

Leave this space clear. Affix additional pages to the left-hand corner.

Insert Duties Assessment No. as issued by Revenue NSW Office.
Duties Assessment No.

Part folio: 30/1273248 known as Waitara Park, Mark Taylor Oval, 20 Waitara Avenue, WAITARA NSW 2077 as defined by the Premises Plan under Schedule 2 attached hereto

AVZ:211164

L

Hornsby Shire Council ABN 20 706 996 972

Encumbrances (if applicable):

Northern District Cricket Club Inc (ABN 44 383 144 829) Registration Number Y1112320

TENANCY:

9. The **RENT** is set out in clause 2 of Annexure A

DATE / /

(H)

I certify I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence.
[See note* below]

Signature of witness:

Name of witness:

Address of witness:

Certified correct for the purposes of the Real Property Act 1900 by the lessor's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of attorney:

Attorney's name: Steven Head

Signing on behalf of: Hornsby Shire Council ABN 20 706 996 972

Power of attorney Book: 4747 No: 104

I certify I am an eligible witness and that an authorised officer of the lessee signed this dealing in my presence.
[See note* below]

Signature of witness:

Name of witness:

Address of witness:

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of authorised officer:

Authorised officer's name:

Authority of officer:

Signing on behalf of: NORTHERN DISTRICT CRICKET CLUB INC REGISTRATION NUMBER: Y1112320

(I) **STATUTORY DECLARATION #**

I,

solemnly and sincerely declare that -

1. The time for the exercise of option to **renew/purchase** in expired lease No. has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed atin the State of New South Wales on.....

in the presence of of

☐ Justice of the Peace (J.P. Number) ☐ Practising Solicitor

☐ Other qualified witness [specify]

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person has a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was [Omit ID No.]

Signature of witness: Signature of applicant:

As the services of a qualified witness cannot be provided at lodgment, the statutory declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out witness certification. If made in NSW, cross out the text which does not apply.

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

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1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, unless the contrary intention appears:

Accounting Period means either the calendar or financial year on which basis the Lessor's accounts are kept.

Asset Management Plan means the asset management plan annexed as Schedule 4 and amended from time to time.

Air-conditioning System means a ducted system which services all or part of the Building.

Air-conditioning Unit means a mobile or fixed unit which services the Premises only.

Authority includes a government, a local, statutory, or public authority, and a person entitled to carry out a statutory function.

Bank Guarantee means a bank guarantee issued by an Australian retail bank containing no expiry date and in a form acceptable to the Lessor for the amount specified in Item 14.

Building means the building situated on the Land of which the Premises form part and any other building and/or structures owned or controlled by the Lessor in connection with the Building existing now or which may be erected after the Commencing Date.

Carrier has the meaning given to it in the *Telecommunications Act 1997* (Cth).

Commencing Date means the commencing date of this Lease specified on the cover page of this Lease.

Common Areas means those parts of the Building which are allocated by the Lessor for use by the Lessee, or its employees customers and the public including but not limited to canteen facilities, roads, car parks, ramps, stair ways, walk ways, path ways, corridors, entrance ways, exits, courts, foyers, toilets, wash rooms, recreational areas, storage areas and loading docks or areas.

Council's Schedule of Fees and Charges is the schedule of Fees and Charges approved or published by the Council on its website annually or from time to time in accordance with the *Local Government Act 1993* (NSW).

Environment includes all aspects of the surroundings of human beings including:

- (a) the physical factors of those surroundings, such as the land, the water and the atmosphere;
- (b) the biological factors of those surroundings, such as the animals, plants and other forms of life; and
- (c) the aesthetic factors of those surroundings, such as their appearance, sounds, smells, tastes and textures.

Environmental Law means any law, State or Federal, which in any way regulates

the use of or dealing with land and/or relates to the protection of the environment, persons and/or property from pollution caused by such use or dealing or otherwise.

GST has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hire Fee means the fees or charges imposed by the Lessor in relation to the use of the Premises for the Permitted Use determined by the Lessor in accordance with the *Local Government Act 1993 (NSW)* and *Local Government (General) Regulation 2021* and as set out and levied pursuant to the Council's Schedule of Fees and Charges and where applicable includes the Lighting Fees and any other applicable fees and charges.

Instalments mean the equal monthly instalments of Rent (as adjusted) specified in Item 2.

Item refers to the item in the Reference Schedule being the item number identified in the relevant clause.

Land means the whole of the land in the Certificate(s) of Title specified on the cover page of this Lease.

Lessee means the Lessee specified on the cover page of this Lease and its approved assigns and, where appropriate, its employees, agents, contractors and invitees.

Lessee's Property means all the Lessee's fixtures, goods, plant and equipment brought on to the Premises.

Lessor means the Lessor specified on the cover page of this Lease and its assigns and, where appropriate, its employees and agents.

Lessor's Outgoings mean the outgoings, costs and expenses assessed, charged, imposed, levied, paid or payable by the Lessor in relation to the Building or the Land and in particular but without limiting the generality of the foregoing shall include any council rates and charges, water and sewerage rates and charges, land tax and insurance premiums

Lighting Fee means the fee payable by the Lessee as specified in Council's Schedule of Fees & Charges.

Maintenance Schedule means the Schedule 1 - Maintenance and Responsibilities Schedule as attached in this Lease which is non-exhaustive in nature.

Market Rent means a rent appropriate for the Premises at the relevant Review Date having regard to the directions in clause 3.1(b).

Option Term means the term specified in Item 12A.

Outgoings Statement means a written report of the actual Lessor's Outgoings.

Permitted Use means the permitted use of the Premises by the Lessee specified in Item 9.

Plan of Management means the Waitara Park Plan of Management adopted 9 June 2021, or otherwise updated by Council.

Premises means the "Property leased" specified on the cover page of this Lease and the Lessor's fixtures, goods, plant and equipment in, on or affixed to the Property leased.

Reference Schedule means the Reference Schedule of this Lease.

Rent means the annual rent (as adjusted) specified in Item 1.

Review Date means the relevant dates on which the Rent will be reviewed specified in the Reference Schedule.

Security Deposit means the security deposit to be provided by the Lessee to the Lessor for the amount specified in Item 14.

Services mean the services or utilities provided by an Authority, the Lessor or others to the Building, the Premises or the Land, including but not limited to telephone, electricity, gas, water, sewerage, air conditioning, lifts, escalators, security (and security systems), fire control and communications together with all plant and equipment relating to those services.

Term means the term of this Lease specified on the cover page of this Lease and any holding over period under this Lease.

Terminating Date means the terminating date of this Lease specified on the cover page of this Lease.

Profit Rent means that as defined in under Schedule 3 as attached in this Lease.

WH&S Legislation means any law that relates to the health and safety of employees, contractors, and other persons at work including but not limited to the *Work Health and Safety Act 2011* (NSW) and the regulations thereunder as amended from time to time.

Winter Season means the period beginning on the first Saturday of April and finishing on the last Sunday of August

- 1.2 The implied covenants and powers otherwise implied by virtue of sections 84 and 85 of the *Conveyancing Act 1919* (NSW) are expressly negated.
- 1.3 In this Lease:
 - (a) words denoting the singular include plural and vice versa; and
 - (b) headings are for convenience only and do not affect interpretation.
- 1.4 If, under the provisions of this Lease or under any notice or demand served pursuant to the provisions of this Lease anything is required to be done on a day which is not a business day, then the day for compliance is deemed to be the business day immediately following that day.
- 1.5 If there are two (2) or more lessors, two (2) or more lessees or two (2) or more guarantors under this Lease (including while the Lease or the reversion is held by legal personal representatives, successors or assigns), each of them is jointly and severally liable under this Lease.

- 1.6 If either under the common law or by force of legislation, any provision of this Lease is or becomes legally ineffective then that provision is to be severed from the Lease which is otherwise to remain effective.
- 1.7 The provisions of this Lease are governed by and to be construed in accordance with, the laws of the State of New South Wales.
- 1.8 This Lease contains the whole of the agreement between the Lessor and the Lessee relating to the Premises and the lease of the Premises by the Lessor to the Lessee.

2. RENT

- 2.1 The Lessee must pay to the Lessor, without deduction or set-off, the Rent by the Instalments in advance, in cleared funds and as directed by the Lessor in writing.
- 2.2 The first of the Instalments is due on the Commencing Date and all subsequent Instalments are due on the same day of each successive month or, if there is no such day, then on the last day of the relevant month.
- 2.3 Additionally, the Lessee must pay to the Lessor the Profit Rent in accordance with Schedule 3 - Profit Rent Schedule.

3. RENT REVIEW

- 3.1 The Rent will be reviewed on each **Review Date** specified in:

CPI

- (a) Item 3, to an amount represented by A in the following formula:

$$A = B \times \frac{C}{D}$$

Where:

B = the Rent payable immediately before the Review Date;

C = the Consumer Price Index (**Index**) (Sydney – All Groups) Number (**CPI Number**) as issued by the Australian Bureau of Statistics (**ABS**) for the last quarter before the Review Date; and

D = the CPI Number for the same quarter ending twelve (12) months before the Review Date.

If the Index is discontinued then, for the purposes of this clause, the CPI Number is to be the CPI Number of the price index which replaces the Index or, if there is no substitute then of any price index kept by the ABS which the Lessor may select at its absolute discretion (**New Index**) to which the Lessor may make the appropriate arithmetical adjustment for differences between the Index and the New Index, if required.

Market Rent

- (b) Item 4, to Market Rent which is determined as follows:

- (1) At any time not earlier than three (3) months prior to the Review Date, the Lessor may serve on the Lessee a notice stating the Market Rent for the subsequent lease year (**Rent Notice**). If no objection is made by the Lessee within twenty eight (28) days of service of the Rent Notice then the Rent following the relevant Review Date is as stated in the Rent Notice.
- (2) If the Lessee serves a notice in writing stating that it does not agree with the Rent stated in the Rent Notice (**Notice of Objection**) then, if the parties have not agreed on Market Rent within seven (7) days of service of the Notice of Objection, the Market Rent is to be determined by a person appointed by agreement between the parties, or failing agreement, appointed by the President for the time being of The Australian Property Institute (Inc.) NSW Division, or its successor at the request of either party (**Valuer**).
- (3) The Valuer must be a licensed valuer who:
 - (A) has practised as a valuer for a period of not less than five (5) years;
 - (B) is a full member of The Australian Property Institute (Inc.) NSW Division; and
 - (C) is licensed to practise as a valuer of the kind of premises demised by this Lease.
- (4) In determining the Market Rent, the Valuer is to act as an expert and not as an arbitrator.
- (5) The costs of the Valuer in determining the Market Rent are to be paid by the Lessee in full if the Market Rent is not more than 2% below the rent stated in the relevant Rent Notice or in full by the Lessor if the Market Rent is more than 2% below the rent stated in the relevant Rent Notice.
- (6) In determining the Market Rent the Valuer must:
 - (A) disregard:
 - i. the value of any goodwill attributable to the Lessee's business and the value of the Lessee's fixtures and fittings and any structures constructed by the Lessee on the Premises;
 - ii. any deleterious condition of the Premises; and
 - iii. any rental fee or money received pursuant to any sub-lease or any sub-tenancy agreement or occupational agreement which has not been approved by the Lessor pursuant to this Lease;
 - (B) have regard to:

- i. the length of the Term, disregarding the fact that part of the Term will have elapsed at the Review Date;
- ii. the rental value of comparable premises, but in doing so must make no deduction on account of any incentive provided as an inducement to enter into any lease of such premises; and
- iii. the Permitted Use and any other use to which the Premises may be lawfully put; and
- iv. the Lessee's obligations under the Asset Management Plan.

(C) assume:

- i. that all covenants on the part of the Lessee and Lessor contained in the Lease have been fully performed and observed; and
- ii. in the event the Premises have been damaged or destroyed, that the Premises have been reinstated in accordance with this Lease.

- (7) For the purposes of sub-clause 3.1.(b)(6)(B).ii, "**incentive**" means any inducement, incentive or concession whatsoever (including any premium or capital payment, any period of abatement or reduction of rent or other money paid for or by a Lessor or otherwise) in connection with the tenancy.

Set Increase

- (c) Item 5 to an amount represented by increasing the Rent for the year immediately preceding the Review Date by the percentage or the amount referred to in Item 6.

- 3.2 Until the new Rent has been determined the Lessee must continue to pay rent being the Rent payable immediately prior to the Review Date.
- 3.3 If the Review Dates have been specified in more than one of Items 3, 4 and 5, then the Rent is to be the greater or greatest amount, calculated in accordance with sub-clauses 3.1(a), 3.1(b) and/or 3.1(c).
- 3.4 The Rent determined in accordance with this clause must not be lower than the Rent payable immediately prior to the Review Date.

4. PAYMENT OF OUTGOINGS

- 4.1 The Lessee is to pay for separately metered Services to the Premises including but not limited to telephone, gas, electricity and water.
- 4.2 The Lessee must pay to the Lessor the percentage specified in Item 7 of the estimated Lessor's Outgoings in respect of the Building in the same manner as Rent is paid under clause 2.

- 4.3 If the Lessor's estimate of Lessor's Outgoings is different to the actual Lessor's Outgoings paid during an Accounting Period then the parties must make an appropriate adjustment within one (1) month of the date when the Lessor provides to the Lessee a statement itemising the actual Lessor's Outgoings.

5. OTHER PAYMENTS

The Lessee must also pay to the Lessor:

- 5.1 Not used;
- 5.2 any additional fee or charge payable under the Council's Schedule of Fees and Charges relating to the Permitted Use including any Lighting Fees;
- 5.3 the registration fee for the registration of this Lease at New South Wales Land Registry Services and the costs associated with any survey required to register this Lease with New South Wales including the cost of surveying the leased Premises and any registration costs payable to New South Wales Land Registry Services if the Lessor proceeds to register this Lease;
- 5.4 interest on any money payable by the Lessee to the Lessor if more than fourteen (14) days overdue at the rate prescribed from time to time under section 101 of the *Civil Procedure Act 2005* (NSW) (as amended) or any succeeding legislation, at the date of demand, from the due date to the date of payment;
- 5.5 the Lessor's reasonable costs and disbursements of considering any application by the Lessee for Lessor's consent (whether or not given) and on any surrender of the Lease;
- 5.6 the Lessor's reasonable costs and disbursements in connection with a default by the Lessee under this Lease including, but not limited to, enforcement costs;
- 5.7 the costs to the Lessor of obtaining any mortgagee's consent to this Lease and/or to any request for the Lessor's consent requiring the consent of any mortgagee; and
- 5.8 at the same time as rent and other payments hereunder are payable under this Lease, any GST payable or collectable by the Lessor as a result of the imposition on the Lessee of the obligation to pay rent and such other payments under this Lease.

6. PERMITTED USE

- 6.1 The Lessor makes no warranty as to the suitability of the Premises for the Permitted Use.
- 6.2 Hours of Operation
- (a) **The hours of operation of the indoor cricket pitch facility within the Premises are restricted to those times listed below:**
- | | |
|----------------------------|-------------------|
| Monday to Saturday | 7:00am to 10:00pm |
| Sunday and public holidays | 8:00am to 10:00pm |
- (b) All persons must vacate the facilities and the Premises by 10:00pm.

6.3 The Lessee must at its own cost:

- (a) use the Premises only for the Permitted Use specified in Item 9;
- (b) comply with all laws and requirements of any relevant authority regulating the Permitted Use including obtaining (and where relevant maintaining) any required consent(s) or license(s);
- (c) keep the Premises clean and free of damage and vermin;
- (d) (Waste Services) arrange and enter into a trade waste agreement for the proper collections and disposal of waste and rubbish generated in connection with the use of the Premises;
- (e) notify the Lessor as soon as practicable of any contagious illnesses or structural defects requiring the urgent attention of the Lessor;
- (f) take all reasonable steps to secure the Premises against unlawful entry;
- (g) ensure security and properly manage any crowd in or near the Premises including any activities therein and ensure all attendees and events are kept in orderly conduct;
- (h) keep and maintain an incidents book ("**Incident Book**") and the Lessee must ensure that its employees record in the book:
 - (1) any wilful damage to the sporting field and/or the Premises;
 - (2) any event or circumstance which results in property damage, death or personal injury to any person;
 - (3) any incident, happening or occurrence of a nature specified by the Lessor in writing as notified to the Lessee;
 - (4) any action taken by the Lessee;
- (i) keep the Incident Book on the Premises and shall permit the Lessor to inspect and make copies of the Incident Book at all reasonable times;
- (j) immediately notify the Lessor of any incident involving injury or death of a person on the sporting field or Premises or damage to same;
- (k) actively prevent:
 - (1) articles such as confetti, chewing gum and fireworks to be stored, park or used in or near any part of the Premises;
 - (2) smoking of any type or kind anywhere in or near the Premises;
 - (3) any sale, presence and consumption of alcohol in or near the Premises (unless specifically approved by the Lessor at its absolute discretion and with the appropriate licence);
 - (4) unlawful or unauthorised parking anywhere in or near the Premises outside of designated parking areas;

- (l) properly manage parking in connection with the Permitted Use including without limitation preventative management to ensure no incidents occur that may lead to damage of Council, the Premises or personal property;
 - (m) be responsible for the acts and omissions of its members and permitted users and invitees as if they were the acts of the Lessee;
 - (n) comply with all applicable laws, rules, regulations or ordinances may be applicable to the Permitted Use.
- 6.4 The Lessee must not do anything in relation to the Premises which in the reasonable opinion of the Lessor is:
- (a) annoying, offensive or dangerous to other occupiers of the Building, the Land or to the owners or occupiers of land or buildings in the vicinity of the Premises;
 - (b) illegal; and/or
 - (c) liable to void any insurance in respect of the Premises or the Building or increase any insurance premium.
- 6.5 The Lessee must not:
- (a) use the toilet, sinks and drainage for any purpose other than that for which they were constructed;
 - (b) hold any auction, bankrupt, liquidation or fire sale on the Premises;
 - (c) overload the floors, walls or any service to the Premises;
 - (d) allow or permit the sale of products for profit or for advertising purposes, unless prior written approval has been obtained, other than the sale of canteen food and drinks (unless specifically authorised by the Lessor in writing);
 - (e) without the consent of the Lessor (which consent will not be withheld unreasonably);
 - (1) alter or carry out works to the Premises;
 - (2) erect signs, notices, advertisements within or upon the Premises; or
 - (3) play music or operate loud speakers.

7. LESSOR'S COVENANT AND RESERVATIONS

- 7.1 So long as the Lessee is not in breach of this Lease and subject to the rights of entry reserved under this Lease, the Lessee may occupy the Premises for the Term without interruption or disturbance by the Lessor.
- 7.2 The Lessor reserves the right to:
- (a) use the roof and/or external walls of the Building, including for the purposes of erecting and displaying advertisements and other signs;

- (b) name and design a logo for the Building and change these at any time;
- (c) pass services through, over, under or around the Premises and to access the Premises for the purpose of installing, maintaining, repairing and/or replacing those services;
- (d) deal with the Land including, but not limited to, the granting of easements or covenants;
- (e) convert the title of the Land to strata title or to subdivide the Land by way of a stratum subdivision;
- (f) carry out any building work to the Building or on the Land;

and the Lessee must do all that is reasonably necessary to enable the Lessor to exercise the rights reserved in this sub-clause including, but not limited to, the signing of consents.

7.3 In exercising any of its rights pursuant to clause 7.2 the Lessor must first consult with the Lessee as to the manner in which that right is or those rights are to be exercised, and in exercising any such rights must take reasonable endeavours to minimise any disruption which may be caused by the exercise of that right or those rights to the Lessee's business operation.

7.4 Despite any other provision in this Lease, the Lessor reserves the right, to enter into any tenure arrangement with a Carrier to construct or erect any telecommunications equipment or structure on the Premises, and the Lessee agrees that:

- (a) the Lessor is entitled to any income derived from any such tenure arrangement; and
- (b) if required by the Lessor in its absolute discretion, the Lessee will sign any document reasonably necessary to effect any such agreement the Lessor may enter into with a Carrier including a partial surrender of Lease.

7.5 The Lessee acknowledges that the obligations of the Lessor under this Lease in no way alters or restricts its role, functions and obligations as a consent authority and no exercise of any function by the Lessor as a consent authority will constitute a breach of this Lease.

8. REPAIRS

8.1 The Lessor must:

- (a) use all reasonable endeavours to maintain essential services, if any, supplied to the Premises by the Lessor but will not be liable to the Lessee for any failure in essential services whatsoever, unless caused by the negligence, wilful act or omission of the Lessor; and
- (b) maintain (subject to clauses 8.2 and 8.3):
 - (1) in a good state of repair the Building;
 - (2) in a structurally sound condition the Premises and the Building; and

- (3) maintain the outdoor practice nets.

8.2 The Lessee must:

- (a) keep the Premises in a good state of repair (fair wear and tear excepted) having regard to its condition as at the Commencing Date and comply with any notice served on the Lessee by the Lessor requiring the Lessee to carry out any repairs being the responsibility of the Lessee within, fourteen (14) days of the date of service;
- (b) maintain, repair and keep in good repair the Premises and Services including without limitation any sports grounds surfaces, so far as they services or situate within the Premises;
- (c) maintain, repair and keep in good repair and working condition of any sports grounds surfaces and synthetic turf and refrain from using the natural turf surfaces when they are in need of rejuvenation or repair in particular during off-peak periods such as the Winter Season;
- (d) undertake works as required by the Asset Management Plan.

8.3 Notwithstanding the provisions of sub-clause 8.1(b)(2), the Lessee must perform any structural work required to the Premises arising from the Permitted Use at the Lessee's cost but only in accordance with the written directions of the Lessor, and must not otherwise perform any structural works.

9. NOT USED

10. RIGHT OF ENTRY

10.1 The Lessor may enter the Premises:

- (a) at all reasonable times, on first providing reasonable notice:
 - (1) to perform any obligation of the Lessor under this Lease;
 - (2) to inspect the Premises; and
 - (3) to show the Premises to prospective purchasers and/or lessees and in this regard to erect 'For Sale' signs at any time and 'To Let' signs no earlier than six (6) months before the Terminating Date.
- (b) The Lessor may enter the Premises at any time and for any reason without the consent of the Licensee in an emergency.
- (c) The Lessor may enter the premises at any time and for any reason without the consent of the Licensee with at least 48 hour's notice.
- (d) to rectify any default by the Lessee including, but not limited to, any failure by the Lessee to comply with a notice served under sub-clause 8.2(a), the cost of which rectification will become immediately payable by the Lessee to the Lessor.

11. DEALINGS WITH THE INTEREST OF PARTIES UNDER THIS LEASE

- 11.1 The Lessor may assign or transfer its interest under this Lease to any third party, at any time, at which time the Lessor will be released from any obligation to the Lessee under this Lease.
- 11.2 The Lessee must not sub-let, grant a license or concession in respect of, or part with possession of any part of the Premises, or transfer, assign, mortgage, charge or otherwise encumber the Lessee's interest under this Lease without the written consent of the Lessor, which consent must not be unreasonably withheld.
- 11.3 In the event of the Lessor's consent being sought to an assignment or transfer, the Lessor shall be entitled to require, as a condition of such consent, that the assignee execute a covenant, in a form approved by the Lessor, pursuant to which such assignee covenants with the Lessor to duly and punctually pay the Rent reserved and perform and observe all of the Lessee's obligations hereunder. In the event of the Lessor's consent being sought to a sublease, licence, mortgage or charge, the Lessor shall be entitled to require as a condition of such consent that the form of sublease, licence, mortgage or charge be submitted to, and approved of, by the Lessor.
- 11.4 The Lessor shall be entitled to require as a condition of its consent that any proposed assignee, transferee, sub-lessee, or licensee furnish to the Lessor such further covenants, indemnities and guarantees in respect of the performance of the obligations of the Lessee under this Lease as the Lessor shall require, and in this respect the Lessor may also require a Security Deposit or Bank Guarantee to secure the proposed lessee's obligations under this Lease and any renewal thereof.
- 11.5 The Lessor shall also be entitled to require as a condition of its consent that the Lessee enter into a deed in the form required by the Lessor releasing the Lessor from all claims which the Lessee or the guarantor (or each of them, if more than one) then has, or may thereafter have, against the Lessor in respect of or in any way arising from this Lease provided that in the case of any sub-lease or licence, the Lessor shall only be released under such deed from all claims made or arising from any breach, omission or default on or prior to the date of such deed.
- 11.6 The Lessee agrees to pay to the Lessor all costs, charges and expenses incurred by the Lessor relating to the Lessee's application for consent and all proper costs, charges and expenses (including legal costs) incurred by the Lessor of or incidental to any enquiries which may be made by or on behalf of the Lessor as to the respectability, responsibility, solvency, fitness and suitability of any proposed assignee or transferee.
- 11.7 For the purposes of this clause, the Lessee, if a company, is deemed to have transferred or assigned its interest where there has been an effective change in the ownership and/or control of the Lessee.

12. INSURANCE

- 12.1 The Lessee must effect and maintain the following insurances in respect of the Premises:

- (a) public liability insurance in an amount for each accident or incident, not less than the sum specified in Item 11, or such other sum as the Lessor may specify by notice in writing to the Lessee;
 - (b) plate glass;
 - (c) workers compensation covering all workers with a common law extension or endorsement in an amount approved by the Lessor; and
 - (d) any other insurance reasonably required by the Lessor.
- 12.2 The Lessee must produce to the Lessor evidence of the currency of the insurances effected in accordance with sub-clause 12.1, on demand.
- 12.3 The insurance policies effected pursuant to this clause must note the interest of the Lessor in the insurance so effected.

13. DEFAULT

- 13.1 The Lessor may terminate this Lease and/or take or demand possession of the Premises at any time if:
- (a) the Lessee repudiates this Lease;
 - (b) the Lessee breaches an Essential Term of this Lease as defined under sub-clause 13.2;
 - (c) the Lessee fails to comply with a term of this Lease which is not an Essential Term, where the failure to comply:
 - (1) can be remedied but is not remedied within fourteen (14) days of a written request from the Licensor by way of service of notice in writing to the Licensee;
 - (2) cannot be remedied but can be compensated for and the Licensee fails to pay compensation within fourteen (14) days of a written request from the Licensor for reasonable compensation by way of service of notice in writing to the Licensee (for the avoidance of doubt, compensation is deemed reasonable so long as the Licensor also provides the information supporting the calculation methodology for the compensation amount(s), methodology and amount(s) of which are broadly fair and the Licensee has not produced expert evidence to the contrary (which, if produced, can be overridden by the Licensor's comparable expert evidence); or
 - (3) cannot be remedied or compensated for; or
 - (4) invokes the operation of subclause (1) to (3) above (with or without the failure being remedied and/or compensated) for more than ten (10) occasions within a period of one (1) year; or
 - (5) a receiver, receiver and manager, administrator, provisional liquidator or liquidator is appointed in respect of the Lessee or any of its property.

13.2 Essential Term includes:

- (a) Clause 2 - the payment of Rent within fourteen (14) days (even if late payment is accepted);
- (b) Clause 4 - the payment of Outgoings;
- (c) Clause 6 - the Permitted Use;
- (d) Clause 8 - the Lessee's obligation to effect repairs to the Premises;
- (e) Clause 11- the provisions relating to dealings with the Lessee's interest under this Lease;
- (f) Clause 12 - the Lessee's obligations to effect and maintain policies of insurance;
- (g) Clauses 21 – the provision of a Security Deposit; and
- (h) Clause 24 - environmental compliance.

13.3 In the case of a breach by the Lessee of an Essential Term then, in addition to the rights of the Lessor under sub-clause 13.1, the Lessor can recover damages for any loss suffered in respect of the Term, subject to any obligation on the Lessor to mitigate such loss.

13.4 If the Lessee is in default under this Lease including the breach of an Essential Term, then any demand of or acceptance from the Lessee by the Lessor of any late payment of Rent, percentage of Lessor's Outgoings or any other money due by the Lessee to the Lessor under this Lease does not:

- (a) constitute a waiver of the Lessee's obligations to make these or any future payments; or
- (b) prevent the Lessor from exercising its rights under this Lease, including of enforcement and termination.

14. INDEMNITY

14.1 The Lessee indemnifies the Lessor in respect of:

- (a) any liability or loss arising out of and any costs incurred at any time whatsoever as a result (directly or indirectly) of a breach of any term or condition of this Lease by the Lessee; and
- (b) any claim, demand or liability for any loss or damage to anything or any injury to or death of any person occurring on or near the Premises, unless caused by the negligence or a wilful act or omission of the Lessor.

14.2 The Lessee occupies, uses and keeps the Premises at the risk of the Lessee and releases, to the extent permitted by Law the Lessor, the Lessor's employees and agents from any liability or obligation to the Lessee (or any person claiming through the Lessee) in respect of any accident, damage, loss (including financial loss), death, injury, costs or expenses occurring in, or outside, the Premises arising by reason of the grant of this Lease, or out of or in connection with the possession or Permitted

Use by the Lessee unless caused by the negligence or wilful act or omission of the Lessor.

- 14.3 The provisions of this clause will continue to apply notwithstanding the expiry or earlier termination of this Lease.

15. DAMAGE

- 15.1 If the Premises or the Building are damaged the Lessee is not liable to pay to the Lessor Rent or other money otherwise payable under this Lease (or a proportion of Rent or other money otherwise payable under this Lease) attributable to any period in which the Premises cannot be used or are inaccessible due to that damage.
- 15.2 If the Lessor notifies the Lessee in writing that it does not intend to repair the damage to the Premises, either party may terminate this Lease by seven (7) days' notice in writing.
- 15.3 If the Lessor fails to repair the Premises within a reasonable time of the Lessee requesting it to do so in writing, the Lessee may terminate this Lease by seven (7) days' notice in writing.
- 15.4 The provisions of sub-clause 15.1 do not prevent the Lessor from recovering any loss or damages from the Lessee in respect of any damage to which this clause applies including any damage caused by the negligence or wilful act or omission of the Lessee.

16. OPTION

- 16.1 If the Lessee wishes to renew this Lease for the Option Term it must:
- (a) serve on the Lessor written notice of its exercise of the option to renew this Lease for the Option Term (**Option Notice**), no earlier than six (6) months and no later than three (3) months prior to the Terminating Date;
 - (b) not be in breach of this Lease, either when the Option Notice is served, or on the Terminating Date; and
 - (c) provide the Lessor with a guarantee for the new lease on the same terms as any guarantee provided under this Lease.
- 16.2 The new lease for the Option Term will be on the same terms as this Lease except for:
- (a) the Commencing Date, which will be the date specified in Item 12A;
 - (b) the Term, which will be the term specified in Item 12A;
 - (c) the Terminating Date, which will be the date specified in Item 12A;
 - (d) Rent, which will be determined in accordance with Item 12B;
 - (e) this clause 16, which will be excluded; and
 - (f) Item 12B, which will be excluded.

17. RIGHTS ON EXPIRY OR TERMINATION

17.1 Not used

17.2 Not used

17.3 On expiry or termination of this Lease the Lessee must vacate the Premises and, subject to sub-clause 17.4, remove the Lessee's Property from the Premises and make good any damage to the Premises or the Building caused by such removal, and where the Term of the Lease shall be determined prior to the Terminating Date, the Lessee shall effect such removal and make good of damage forthwith after such determination. At the end of the Lease including any early termination, the indoor sports surface shall be replaced if deemed necessary by the Lessor.

17.4 At the expiry or earlier termination of this Lease the Lessor may, in its absolute discretion, notify the Lessee to vacate Premises and leave the Lessee's Property in, on or within the Premises.

17.5 If the Lessee fails to remove the Lessee's Property in accordance with the requirements of this clause, it becomes the property of the Lessor who may keep it or dispose of it and recover from the Lessee the cost of such removal or disposal with such costs to be a liquidated debt due and owing by the Lessee to the Lessor and must be paid on demand by the Lessor.

17.6 The Lessee must continue to pay the Rent as required under this Lease until such time as the Lessee removes the Lessee's Property and/or the Lessor elects to remove or dispose of the Lessee's Property as required under this clause.

18. COMMON AREAS AND ACCESS WAYS

18.1 In respect of any Common Areas and any part of them, the Lessor may:

- (a) restrict access to particular lessees or classes of persons;
- (b) restrict or prohibit access during certain hours or days; and/or
- (c) close them temporarily for the purpose of repair, renovation or service.

18.2 In respect of the public accessway being part of the Common Areas and as described in Schedule 2:

- (a) the Lessee must ensure that the public accessway and the gate thereto must be closed when the nets area are substantively in use, and remain opened to the public when the nets area are otherwise not in use.

18.3 In respect of the Covers and Equipment Shed being part of the Common Areas and as described in Schedule 2:

- (a) the Lessee acknowledges and agrees that it does not have exclusive possession, use or access in relation to the Covers and Equipment Shed including its roof;
- (b) the Lessee or its nominee will require, and shall hereby have by way a licence, reasonable access to and from the Covers and Equipment Shed at

any and all reasonable times for the Term of the Lease and accordingly, the Lessee must permit the Lessor and/or its nominee the access, use and occupation of the Covers and Equipment Shed at all times without fee or charge and also the Lessee may also have access to the Covers and Equipment Shed subject to clause 19.

19. RULES AND REGULATIONS

19.1 The Lessor may from time to time promulgate rules and regulations not inconsistent with or in derogation of the rights of the Lessee hereunder relating to:

- (a) the use safety care and cleanliness of the Premises or the Land;
- (b) the preservation of good order therein;
- (c) the comfort of persons lawfully using the same;
- (d) the location and storage of garbage and refuse pending its removal;
- (e) the policing and regulating of traffic and the parking of motor vehicles on the Premises or the Land;
- (f) the external appearance of the Premises and the Land.

Any such rules and regulations not inconsistent with or in derogation of the rights of the Lessee may from time to time be repealed amended or added to at the discretion of the Lessor and upon notice in writing thereof under the hand of the Lessor or its authorised agent being given to the Lessee shall be and become as binding upon the Lessee as if the same were expressly set forth herein as covenants on the part of the Lessee.

20. NOT USED

21. SECURITY DEPOSIT

- 21.1 The Lessee must, on or before the Commencing Date, pay to the Lessor the Security Deposit.
- 21.2 The Security Deposit will be refunded to the Lessee on termination of this Lease and the vacation of the Premises by the Lessee, provided that the Lessor at any time may deduct from the Security Deposit and apply the amount deducted, to pay any amount that may be payable to the Lessor as a result of any breach by the Lessee of any of the terms and conditions of this Lease (and such deduction is not to be deemed to waive the Lessee's breach).
- 21.3 If any amount is deducted from the Security Deposit pursuant to sub-clause 21.2, the Lessee must immediately pay to the Lessor within seven (7) days a similar amount or the same amount so as to restore the Security Deposit.

22. POWER OF ATTORNEY

- 22.1 The Lessee appoints the Lessor as the Lessee's attorney (**Power of Attorney**).
- 22.2 This Power of Attorney is:

- (a) irrevocable by the Lessee;
 - (b) granted by the Lessee for valuable consideration to secure performance of the Lessee's obligations under this Lease and the Lessor's proprietary interest as Lessor; and
 - (c) exercisable by the Lessor when the Lessee is in default under this Lease.
- 22.3 This Power of Attorney is limited to permit the Lessor to take any action to protect the Lessor's interest under this Lease and in the Building, the Premises and the Land and to comply with any obligations of the Lessee under this Lease.

23. ENVIRONMENTAL COMPLIANCE

- 23.1 The Lessee warrants that the Permitted Use complies and will continue during the Term to comply with, any Environmental Law or the requirements of any statutory authority relating to environmental matters that apply to the Permitted Use.
- 23.2 The Lessee will do such things and execute such documents as are required to maintain and/or renew any licences, authorisations or approvals relating to the compliance referred to in sub-clause 23.1.
- 23.3 If any statutory authority issues a notice to the Lessee during the Term in respect of any environmental matter, the Lessee must comply with the requirements of that notice within the time specified, at the Lessee's expense.

24. NOTICE

Any notice direction or request hereunder to be given to the Lessee may be served upon the Lessee at the Premises in any manner mentioned in Section 170 of the *Conveyancing Act 1919 (NSW)* and may be signed on behalf of the Lessor by its managing agent, solicitor, attorney or by a director, associate director, manager, secretary or any delegated officer of the Lessor and any notice so signed shall be conclusive evidence as to its execution and of the authority of the person whose name appears therein to sign the same.

25. DISPUTE RESOLUTION

- 25.1 All disputes or differences arising out of this Lease will be resolved in accordance with this clause 25, unless:
- (a) a party is seeking urgent interlocutory relief or a remedy where a delay in commencing proceedings in Court could prejudice the party's entitlement to seek that remedy;
 - (b) an incident has arisen that requires urgent resolution which mediation might not resolve; or
 - (c) the process in the remainder of this clause 25 has been exhausted.

25.2 Notice of Dispute

Either party may, at any time, notify the other party in writing that there is a dispute or difference concerning any matter in this Lease (**Dispute Notice**). The Dispute Notice must:

- (a) identify the subject matter of the dispute;
- (b) identify the relevant provisions of this Lease;
- (c) annex copies of any correspondence, or background material and information relevant to that dispute; and
- (d) contain any particulars of quantification of the dispute.

25.3 Parties to Confer

The parties must, within twenty-one (21) days of the service of the Dispute Notice, meet in an attempt to discuss, and to reach a mutually acceptable decision, on the matter of the dispute.

25.4 Referral to Mediation

If:

- (a) the matter in dispute is not settled within ten (10) business days of the meeting referred to in the preceding paragraph, or such later date as the parties may agree; or
- (b) either party refuses to attend a meeting in accordance with clause 25.3; then
- (c) the difference or dispute must be the subject of a mediation administered by the Australian Disputes Centre (**ADC**) conducted and held in accordance with the mediation rules of the ADC in force at the time of the appointment of a mediator.

25.5 The mediator will be appointed:

- (a) by the parties, from a panel suggested by the ADC within twenty-eight (28) days of the referral of the difference or dispute for mediation; or
- (b) if a mediator is not appointed by agreement within that period, by the Secretary-General of the ADC at the request of either party.

25.6 The costs of and associated with formal mediation before a mediator under this clause are to be paid by the parties to the mediation in such proportions as they may agree among themselves or, failing agreement, in equal shares.

26. EARLY DETERMINATION

26.1 It is agreed between the parties that if any time during the term of the Lease, the Lessor in its absolute discretion require:

- (a) the Premises to be demolished, substantially altered, or rebuilt or rezoned; or

(b) the Land to be acquired, resumed or dedicated for any public purpose,

then the Lessor shall be entitled to determine this Lease by giving the Lessee six (6) months written notice of its intention and at the expiration of such time ("the Determination Date") this Lease shall be at an end and subject to the other provisions hereof and save for any rights which either party may have against the other for any breach or damage which has occurred prior to the expiration of the term, neither party shall have any action or claim for damages against the other for the termination of Lease pursuant to this clause.

- 26.2 A certificate by the Lessor or its agent certifying that it has made a decision under clause 26.1 above shall be conclusive evidence for all purposes including court or other proceedings that such decision has been made pursuant to clause 26.1.
- 26.3 That exercise by the Lessor of its rights conferred by this clause shall not constitute a breach by the Lessor of its covenant for quiet enjoyment of the premises or any other covenant or obligation of the Lessor, express or implied, contained in or arising under this Lease.
- 26.4 Under no circumstance shall the Lessor be liable for any loss, injury and/or damage howsoever caused by whomsoever (including but without limiting the generality of the foregoing loss of goodwill, profits and/or economic loss) suffered or sustained by the Lessee or any other person at any time as a result of or arising out of the exercise by the Lessor or any of its rights under this clause.
- 26.5 Without prejudice to the operation of this Lease, the Lessee acknowledges and accepts that in entering into this Lease, the Lessee has not relied and will not rely upon any warranty or representation made by the Lessor or any person on behalf of the Lessor, express or implied, or upon any conduct of the Lessor or any person on behalf of the Lessor as to whether or when the Lessor may make a decision under this clause.
- 26.6 The Lessee must do all things, execute such documents and carry out such acts as will put into effect the intentions of this clause such that the Lease must be surrendered and vacant possession of the premises must be available to the Lessor as and from the Determination Date. The Lessee agrees to refrain from any act or being a party to any act or circumstance which would defeat those intentions.
- 26.7 The Lessor and the Lessee agrees to make on the Determination Date all adjustments or rents, rates, land tax and any other outgoings or other amounts which are payable by the Lessee pursuant to the covenants of the Lease.
- 26.8 For the removal of any doubt it is acknowledged and agreed by the Lessee that:
- (a) until the Determination Date, the Lessee must continue to duly and punctually observe and perform the covenants expressed or implied in this Lease to be observed and performed by the Lessee up to and including the Determination Date;
 - (b) as from the Determination Date the Lessee shall have no right whatsoever to occupy or use the Premises.

27. LAND TAX

27.1 Pursuant to section 21C of the *Land Tax Management Act 1956* (NSW), the Lessor is

not liable for the payment of land tax.

- 27.2 The Lessee acknowledges that as a lessee of land or part of land owned by a local council, it is for land tax purposes deemed to be the owner of that land or parcel of land consisting of the land leased and as such the Lessor is not considered to be the owner of that land for land tax purposes.
- 27.3 The Lessee acknowledges that the intent of this clause is that the Lessee may be liable for land tax as though it is the owner of the land.
- 27.4 Unless any of the exemptions available under subsection 21C(6) apply, the Lessee enters into this Lease in full knowledge of the provisions of section 21C and its liability for payment of such tax as assessed and determined by the Chief Commissioner.
- 27.5 The Lessee acknowledges it has obtained advice on this clause and understands the Lessee may be liable to pay land tax as a direct liability pursuant to Land Tax Management Act 1956 (NSW). The lessee acknowledges such liability is not an outgoing under the Lease, but a direct liability of the Lessee.

28. WORK HEALTH AND SAFETY LEGISLATION

28.1 Lessee's Acknowledgements

The Lessee acknowledges that as the owner of the Premises, the Lessor has obligations under the WH&S Legislation and as occupier of the Premises, the Lessee has obligations under the WH&S Legislation and, in particular, the Lessee has control of the Premises and plant and substances, for the purposes of the WH&S Legislation.

28.2 Lessee to Perform Lessor's Obligations

To the extent permitted by law, the Lessee agrees that it will perform the obligations of the Lessor under the WH&S Legislation and be liable for the non-performance of the obligations of the Lessor under the WH&S Legislation, except where the non-performance results from the negligence or wilful act or omission of the Lessor.

28.3 Lessee to Perform Obligations

The Lessee must:

- (a) perform all the Lessee's obligations under the WH&S Legislation; and
- (b) participate in safety drills including but not limited to emergency response drills and fire safety evacuation drills; and
- (c) ensure that the Lessee does not by any act or omission cause the Lessor to be in breach of the Lessor's obligations under the WH&S Legislation; and
- (d) put in place emergency procedures for invitees, licensees and employees of the Lessee and adequate provisions with regard to:
 - (1) information for invitees and licensees of the Lessee; and
 - (2) information and training for employees of the Lessee, in relation to the emergency procedures; and

- (3) minimise risk to the general public from its occupation of the Premises.

28.4 Principal Contractor

The Lessor appoints the Lessee, and the Lessee accepts the appointment, as principal contractor for the purposes of the WH&S Legislation in relation to any work carried out to the Premises.

29. LESSEE'S DUTY TO GET CONSENT FOR WORK

29.1 The Lessee must obtain the Lessor's written consent before any of the following occurs:

- (a) work is done to the Premises; or
- (b) an application is made to an Authority for approval for work to the Premises; or
- (c) a contractor is engaged to do work to the Premises.

29.2 If the work affects the structure of the Building or the Services, the Lessor may withhold consent at its absolute discretion. In other cases, the Lessor must not withhold consent unreasonably. The Lessor will require a contractor to have insurance to cover the risks associated with the work.

29.3 Work must be by approved contractors and to Lessor's satisfaction

Any work the Lessee does to the Premises at any time must be done by contractors approved by the Lessor for that work and must be done to the Lessor's reasonable satisfaction. Prior to work commencing, the Lessee must provide the Lessor a building permit for the work together with two full sets of plans describing the works and seek the Lessor's approval in writing. The Lessee must submit variations for the works in progress which affect the structure of the Building or Services prior to undertaking the works set out in the variation and seek the Lessor's approval in writing.

29.4 Lessee must give Lessor evidence of completion of work

When the work is complete, the Lessee must give the Lessor, at the Lessee's expense:

- (a) any certificate of compliance or statement of satisfactory completion that is required by an Authority;
- (b) a certificate from a consultant the Lessor approves that the work has been carried out satisfactorily; and
- (c) two sets of as built drawings and specifications in paper format and one set of drawings and specifications stored digitally in PDF format on a compact disc.

29.5 Lessee must pay Lessor's costs in relation to work

The Lessee must pay any costs the Lessor's reasonably incurs because of any of the following:

- (a) the Lessee asks for the Lessor's permission to do work;
- (b) work by the Lessee is not done properly; or
- (c) the Lessor does work (to the Premises, the Building, any equipment in it, or any of its Services) because of work the Lessee has done or proposes to do.

30. CONTAMINATION

The Lessee must ensure that the Premises remain uncontaminated throughout the Term. If the Premises become contaminated at any time, the Lessee must immediately notify the Lessor and promptly remediate the Premises and provide a certified validation report to the Lessor to verify that remediation has taken place.

31. GST

If GST or similar value added tax is imposed on any supply under or in accordance with this Lease, the amount payable for that supply is increased by the amount of that GST. The party seeking payment must provide a GST tax invoice (or any other thing required under any legislation) in the form required, and in the time provided for, by the relevant legislation.

32. PLAN OF MANAGEMENT

The Lessee must comply with the Plan of Management that applies to the Premises and/or the Permitted Use.

33. GENERAL

33.1 Entire Agreement

This Lease is the entire agreement between the parties on the subject matter. All representations, communications and prior agreements with respect of the subject matter are merged in, and superseded by, this Lease.

33.2 Survival Indemnities

Each indemnity in this Lease is a continuing obligation, which is independent from the other obligations of the indemnifying party, and which survives termination of this Lease.

33.3 No Waiver

No failure or delay by another party in exercising any right, power or remedy under this Lease will operate as a waiver of any breach of default by the other party. A single, or partial, exercise of any right, power or remedy does not prevent any further, or other, exercise of any right power or remedy.

33.4 Agent

The Lessor may by notice in writing appoint any person to act as its agent in relation to all or any of the rights and functions of the Lessor under this Lease.

33.5 Child protection

The Lessee acknowledges and warrants that where the Permitted Use of the Premises involves children under 18 years that it has and will at all times comply with the requirements of the Child Protection (Offenders Registration) Act 2000 and the Commission for Children and Young People Act 1998 and any other related legislation as in place from time to time relating to working with children. The Lessee must also comply with the mandatory guidelines available from the Commission for Children and Young People and which are also available on their website www.kids.nsw.gov.au. These guidelines contain forms including declarations and consents which must be made by prospective employees.

34. FURTHER MAINTENANCE AND RESPONSIBILITIES

- 34.1 Without limiting the Lessee's other obligations under this Lease, the Lessor and Lessee acknowledge and agree that their respective maintenance and repair obligations and responsibilities in respect of the Premises are additionally set out in the Maintenance Schedule which shall be non-exhaustive, and the provisions of this Lease shall prevail in the event of any inconsistency between the provisions of this Lease and that under the Maintenance Schedule.

35. EARLY TERMINATION

- 35.1 The Lessee may, at any time during the Term of this Lease terminate this Lease by giving the Lessor no less than six (6) months written notice (the "Early Termination Notice") provided that the Lessee is not in breach of the Lease at the time of the Early Termination Notice or at the date the Lease terminates pursuant to this clause 35.
- 35.2 For the removal of any doubt it is acknowledged and agreed by the Lessee that up until the expiry of the date specified in the Early Termination Notice the Lessee must continue to duly and punctually observe and perform the covenants expressed or implied in this Lease to be observed and performed by the Lessee.
- 35.3 the Lessee shall have no right whatsoever to occupy or use the Premises after the expiry of the date stated in the Early Termination Notice
- 35.4 The Lessee must comply with the provisions of clause 17 on or prior to the expiry of the date stated in the Early Termination Notice.

36. INCENTIVE

- 36.1 Notwithstanding anything to the contrary in this Lease, the parties agree that:
- (a) Subject to the terms of this clause, no Rent is payable for the six (6) month period from the Commencing Date of this Lease (**Rent Free Period**);
 - (b) If the Lessee breaches any term of this Lease and that breach is:
 - (1) Not capable of remedy; or
 - (2) Is an essential term; or

- (3) Is capable of remedy (and is not an essential term) but is not remedied within 7 days of a request to do so;

Then the Lessee ceases to be entitled to the Rent Free Period and must pay the Rent for the whole of the Rent Free Period. If part or all of the Rent Free Period has already passed, then in respect of that past period the Lessee must make payment of the applicable rent within 7 days of demand by the Lessor.

- (c) This clause only operates in favour of the successful tenderer of the Request for Tender Specification as defined in this Lease. For clarity, all amounts (other than rent) remain payable during the Rent Free Period, without limitation, all Lessor's Outgoings and Profit Rent.

37. ASSET MANAGEMENT PLAN

- 37.1 The Lessee acknowledges and accepts that the Asset Management Plan applicable to the Land and the Premises is subject to review on the fifth, tenth and fifteenth anniversaries of the Commencing Date of this Lease.
- 37.2 The Asset Management Plan shall be updated by the Lessor by way of recalculation of the maintenance costs to be borne by each party on the aforementioned dates.
- 37.3 The Lessor may serve a copy of the amended Asset Management Plan on the Lessee and such amended Asset Management Plan will be automatically incorporated into the terms of this Lease and replace the original Asset Management Plan attached to this Lease and take effect from the most recent of the fifth, tenth or fifteenth anniversary of the Commencing Date of this Lease as at the date of service.
- 37.4 The Lessee acknowledges and accepts that the Rent payable pursuant to this Lease has been determined by way of calculating the portion of maintenance costs allocated by the Asset Management Plan, being the yearly average of the whole of the estimated Lessor's costs associated with the Building and the yearly average of one quarter of the estimated Lessor's costs associated with the outdoor wickets over the time period contained in the Asset Management Plan. Should an updated Asset Management Plan increase these aforementioned costs, then the Rent shall increase by an amount equal to the increase of the aforementioned costs.

REFERENCE SCHEDULE

ITEM 1	RENT <i>(Clause 2)</i> \$16,621.90 plus GST
ITEM 2	EQUAL MONTHLY INSTALMENTS <i>(Clause 2) paid in advance</i> \$1,385.16 plus GST
ITEM 3	REVIEW DATE(S) – CPI <i>(Sub-Clause 3.1(a))</i> On each anniversary of the Commencing Date
ITEM 4	REVIEW DATE(S) – MARKET RENT <i>(Sub-Clause 3.1(b))</i> N/A
ITEM 5	REVIEW DATE(S) – SET INCREASE <i>(Sub-Clause 3.1(c))</i> Not applicable.
ITEM 6	SET INCREASE – PERCENTAGE OR AMOUNT <i>(Sub-Clause 3.1(c))</i> Not applicable.
ITEM 7	PERCENTAGE OF LESSOR'S OUTGOINGS <i>(Clause 4)</i> 100%
ITEM 8	NOT USED N/A
ITEM 9	PERMITTED USE <i>(Clause 6)</i> Indoor and outdoor sports facility subject to all applicable laws including DA/96/2021 and the Waitara Park Plan of Management.
ITEM 10	DATES FOR REDECORATION <i>(Sub-Clause 8.2(c))</i> Terminating Date
ITEM 11	PUBLIC LIABILITY INSURANCE <i>(Clause 12)</i> \$20,000,000.00 (Twenty million dollars)
ITEM 12A	OPTION TERM <i>(Clause 16)</i> <u>Term:</u> N/A <u>Commencing Date:</u> N/A <u>Terminating Date:</u> N/A

ITEM 12B	RENT REVIEW AT COMMENCEMENT OF OPTION TERM <i>(Clause 16)</i>
	N/A
ITEM 13	PROFIT RENT <i>(Clause 2.3)</i>
	50% of Certified Profit
ITEM 14	SECURITY DEPOSIT/BANK GUARANTEE <i>(Clauses 21/22)</i>
	Nil required whilst ever Northern District Club Inc is the Lessee.

SCHEDULE 1 - MAINTENANCE AND RESPONSIBILITIES SCHEDULE

Facility Component	NDCC (The Lessee) Responsibility	Council (The Lessor) Responsibility	Primary party responsible for costs
Cricket Centre			
Building shell erected by NDCC		Full maintenance	NDCC to fund
External surfaces, including painting, glazing		Full maintenance	NDCC to fund
Internal fixtures including lights, nets, wicket strips	Full maintenance		NDCC to fund
Interior surfaces	Full maintenance		NDCC to fund
Building services (water supply, gas, electrical)	Full maintenance		NDCC to fund
Management and cleaning	Full maintenance		NDCC to fund
Internal furniture	Full maintenance		NDCC to fund
Solar panels and all associated connections and battery	Full maintenance		NDCC to fund
External landscape		Full maintenance	HSC to fund
HSC Covers & equipment shed			
Building shell erected by NDCC		Full maintenance	HSC to fund
External surfaces, including painting, glazing		Full maintenance	HSC to fund
Internal fixtures including lights, toilet		Full maintenance	HSC to fund
Interior surfaces		Full maintenance	HSC to fund
Building services (water supply, gas, sewage, electrical)		Full maintenance	HSC to fund
Internal furniture		Full maintenance	HSC to fund
External turf cricket nets			
Structures and netting		Full maintenance	NDCC to fund
Turf wicket (synthetic and living turf)		Full maintenance	NDCC to fund
Oval gates		Full maintenance	NDCC to fund

[illegible]

SCHEDULE 3 - PROFIT RENT SCHEDULE

PROFIT RENT SCHEDULE

1. RENT

The Lessee must pay Rent to the Lessor as follows:

- (a) For the period commencing on the Commencement Date and ending on the first 30 June thereafter:
 - (i) that proportion of the Base Rent payable for this period; plus
 - (ii) the Profit Rent for such period.
- (b) For each Profit Period:
 - (i) the Base Rent; plus
 - (ii) the Profit Rent for each year of such period.
- (c) For the period commencing on the first day after the last Profit Period of the Term and ending on the Terminating Date:
 - (i) that proportion of the Base Rent payable for this period; plus
 - (ii) the Profit Rent for such period.

2. BASE RENT PAYMENT

- (a) For each month of the Term the Lessee must pay in advance on the first day of each month an amount being one twelfth of the Base Rent.
- (b) For any period of less than a month the Lessee must pay in advance on a pro rata basis that amount that would otherwise be payable for a month.

3. STATEMENT OF GROSS REVENUE

- (a) The Lessee must give the Lessor in the form which the Lessor reasonably requires:
 - (i) A statement by a practising accountant certifying the Gross Revenue (the "Accountant's Certificate") for:
 - (A) each Profit Period;
 - (B) the period from the day after the last Profit Period of the Term to the Terminating Date;within two (2) months after the end of each of such period; and
 - (ii) any other information or supporting documents in relation to the Gross Revenue including without limitation Profit and Loss Statement, invoices and BAS statement where applicable.

4. ANNUAL ADJUSTMENT OF RENT

- (a) Within one (1) months of the Lessor receiving each Accountant's Certificate the Lessor must give the Lessee a notice (the "Annual Profit Rent Notice") stating:
 - (i) the Profit Rent for the relevant period of the Accountant's Certificate;
 - (ii) the amount paid, if any, by the Lessee on account of Rent for such period.
- (b) The Lessee must pay within fourteen (14) days of the date of the Annual Profit Rent Notice the entire amount, if any, as set out in the Annual Profit Rent Notice .

5. DEFINITIONS

For purpose of this Profit Rent Schedule and Item 13 only, definitions in clause 1.1 of this Lease apply except to the following:

Base Rent means the amount set out in Item 1 in the Reference Schedule of this Lease and as reviewed in accordance with clause 3.1.

Certified Profit means Gross Revenue less Expenses, that amount of which has been duly certified in a review engagement for the purpose of determination in consideration of this Profit Rent Schedule by the Lessee's accountant who must be a member of either CPA Australia or the Australian Institute of Chartered Accounts who holds a Public Practice Certificate and does not hold a pecuniary interest in the Lease or the Lessee.

Expenses means all monies expended or brought to account by the Lessee, its assigns, successors, licensees, subtenants and lessees arising from the carrying on of its and/or their business or businesses upon or in connection with the Premises or any part thereof and includes, but is not limited to, the Base Rent and Lessor's Outgoings payable pursuant to this Lease (as adjusted from time to time) and the Lessee's Facility and Maintenance Costs.

Gross Revenue means all monies received or brought to account by the Lessee, its assigns, successors, licensees, subtenants and lessees arising from the carrying on of its and/or their business or businesses upon or in connection with the Premises or any part thereof and include without limitation all Rent received by the Lessee from its subtenants and licenses but does not include turnover that is specified in section 20 of the RLA.

Lessee's Facility Management and Maintenance Costs, means the maintenance obligations allocated to the Lessee by the Asset Management Plan and the costs described therein.

Profit Period means the Accounting Period as defined in clause 1.1 of this Lease.

Profit Rent means the amount equivalent to the percentage (as set out in Item 13 of the Reference Schedule) of the Certified Profit of the Lessee (exclusive of any GST, in each Accounting Period or part thereof (if applicable)).

Worked example

The following worked example does not form part of the terms and conditions of this Lease and is provided to assist only:

Profit Rent = Item 13 x (Gross Revenue – Expenses)

Item 13 = 50 %

Gross Revenue consists of:

Revenue from local schools using cricket nets of \$100,000.00

Expenses consist of:

Base Rent of \$16,621.90

Outgoings payable under Lease of \$10,000.00

Lessee's Facility Management and Maintenance Costs of \$624.00

Other expenses of \$5,000.00

Total Expenses = \$32,245.90

Thus: Profit Rent = 50% x (\$100,000.00 - \$32,245.90)

Profit Rent = 50% x \$67,754.10

Profit Rent = \$33,877.05 payable by the Lessee.

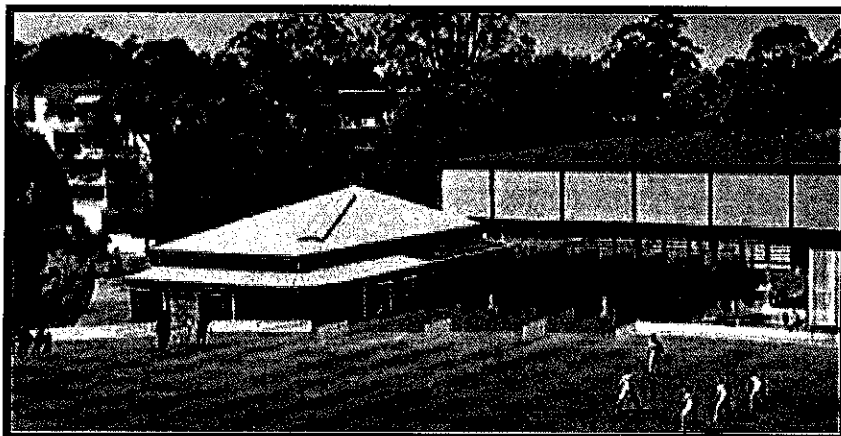


Hornsby Shire Council

20 Year Indicative Asset Maintenance Plan

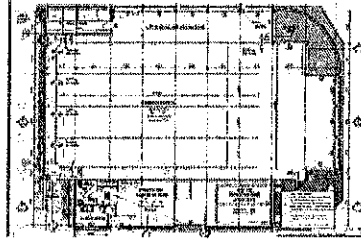
Mark Taylor Oval - Northern Districts Cricket Club (NDCC) - Indoor Cricket Centre

August 2022



INTRODUCTION

Council has prepared an asset management plan for the proposed Indoor Cricket Centre at Mark Taylor Oval including covers / equipment shed, outdoor nets and wickets, which outlines tasks and costs associated with the ongoing maintenance and upkeep of this facility.



The 20-year maintenance plan was compiled by using models/components based on plans and documents provided by Turner Hughes Architects together for the Construction Certificate (2022) with the proposed maintenance responsibility matrix for the facility (copy below). Note: To ensure greater accuracy the asset management plan will require further review once the facility is ready for occupation to ensure all components have been captured.

As part of the lease conditions **Northern District Cricket Club** will be responsible for maintenance works relating to the Indoor Wicket, Circulation and Viewing Area and Bag Store.

Electrical Services: This includes the inspection, preventative maintenance and replacement of internal lighting and GPOs

Facility Maintenance: This includes the inspection, preventative maintenance works including replacement of internal components.

Fire Protection Services: This is a statutory requirement which requires regular inspections, condition assessments and replacement of fire service equipment.

As part of the lease conditions **Hornsby Shire Council** is responsible for maintenance works relating to the external building components, roof, covers and equipment shed, accessible WC and lunchroom.

Building Services: This includes the inspection, preventative maintenance and replacement of external building components such as doors, windows, walls, roofing and flooring.

Electrical Services: Includes the inspection, preventative maintenance and replacement of external lighting, distribution boards, solar equipment and associated electrical components.

Plumbing Services: Includes the inspection, Preventative Maintenance and Replacement of toilets and basins, taps and eye wash station.

Note:

- This maintenance plan does not include safety anchor points - Roof anchor points are a safety regulation which will require ongoing inspections and testing.
- This maintenance plan does not include any internal fitting or fixtures and furniture that the NDCC install.
- The costs supplied in this report are considered indicative at this stage. Council will revise these costs once the facility is constructed and a final onsite data collection inspection and review is undertaken.
- Reactive maintenance costs are not reflected in the asset management plan.

PROPOSED MAINTENANCE RESPONSIBILITY MATRIX FOR THE LEASE OF THE MARK TAYLOR OVAL FACILITY

Facility Component	NDCC Responsibility	Council responsibility	Lease	Reflect in AMP	Comments
Cricket Centre- Proposed Indoor Wickets	*NDCC - Northern District Cricket Club				
Building shell erected by NDCC		Full maintenance	NDCC to fund	Yes	
External surfaces, including painting, glazing		Full maintenance	NDCC to fund	Yes	
Internal fixtures including lights, nets, wicket strips	Full maintenance		NDCC to fund	Yes	
Interior surfaces	Full maintenance		NDCC to fund	Yes	
Building services (water supply, gas, electrical)	Full maintenance		NDCC to fund	Yes	
Management and cleaning	Full maintenance		NDCC to fund	NA	Not Collected
Internal furniture	Full maintenance		NDCC to fund	NA	Not Collected
External landscape		Full maintenance		NA	Not Collected
HSC Covers & Equipment Shed					
Building shell erected by NDCC		Full maintenance		Yes	
External surfaces, including painting, glazing		Full maintenance		Yes	
Internal fixtures including lights, toilet		Full maintenance		Yes	
Interior surfaces		Full maintenance		Yes	
Building services (water supply, gas, sewage, electrical)		Full maintenance		Yes	
Internal furniture		Full maintenance		NA	Not Collected
External Turf and Cricket Nets					
Structures and netting		Full maintenance	NDCC to fund	Yes	Not Collected
Turf wicket (synthetic and living turf)		Full maintenance	NDCC to fund	Yes	Not Collected
Oval gates		Full maintenance	NDCC to fund	Yes	Not Collected
Bookings		Full maintenance		NA	Parks Responsibility

20 YEAR MAINTENANCE COST SUMMARY

PROPOSED 20 YEAR MAINTENANCE COSTS - MARK TAYLOR OVAL (ENTIRE FACILITY)

Trade Type	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	Grand Total
HSC - Building Services	2,075	2,331	2,423	2,106	1,339	7,234	2,075	8,415	6,578	11,096	1,328	12,267	4,872	21,587	20,633	7,328	2,075	6,261	19,061	7,290	174,237
HSC - Electrical Services	1,549	1,639	1,340	1,690	1,346	2,304	1,329	2,152	1,340	1,649	1,898	2,918	1,340	1,620	2,052	1,468	1,340	1,340	1,340	1,440	38,911
HSC - Fire Protection Services	816	816	816	816	1,215	816	816	816	816	1,115	1,265	576	2,299	815	1,215	815	815	815	815	1,215	21,592
HSC - Plumbing Services	182	190	354	221	190	356	190	292	456	1,018	192	425	190	190	394	219	2,500	363	435	321	9,336
NDCC - Electrical Services	185	665	185	665	185	665	82	3,725	185	665	1,809	665	185	562	2,755	4,275	185	665	185	665	18,546
NDCC - Facility Maintenance			173	1,685		173		3,695	183	116,345		1,336			921	4,059		163	116,345	1,685	245,332
NDCC - Fire Protection Services	438	438	438	438	970	438	438	438	937	1,285		119	2,538	438	970	438	438	438	438	970	13,491
Grand Total	2,217	6,012	4,703	5,271	2,009	12,077	6,111	16,417	10,778	14,816	3,228	16,544	11,775	27,177	24,785	11,115	7,515	10,511	13,491	31,280	321,200

PROPOSED 20 YEAR MAINTENANCE COSTS NORTHERN DISTRICT CRICKET CLUB - MARK TAYLOR OVAL

Trade Type	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	Grand Total
NDCC - Electrical Services	185	665	185	665	185	665	82	3,225	185	665	1,809	665	185	562	2,745	4,275	185	665	185	665	18,546
NDCC - Facility Maintenance			173	1,685		173		1,685	163	116,345		1,336			921	4,059		163	116,345	1,685	245,332
NDCC - Fire Protection Services	438	438	438	438	970	438	438	438	438	937	1,285	119	2,538	438	970	438	438	438	438	970	13,491
Grand Total	623	1,103	797	2,788	1,155	1,777	521	5,348	786	117,948	3,691	2,770	2,723	1,001	4,638	8,772	624	1,266	116,959	3,370	277,470

Electrical Services: This includes the inspection, preventative maintenance and replacement of internal lighting and GPOs

Facility Maintenance: This includes the inspection, preventative maintenance and replacement of doors, cupboards, artificial turf, nets and flooring

Fire Protection Services: This is a statutory requirement which requires regular inspections, condition assessments and replacement of fire service equipment

PROPOSED 20 YEAR BUILDING MAINTENANCE COSTS HORNSBY SHIRE COUNCIL - MARK TAYLOR OVAL

Trade Type	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	Grand Total
HSC - Building Services	2,075	2,393	7,425	7,108	1,939	7,534	2,075	8,415	8,098	13,099	2,328	12,257	4,892	23,587	28,933	7,598	2,075	6,861	19,561	7,269	174,237
HSC - Electrical Services	1,540	1,840	1,540	1,640	1,540	2,304	1,520	2,152	1,540	1,540	8,696	2,910	1,540	1,620	2,092	3,468	1,540	1,540	1,540	1,540	38,911
HSC - Fire Protection Services	816	816	816	816	1,215	816	816	816	816	1,116	3,365	576	1,350	816	1,215	816	816	816	816	1,215	21,694
HSC - Plumbing Services	182	190	394	221	190	395	190	252	455	1,016	152	425	190	190	394	739	2,502	363	895	221	9,595
Grand Total	4,613	4,979	10,173	9,784	4,824	11,629	4,600	11,635	9,490	16,868	3,841	16,184	9,017	26,212	37,294	12,690	6,933	9,690	22,412	10,435	244,434

Building Services: This includes the inspection, preventative maintenance and replacement of external building components such as doors, windows, walls, roofing and flooring including all the internal components for the covers and equipment shed.

Electrical Services: Includes the inspection, preventative maintenance and replacement of external lighting, distribution boards, solar equipment and associated electrical components in the covers and equipment shed.

Fire Protection Services: This is a statutory requirement which requires regular inspections, condition assessments and replacement of fire service equipment

Plumbing Services: Includes the inspection, Preventative Maintenance and Replacement of toilets and basins and taps located within the covers and equipment shed.

PROPOSED 20 YEAR MAINTENANCE COSTS OUTDOOR WICKETS HORNSBY SHIRE COUNCIL - MARK TAYLOR OVAL

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	Grand Total	Annual Avg.	25% Annual cost	
Practice nets																								
gates	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	5,000	250	62.50	
Synthetic grass																								
run ups	300	300	300	300	300	300	300	1,600	300	300	300	300	300	300	300	10,000	300	300	300	300	25,000	1,270	317.5	
Natural turf																								
wickets	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	300,000	15,000	3,750	
Fencing																								
internal nets	200	200	200	200	200	200	200	200	200	800	200	200	200	200	200	100	200	200	200	200	10,000	21,600	1,050	270
	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	23,550	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	382,000	17,690	4,400	

Total yearly cost for Building calculated 2022: (\$12,221.90) Plus Outdoor Wickets (\$4,400) = \$16,621.90

EXECUTION

Dated:

Signed by **HORNSBY SHIRE COUNCIL**
ABN 20 706 996 972 by its duly constituted
Attorney STEVEN HEAD pursuant to Power
of Attorney registered Book 4741 No 104 in
the presence of:

Signature of witness

Signature of Steven Head

Name of witness [please print]

Address of Witness

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer
named below.

**EXECUTED by NORTHERN DISTRICT
CRICKET CLUB INC REGISTRATION
NUMBER: Y1112320**

in accordance with its Constitution and in
accordance with Section 22 of the
Associations Incorporation Act 2009 by:

Signature

Signature

Name of Authorised Signatory

Name of Public Officer and Authorised
Signatory