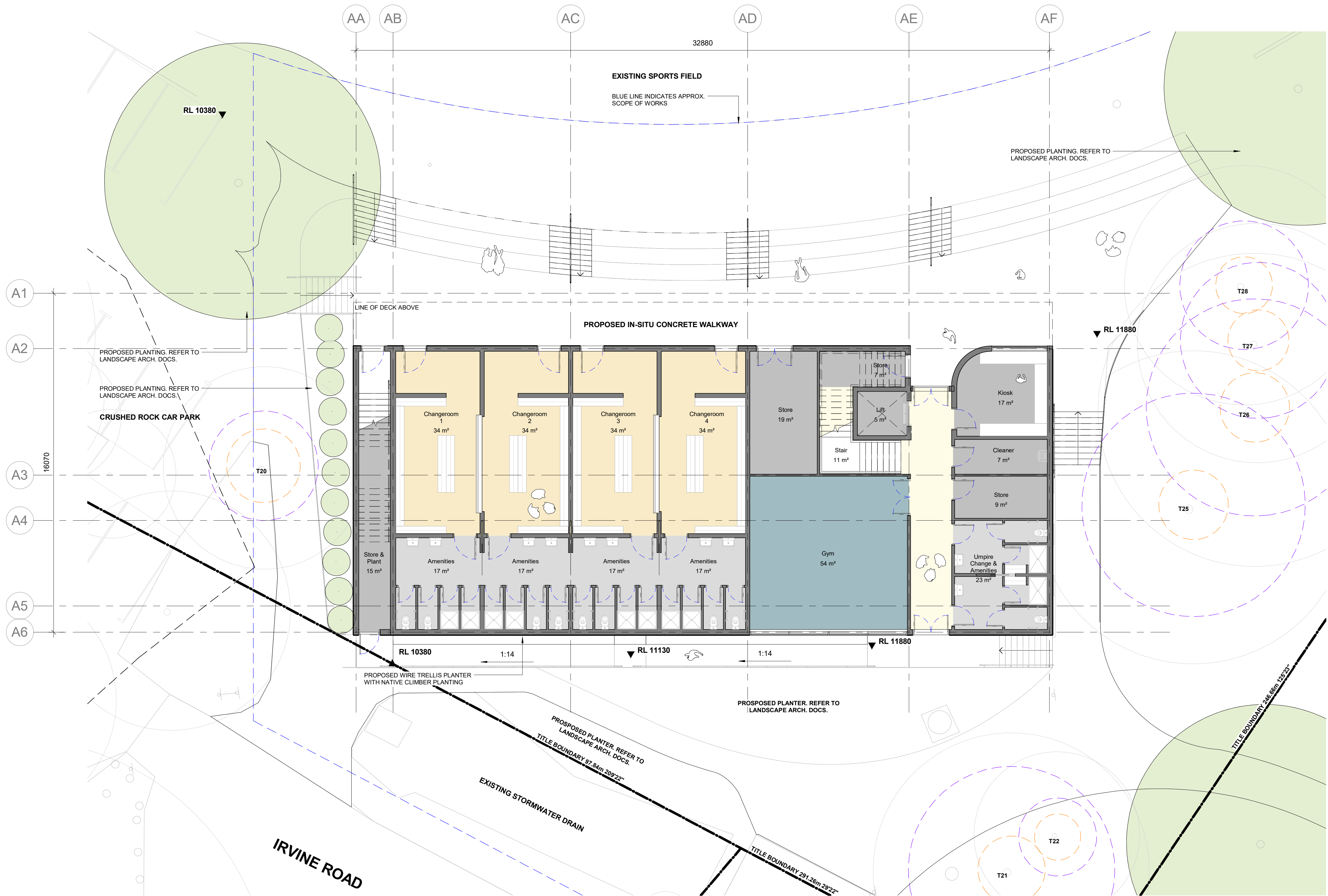




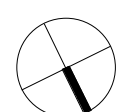
Draft Proposed Site Plan

		<div><div>McIlldowie Partners</div><div><div>T/ +61 3 8695 0300</div><div>info@mcilldowiepartners.com.au</div></div><div><div>Level 2, 325 Flinders Lane</div><div>Melbourne, Vic 3000</div></div></div>	<div><div>CLIENT</div><div>Ivanhoe Grammar School</div></div> <div><div>PROJECT NAME</div><div>Chelsworth Park</div></div> <div><div>PROJECT ADDRESS</div><div>Irvine Road, Ivanhoe</div></div>	<div><div>DRAWING NUMBER</div><div>TP051</div></div>
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Pavilion A (Existing Timber) -  
Ground Floor Plan



**McIlldowie  
Partners**

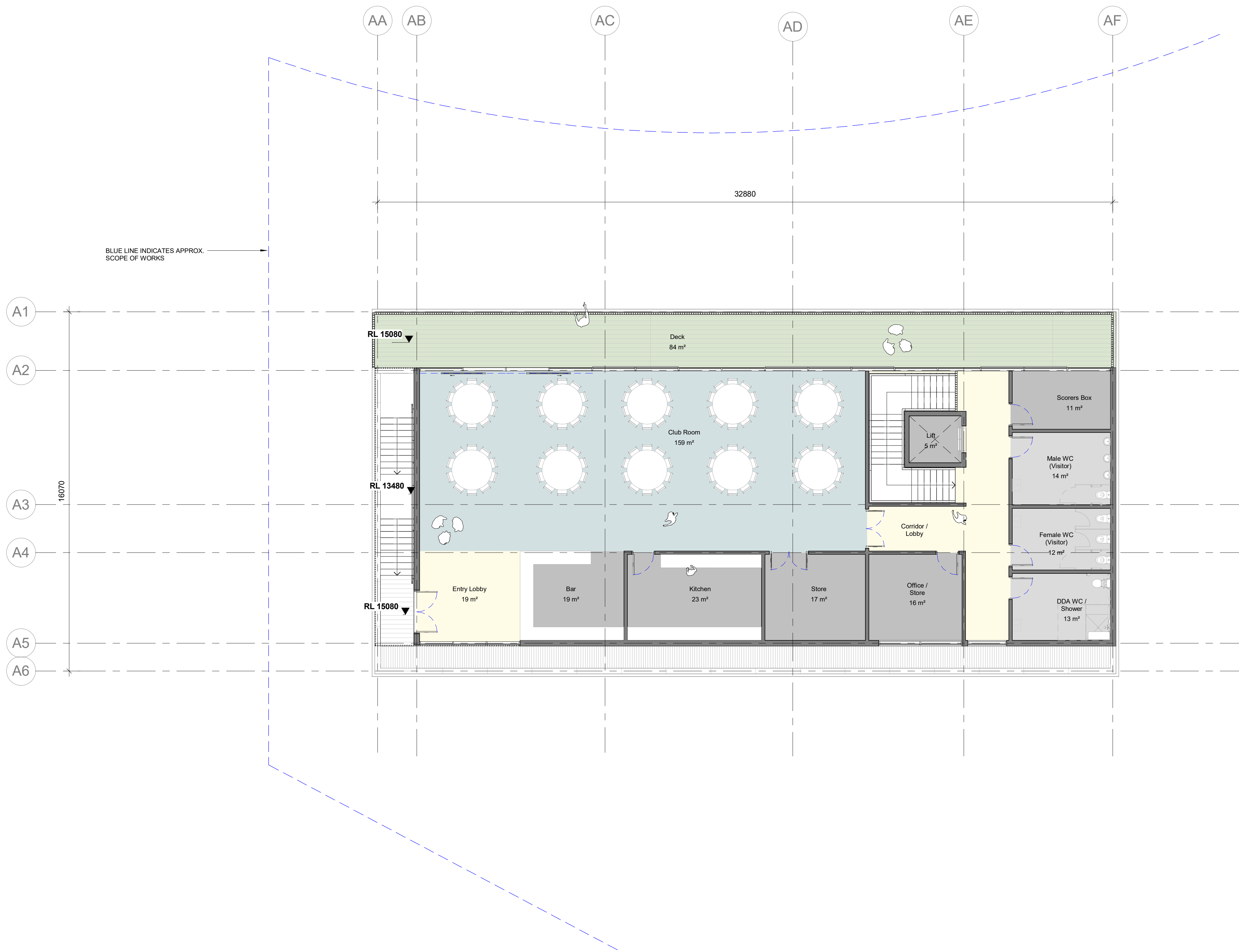
T/ +61 3 8695 0300  
info@mcilldowiepartners.com.au

Level 2, 325 Flinders Lane  
Melbourne, Vic 3000

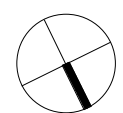
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Ivanhoe Grammar School  
PROJECT NAME  
Chelsworth Park  
PROJECT ADDRESS  
Irvine Road, Ivanhoe

DRAWING NUMBER  
TP101





Pavilion A (Existing Timber) -  
First Floor Plan



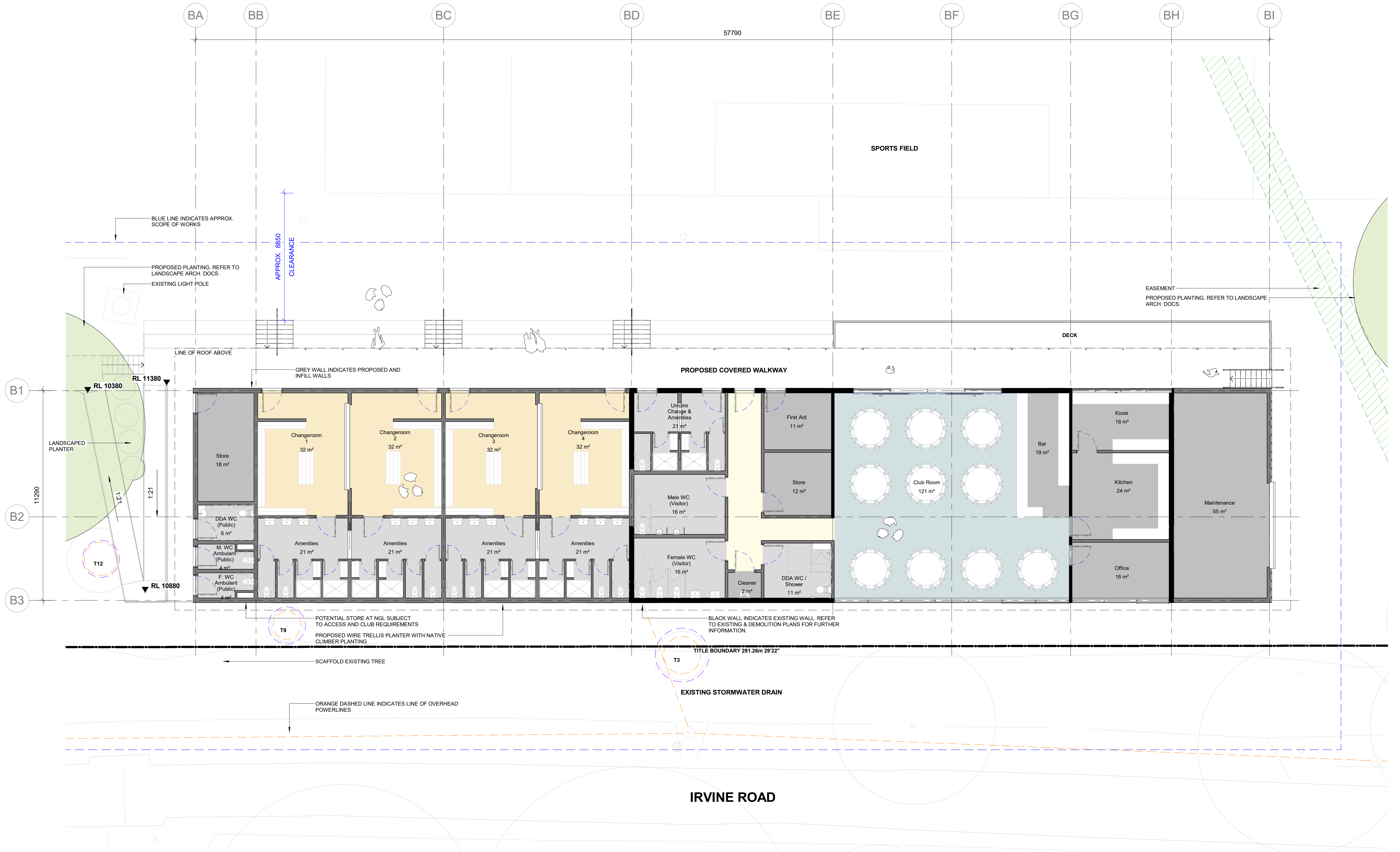
**McIlldowie  
Partners**

T/ +61 3 8695 0300  
info@mcilldowiepartners.com.au

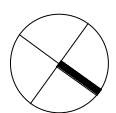
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Melbourne, Vic 3000

CLIENT  
Ivanhoe Grammar School  
PROJECT NAME  
Chelsworth Park  
PROJECT ADDRESS  
Irvine Road, Ivanhoe

DRAWING NUMBER  
TP102



Pavilion B (Existing Brick) -  
Ground Floor Plan



**MSIldowie  
Partners**

Tf +61 3 8695 0300  
info@msildowiepartners.com.au

Level 2, 325 Flinders Lane  
Melbourne, Vic 3000

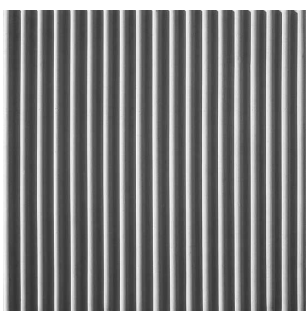
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PROJECT ADDRESS  
Irvine Road, Ivanhoe

DRAWING NUMBER  
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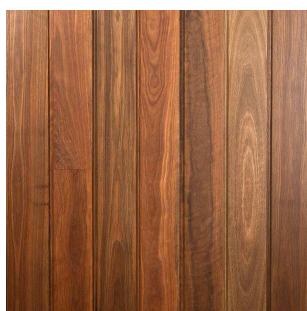




## FINISHES SCHEDULE



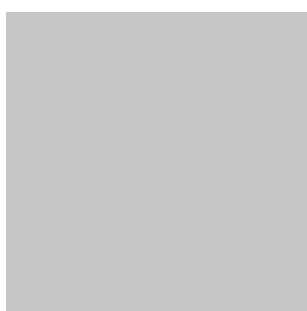
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REKLI FORMLINER '2/95  
AMAZONAS'



**FE02**  
TIMBER CLADDING  
SPOTTED GUM, CLEAR OIL



**FE03**  
POWDER COAT,  
DURALLOY, BLACK NIGHT  
SKY, SATIN FINISH



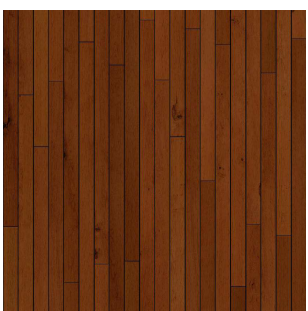
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ANOTEC, SILVER GREY,  
MATT FINISH



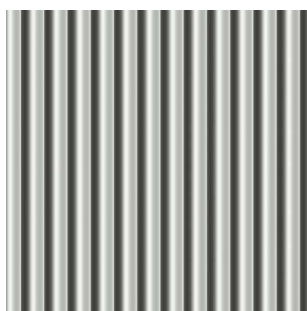
**FE05**  
GALVANISED STEEL PANEL,  
FLATLOCK SYSTEM



**FE06**  
JAPANESE CHARRED TIMBER  
CLADDING (SHOU SUGI BAN)  
VERTICAL



**FE07**  
TIMBER DECKING, MERBAU

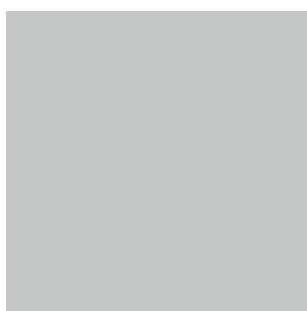


**FE08**  
LYSAGHT CUSTOM ORB,  
COSMIC COLOUR, METALLIC  
FINISH

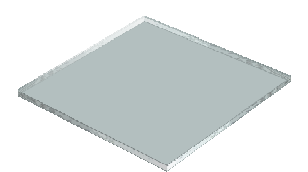


## FE09

### INSITU CONCRETE PAVEMENT



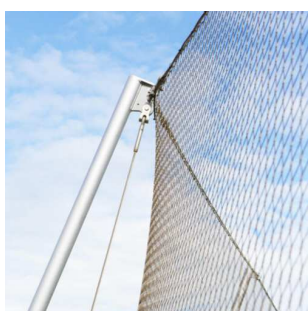
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SATIN FINISH



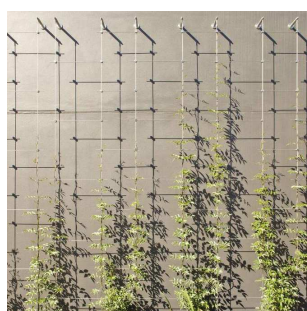
**FE11**  
LAMINATED GLAZING, VLAM  
TRANSLUCENT



**FE12**  
STRAMIT ROLL TOP RIDGE,  
COSMIC COLOUR, METALLIC  
FINISH



### FE13 RONSTAN TENSILE CHAIN FENCE



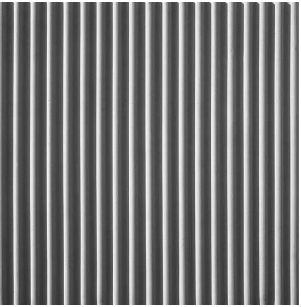
**FE14**  
RONSTAN CABLE TRELLIS

## Pavilion A (Existing Timber) - Proposed 3D View & External Finishes





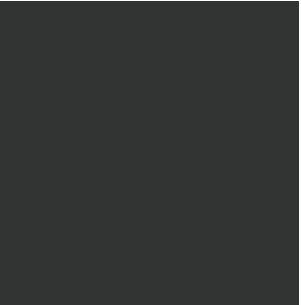
FINISHES SCHEDULE



FE01  
INSITU CONCRETE WITH  
REKLI FORMLINER 2/85  
AMAZONAS'



FE02  
TIMBER CLADDING  
SPOTTED GUM, CLEAR OIL



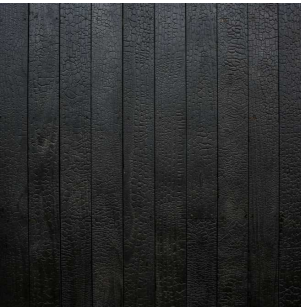
FE03  
POWDER COAT,  
DURALLOY, BLACK NIGHT  
SKY, SATIN FINISH



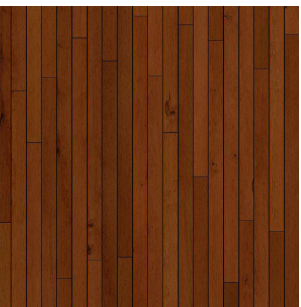
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ANOTEC, SILVER GREY,  
MATT FINISH



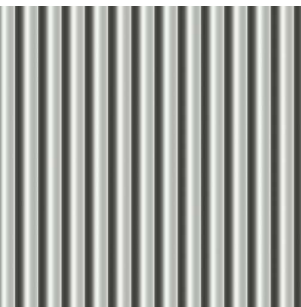
FE05  
GALVANISED STEEL PANEL,  
FLATLOCK SYSTEM



FE06  
JAPANESE CHARRED TIMBER  
CLADDING (SHOU SUGI BAN),  
VERTICAL



FE07  
TIMBER DECKING, MERBAU



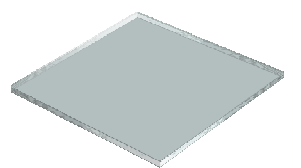
FE08  
LYSAGHT CUSTOM ORB,  
COSMIC COLOUR, METALLIC  
FINISH



FE09  
INSITU CONCRETE  
PAVEMENT



FE10  
PAINT FINISH, DURALLOY,  
ANOTEC, SILVER GREY,  
SATIN FINISH



FE11  
LAMINATED GLAZING, VLAM  
TRANSLUCENT



FE12  
STRAMIT ROLL TOP RIDGE,  
COSMIC COLOUR, METALLIC  
FINISH



FE13  
RONSTAN TENSILE CHAIN  
FENCE



FE14  
RONSTAN CABLE TRELLIS

Pavilion B (Existing Brick) -  
Proposed 3D View & External  
Finishes

**McIlldowie  
Partners**

T/ +61 3 8695 0300  
info@mcilldowiepartners.com.au

Level 2, 325 Flinders Lane  
Melbourne, Vic 3000

CLIENT  
Ivanhoe Grammar School  
PROJECT NAME  
Chelsworth Park  
PROJECT ADDRESS  
Irvine Road, Ivanhoe

DRAWING NUMBER  
TP802



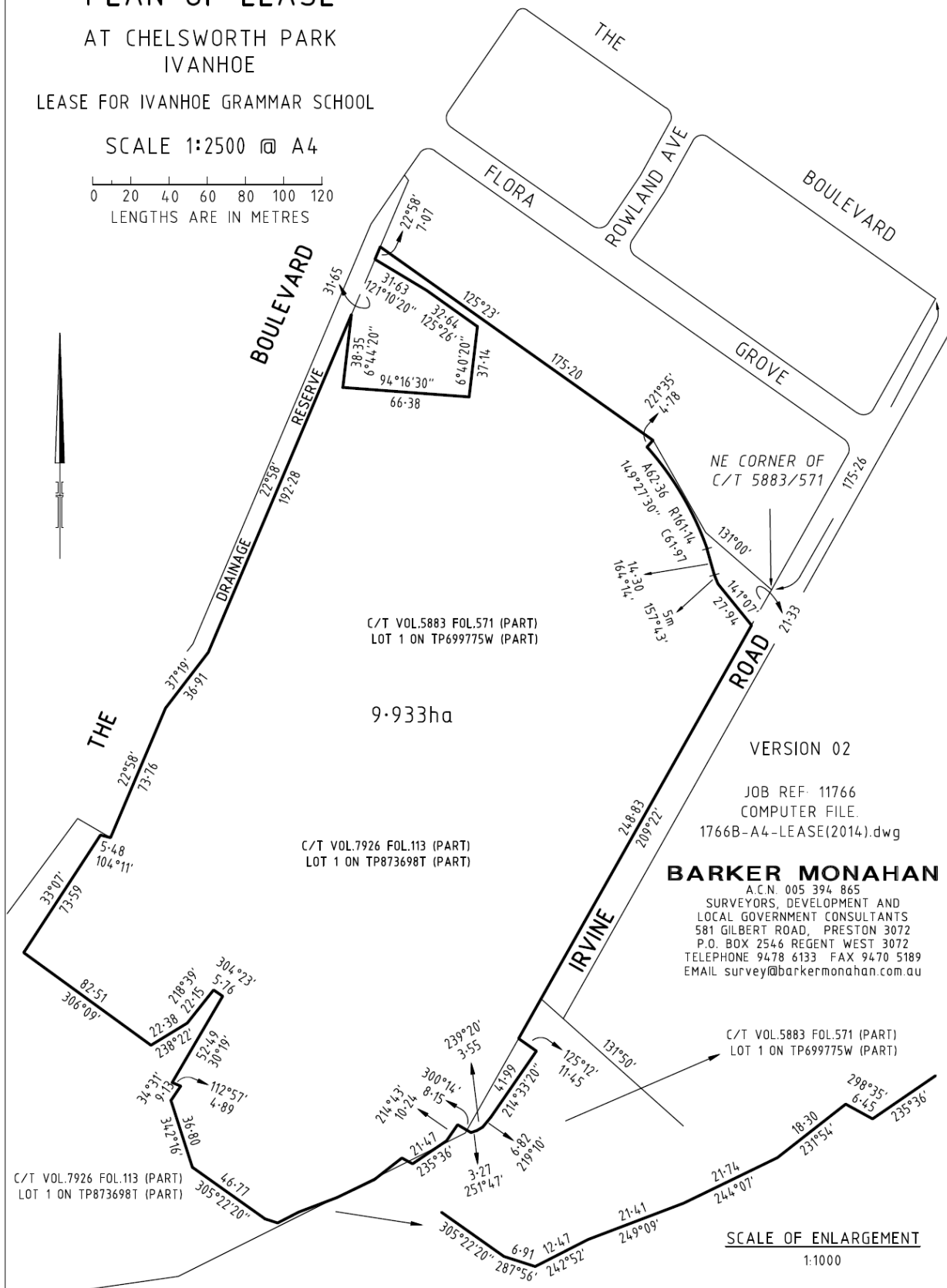
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**ATTACHMENT 2 – PREMISES PLAN**

DRAFT

AT CHELSWORTH PARK  
IVANHOE

SCALE 1:2500 @ A4



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**ATTACHMENT 3 – NEW LEASE**

DRAFT

DATED:

2024.

Executed by the parties

Signed for and or behalf of **Banyule City Council** by Allison Beckwith, Chief Executive Officer, in exercise of a power delegated by an Instrument Delegation dated [insert] in the presence of:

)  
)  
)  
)  
)

\_\_\_\_\_  
Allison Beckwith

\_\_\_\_\_  
Witness

Executed by **The Ivanhoe Grammar School** in accordance with Section 127(1) of the Corporations Act 2001:

)  
)  
)  
)

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Print full name

\_\_\_\_\_  
Print full name