

8 MARK TAYLOR OVAL INDOOR CRICKET CENTRE LEASE

EXECUTIVE SUMMARY

- In May 2019, the NSW Government provided a grant to Council for the upgrade of Waitara Park including the oval surface, an indoor cricket centre and new pavilion.
- In April 2021, Council agreed to enter into a sub-funding agreement with the Northern District Cricket Club (NDCC) to ensure probity, governance and budget control for the construction of the indoor cricket centre.
- In June 2021, DA approval was issued by the local planning panel for the indoor cricket centre. The facility was designed with specific input of the NDCC and Cricket NSW.
- At the request of NDCC, a 21-year lease has been drafted to allow the Club to manage the facility and receive income that could then be used to offset the operating, maintenance and ultimate renewal of the facility at no cost to Council.
- Whilst the vast majority of the lease has been negotiated and agreed between Council and NDCC, there are two clauses where agreement has not been reached. These are related to the rent review process and NDCC's request that Council agree to include a profit rent sub-clause in the lease to restrict Council's use of any profit rent from the indoor centre to cricket across the Shire. Council will need to provide direction on both of these matters to enable the draft lease to be finalised and publicly exhibited.
- Subject to Council providing direction on NDCC's requested changes to clauses related to the rent review process and use of profit rent by Council, approval of the draft lease to NDCC is recommended, noting that 28-days public notice is required to be provided allow for public submissions.
- Easements for drainage and On-site Detention tanks are also required over Waitara Park. It is recommended that Council agree to the proposed easements.

RECOMMENDATION**THAT:**

1. Council confirm its support to enter into a 21 year lease with Northern District Cricket Club to occupy and operate the Mark Taylor Oval indoor cricket centre.
2. Council determine its position regarding Northern Districts Cricket Club's requested amendments to the draft lease relating to the rent review process and use of profit rent.
3. Subject to point 2 above, Council endorse the lease agreement attached to Director's Report No. CE19/22.
4. Council give notice of the proposed lease for 28 days which includes website, signage at the site, and adjoining properties.
5. Subject to receiving no submissions objecting to the lease proposal, the terms generally outlined in Director's Report No. CE19/22, and any changes recommended by Council's legal advisers, Council delegate authority to the General Manager to sign the agreement attached to Director's Report No. CE19/22.
6. Where any objections are received, a report be prepared for Council's consideration regarding the matters raised and what action may then be taken.
7. Council agree to the creation of easements for OSD and drainage over Lot 30 DP 1273248 being land within Waitara Park.
8. Council authorise the use of Council's seal on any legal, survey or other documents directly related to creation of the easements as deemed appropriate by Council's legal advisors.

PURPOSE

The purpose of this Report is to confirm Council's support to enter into a 21-year lease with the Northern District Cricket Club to occupy and operate the Mark Taylor Oval Indoor Cricket Centre.

In endorsing the lease agreement attached to Director's Report No. CE19/22, Council will give public notice of the proposal and provide the opportunity for submissions.

BACKGROUND

In May 2019, the NSW Government provided a grant of \$9M to Council for the upgrade of Waitara Park including the oval surface, an indoor cricket centre and new pavilion.

In April 2021, Council agreed to enter into a sub-funding agreement with the Northern District Cricket Club (NDCC) to ensure probity, governance and budget control for the construction of the indoor cricket centre. This allowed NDCC to project manage and deliver the Indoor Cricket Centre.

In May 2021, DA/96/2021 for the indoor cricket centre was approved by the local planning panel. The indoor centre essentially encompasses the area that was formerly used for outdoor cricket practice nets.

As part of the process of developing the plans and funding of the indoor cricket centre, the Club requested tenure over the new facility. This tenure would allow the club to manage the facility and receive income that could then be used to offset the operating, maintenance and ultimate renewal of the facility. See attachment 1, regarding the Club's request for a lease.

On June 2021, Council adopted an amendment to the Waitara Park Plan of Management that expressly authorises the lease of the indoor facility.

In 2021 a Project Control Group (PCG) was established to provide Council, NDCC and Cricket NSW joint oversight of the design, procurement, project and financial management of the Indoor Cricket Centre. Council retains a casting vote in all matters.

In May 2022, works commenced on the indoor centre with works scheduled to be completed in December 2022.

DISCUSSION

The indoor cricket centre is a specialist indoor venue that is designed to cater for high level to elite cricket use. This operation is often in conjunction with the use adjacent Mark Taylor Oval and adjacent outdoor cricket nets. The indoor cricket facility was designed by the NDCC with input from Cricket NSW.

Therefore, it is logical for the indoor facility to be used and operated by the NDCC considering their long-standing presence at the site since 1925 and continued use of Mark Taylor Oval. NDCC participate in the Sydney Cricket Association (SCA) which provides players to state and national competition levels.

The Club fields teams from seniors to U16 and covers both male and female competitions. NDCC also collaborate with the Hornsby, Ku-ring-gai & Hills District Cricket Association for joint coaching clinics and skills coaching.

Noting Council's limited funding resources are focussed upon the provision of 'grass roots' sports facilities, the indoor facility is an elite sports venue which its construction has been funded by the NSW Government together with Cricket NSW.

The operation, repairs, maintenance, all outgoings and ultimate renewal is therefore proposed to be funded NDCC following an asset management plan prepared by Council. This is reflected in a lease between Council and NDCC which allows the Club to re-coup costs from users which are then used to offset all outgoings / maintenance costs.

Council will not be funding any aspect of the indoor cricket centre.

Councillors have been stepped through the main provisions of the lease at an Informal Workshop 15 November 2022 being:

- 21 year lease term.
- NDCC to operate and manage the centre (including the ability to charge users for use of the facility).
- An Asset Management Plan has been developed for the facility and the rental amount would be aligned to the projected Asset Management Costs for the facility. This would ensure that maintenance and renewal of the facility would not come at a cost to Council.
- Council would be responsible for undertaking structural maintenance of the facility, however the full costs for this would be covered by the rent to be paid by NDCC.
- NDCC responsible for outgoings associated with the facility (e.g. electricity), and replacement of wearing items such as the synthetic wickets.
- Any profit generated by the facility after the costs associated with operating and maintenance the facility have been taken into account, to be equally shared between Council and NDCC.
- A six month 'rent free' period has been requested and supported to allow the Club to commence operation and develop a 'hirer base'.

Noting a time delay will occur before any lease can be entered into due to the public consultation required, a six month licence agreement will be entered into to allow the Club to operate.

A copy of the lease is provided as attachment 2.

Whilst the vast majority of the draft lease has been negotiated and agreed between Council officers and NDCC, there are two clauses where agreement has not been reached. These are summarised below:

- Rent Review Process.
- Restricting where Council can allocate its share of any profit generated by the facility.

Rent review process

The draft lease establishes a commencing rental amount that is derived from an Asset Management Plan (AMP) prepared by Council for the facility. Rent (AMP costs) would be escalated by CPI annually for years 2-5. Every fifth year, a condition assessment would be conducted on the facility and the AMP updated accordingly.

The rent would then be reset to reflect the updated AMP costs (which could be lower) and CPI escalation would then apply annually until the next scheduled condition assessment and AMP update in 5 years' time.

NDCC have expressed reservations about the proposed rent review process and suggested an alternative whereby the commencing rent should be informed by the AMP prepared for the facility,

and that the rental amount for the remaining 20 year term of the lease should be escalated annually by CPI.

Rent Review Considerations

NDCC support the key principle that maintenance and renewal of the facility should not come at a cost to Council.

Periodically updating AMP's is consistent with the approach taken for other Council buildings, and by adjusting rent to match the AMP costs would satisfy that the key principle that maintenance and renewal of the facility should not come at a cost to Council.

Standard leasing practice for long term leases is to include periodic market rent reviews. Whilst this lease does not include a periodic market rent review, it seeks to incorporate a similar principle with AMP reviews and adjusting the rent to mirror AMP costs. Officers suggest that this is a suitable mechanism to give effect to the agreed principle that maintenance and renewal of the facility should not come at a cost to Council.

Given NDCC's request, a decision of Council is required on this matter. If Council supports the Club's position, the attached lease will be required to be amended and reflected in the resolution.

Use of Profit Rent

The draft lease includes a Profit Rent clause which enables any profit generated by the facility equally shared between Council and NDCC (after the costs associated with operating and maintaining the facility have been taken into account).

NDCC have agreed to the inclusion of the Profit Rent clause with the inclusion of an additional sub-clause where Council would agree to restrict its share of any profit generated by the facility, solely to the improvement cricket facilities across the Shire. NDCC's rationale for this is that the NSW Government Grant funds were directed towards cricket.

Council needs to be mindful of not setting a challenging financial precedent if the approach requested by the Club is accepted being:

- Council does not have any other leases where it has agreed to clauses that restrict its ability to apply rental income to specific purposes.
- It is considered highly likely that agreeing to a clause as requested by NDCC would raise expectations for many other sporting and community groups that they could also seek similar clauses restricting Council's use of rental income.

Feedback has been provided to NDCC that officers are unable to support their request for a clause that restricts Council's use of any profit rent generated by the facility.

Given NDCC's maintain their desire to include such a clause, Council's direction will be required on this matter. If Council support's the Club's position the attached lease will need to be amended and reflected in the resolution.

Easements for Drainage and On-site Detention System

In order to comply with the conditions of consent DA/96/2021, the creation of an appropriate "*Positive covenant*" and "*Restriction of User*" is required for the constructed on-site detention system and outlet works. To achieve this an easement is required to be established in favour of Council.

The creation of this easement will have minimal impact on Waitara Park noting the benefits of the project for the sport of cricket.

As such it is recommended that Council agree to the proposed easements.

CONSULTATION

In the preparation of this Report there was consultation with the Northern District Cricket Club in conjunction with Council's legal advisors.

For leases such as this with a term greater than 5 years, and not exceeding 21 years, Council must:

- a) Give public notice of the proposal for not less than 28 days (including Council's website).
- b) Exhibit notice of the proposal on the land which the proposal relates.
- c) Give notice to adjoining properties and adjoining park users.

Before granting the lease, Council must consider all submissions.

Where a person makes an objection through the public notice and submission period, the Minister of Local Government's consent will be required. If an objection is received, a report for Council's consideration will be prepared outlining the matters raised and what action may then be taken.

BUDGET

There are no budgetary implications associated with this Report as professional costs for the development of the lease document have been covered within the operating budget. Further the draft lease has been prepared on the principle that the operation, repairs, maintenance, all outgoings and ultimate renewal of the facility would be funded by NDCC following an asset management plan prepared by Council

POLICY

The lease document has been prepared with the input of Council's legal advisors on the basis that the indoor cricket facility will not impose any cost to Council for any outgoings, repairs, maintenance and ultimate renewal at the end of its useful life.

An asset management plan has been prepared by Council that supports the lease and which outlines key maintenance activities and responsibilities.

All negotiations with NDCC have been conducted in accordance with Council's Code of Conduct and accepted probity principles including, impartially, managing conflicts of interest, maintenance of confidentiality and obtaining value for money.

CONCLUSION

The proposed lease of the Mark Taylor Indoor Cricket Facility provides reasonable tenure to the NDCC to the venue where the Club has existed for close to 100 years. Aspects of the sport of cricket has changed over time including the focus upon skills training using all-weather indoor facilities such as the venue being constructed at Mark Taylor Oval. The lease has been drafted with input from Council's legal advisors and in consultation with the Club itself.

The lease provides no cost to Council in the operation, repairs, maintenance, all outgoings and ultimate renewal of facility. It also allows the Club to re-coup costs from users which are then used to offset the outgoings.

The creation of an easement for OSD and stormwater is required as part of the development consent. The provision of the easement is supported and is reflected in the recommendations.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager Parks, Trees and Recreation – David Sheils - who can be contacted on 9847 6792.

DAVID SHEILS
Manager - Parks Trees and Recreation
Community and Environment Division

STEPHEN FEDOROW
Director - Community and Environment
Community and Environment Division

Attachments:

1.  Northern District Cricket Club letter - Mark Taylor Oval Indoor Cricket Centre Lease
2.  Mark Taylor Oval Indoor Cricket Centre Lease

File Reference: F2022/00270
Document Number: D08497433

ATTACHMENT/S

REPORT NO. CE19/22

ITEM 8

- 1. NORTHERN DISTRICT CRICKET CLUB LETTER - MARK
TAYLOR OVAL INDOOR CRICKET CENTRE LEASE**
- 2. MARK TAYLOR OVAL INDOOR CRICKET CENTRE
LEASE**

**NORTHERN DISTRICT CRICKET CLUB****P.O. Box 154, Hornsby, NSW 2077****(Founded 26th May, 1925)**

ABN: 44 383 144 829

Mr Steven Head
General Manager
Hornsby Shire Council
296 Peats Ferry Road
HORNSBY NSW 2077

via email: SHead@hornsby.nsw.gov.au

1st October 2022

Dear Steven,

Re: Lease of the Mark Taylor Oval Indoor Cricket Centre

I write to request that a lease be negotiated for use of the Mark Taylor Oval Indoor Cricket Centre.

This letter follows a series of discussions between officials of Northern District Cricket Club ("the Club") and Hornsby Council ("Council") about the lease. Those discussions began late in 2021.

It also references details about the Mark Taylor Oval Redevelopment Project from my letter to you from 1st December 2020 ("Request for Funding for the Mark Taylor Oval Redevelopment").

Mark Taylor Oval Redevelopment

The Club established a Redevelopment Committee and in 2018 designed a masterplan for the new Mark Taylor Oval, costed at \$10m (using 2018 costings).

PRESIDENT

Mr Jeremy Hook
[Redacted Signature]

HON SECRETARY

Mr Graham Gorrie
[Redacted Signature]

HON TREASURER

Mr Peter Vilimaa
[Redacted Signature]

The key components of the successful 2018 plan were: (in order of proposed works, and as shown on Figure 1):

- 1) **Fully upgraded playing surface:** with a reshaped oval and centre square, new drainage, new irrigation, new covers system
- 2) **New indoor cricket centre:** 4 lane synthetic wickets on the site of the then practice area;
- 3) **Fully renovated turf nets**
- 4) **New pavilion/grandstand:**
 - a. Ground floor: fully universal use changerooms, storage rooms, canteen,
 - b. First floor: clubrooms for NDCC and HJRU/HRU
 - c. Second floor: scorers' room; camera area and commentary box; cricket museum; meeting rooms for cricket coaching, umpiring training and administration, and for community usage
- 5) **New scoreboard:** electronic panel for cricket and rugby usage
- 6) **New groundsman's shed**



Figure 1: Masterplan of works for Mark Taylor Oval

The Club funded the early investigative work on the Project from its own resources, and a grant from CricketNSW.

State Government Grant

In March 2019, it was announced that the Club was successful in receiving a \$9m grant from the NSW Government.

The grant was the result of a work of a long process of discussion between the Club, Council and the local State Member for Hornsby Matt Kean.

Undertaking the work

Since the announcement of Government funding the Club has worked cooperatively with Council management and especially its Parks team through a Project Control Group (PCG), whose operations and governance are explained in the Sub-Funding Agreement which was signed in 2021. The Club is represented on the PCG by Jeremy Hook and Graham Gorrie, who both act in a volunteer capacity.

Indoor Centre

The work on the Indoor Centre commenced in May 2022 and at time of writing is approaching completion.

The Club's Management Committee has established a Sub-Committee to manage the Indoor Centre. This Sub-Committee comprises five members, who have a range of business skills and experience and we believe will properly represent the interests of the Club and community in managing the Indoor Centre.

The following are members of the IC Management Sub-Committee (with references to club position and history, and occupation)

- **Jeremy Hook (Chairman)**
 - NDCC President, Life Member, club member since 1991.
 - Investment Director
- **Mike Langford**
 - NDCC Vice President, Life Member, former President, club member since 1999
 - Finance Manager (retired)
- **Graham Gorrie**
 - NDCC Honorary Secretary, Chairman Sydney Cricket Association, club member since 2007
 - Solicitor
- **Peter Vilimaa**
 - NDCC Honorary Treasurer, Life Member, club member since 1973
 - Chartered Accountant
- **Matthew Johnson**
 - NDCC Vice President, Life Member, club member since 1999
 - Company Director, Finance Broker

Further the Club has appointed (subject to lease contract documentation) a **Consulting Manager**, Austin Morey. Austin has had three decades of experience in managing similar facilities, including the Action Indoor Sports Centre at Mt Kuringai (which closed in April 2020), and before that the Thornleigh Indoor Sports Centre on Sefton Road, Thornleigh. The Club will finalise a management team after the lease contract has been resolved.

Lease

The Club is seeking a long-term lease to provide tenure over the facility.

We believe the Club is best-placed to manage the facility for the betterment of the sport in conjunction with the long-standing use of the Oval.

The Club is seeking a lease that is consistent with the purpose of the funding, namely, to develop cricketers of the Club and the local community; to become a Centre of Excellence for cricket and a hub for cricket in northern Sydney; and specifically, to grow and develop Women's cricket.

The facility was designed by the Club and Cricket NSW in consultation with Council, and the lease should reflect the Club's immense contribution to the project.

The funding for the Indoor Centre has drawn on Project funds achieved through the State Government grant.

The Club welcomes the opportunity to work with Council on the lease for the Mark Taylor Oval Indoor Centre.

Yours faithfully



Jeremy Hook

President

Form: 07L
 Licence: 05-11-667
 Licensee: Softdocs
 Matthews Folbigg Pty Limited

LEASE
 New South Wales
 Real Property Act 1900

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

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY	Insert Duties Assessment No. as issued by Revenue NSW Office. Duties Assessment No.				
(A) TORRENS TITLE	Property leased 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				
(B) LODGED BY	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; vertical-align: top;">Document Collection Box 307V</td> <td style="width: 65%;"> Name, Address or DX, Telephone and Customer Account Number if any Acc. No. 123198L Matthews Folbigg Pty Limited PO Box 248 Parramatta NSW 2124 Tel: 9635 7966 Email: _____ Reference: AVZ:211164 </td> <td style="width: 20%; vertical-align: top;"> CODE L </td> </tr> </table>	Document Collection Box 307V	Name, Address or DX, Telephone and Customer Account Number if any Acc. No. 123198L Matthews Folbigg Pty Limited PO Box 248 Parramatta NSW 2124 Tel: 9635 7966 Email: _____ Reference: AVZ:211164	CODE L	
Document Collection Box 307V	Name, Address or DX, Telephone and Customer Account Number if any Acc. No. 123198L Matthews Folbigg Pty Limited PO Box 248 Parramatta NSW 2124 Tel: 9635 7966 Email: _____ Reference: AVZ:211164	CODE L			
(C) LESSOR	Hornsby Shire Council ABN 20 706 996 972 The lessor leases to the lessee the property referred to above.				
(D)	Encumbrances (if applicable):				
(E) LESSEE	Northern District Cricket Club Inc (ABN 44 383 144 829) Registration Number Y1112320				
(F)	TENANCY:				

- (G) 1. TERM** Twenty One (21) years
- 2. COMMENCING DATE**
- 3. TERMINATING DATE**
4. With an **OPTION TO RENEW** for a period of N.A.
 set out in clause N.A. of N.A.
5. With an **OPTION TO PURCHASE** set out in clause not applicable of not applicable
6. Together with and reserving the **RIGHTS** set out in clause not applicable of not applicable
7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** Annexure A hereto.
8. Incorporates the provisions set out in N.A.
 No. N.A.
9. The **RENT** is set out in clause 2 of Annexure A

Form: 07L

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 at in 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.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

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2005

This is the Annexure "A" referred to in the Lease between Hornsby Shire Council (ABN 20 706 996 972) (the "Lessor") and Northern District Cricket Club Inc Registration Number: Y1112320 (the "Lessee")

Dated the day of 2022

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ATTACHMENT 2 - ITEM 8

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:

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

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:

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- (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 Licensor may enter the Premises at any time and for any reason without the consent of the Licensee in an emergency.
- (c) The Licensor 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 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 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

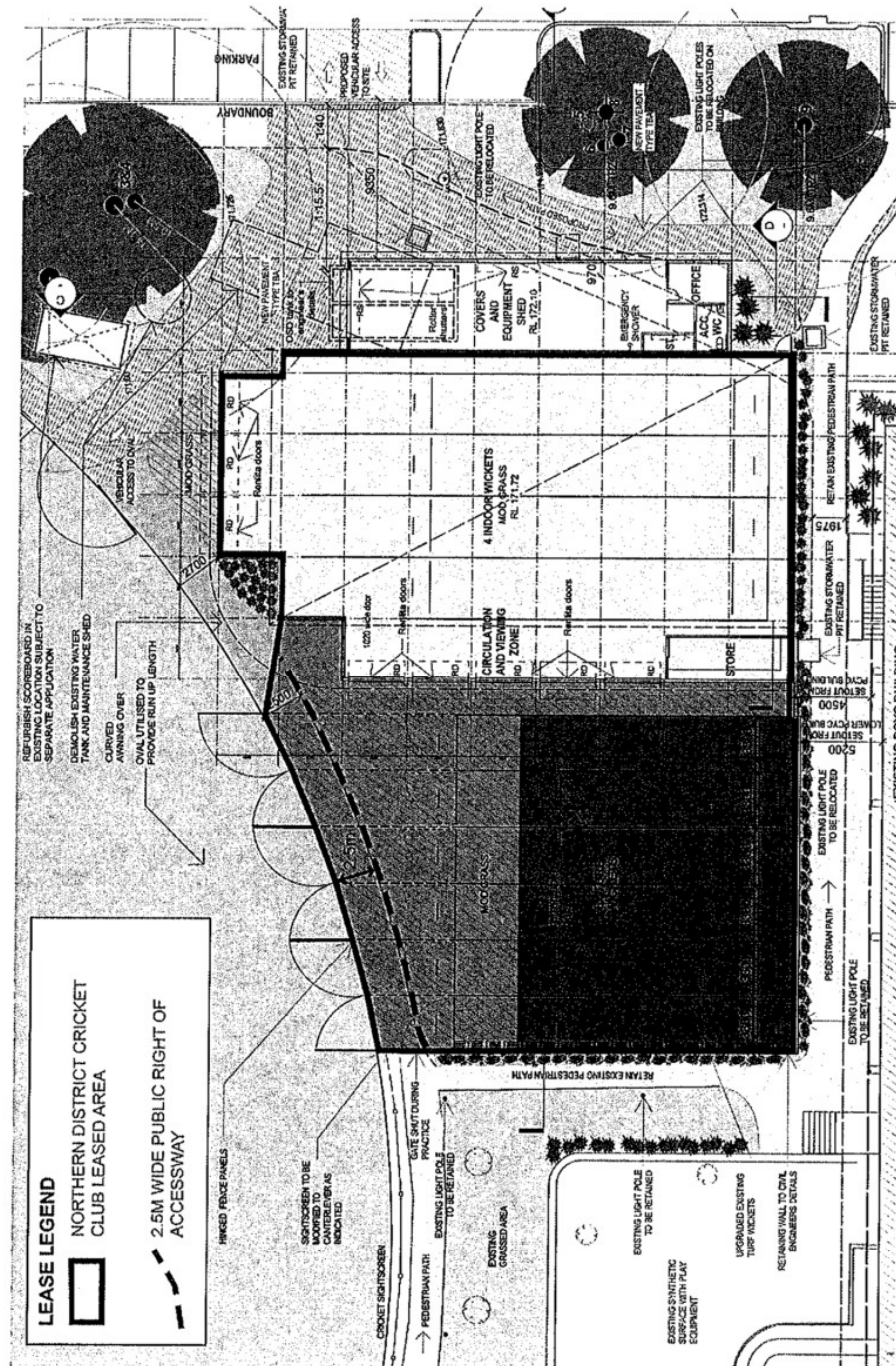
ITEM 12B	RENT REVIEW AT COMMENCEMENT OF OPTION TERM <i>(Clause 16)</i>
	N/A
ITEM 13	PROFIT RENT <i>(Clause 2.3)</i>
	50% of Certified Profit
ITEM 14	SECURITY DEPOSIT/BANK GUARANTEE <i>(Clauses 21/22)</i>
	Nil required whilst ever Northern District Club Inc is the Lessee.

ATTACHMENT 2 - ITEM 8

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

SCHEDULE 2 - PREMISES PLAN



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ATTACHMENT 2 - ITEM 8

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.

SCHEDULE 4 – ASSET MANAGEMENT PLAN



Hornsby Shire Council

20 Year Indicative Asset Maintenance Plan

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

August 2022



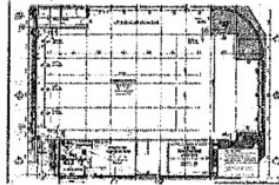
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ATTACHMENT 2 - ITEM 8

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.

ATTACHMENT 2 - ITEM 8

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
MCC - Building Services	2,875	2,333	3,423	2,186	1,579	2,294	2,075	8,435	6,573	13,095	2,355	82,261	4,021	23,587	16,437	7,526	2,075	6,061	13,361	7,229
MCC - Electrical Services	1,540	1,009	1,440	1,040	1,599	2,364	1,339	2,152	1,540	1,440	1,440	2,088	1,540	1,632	2,652	4,668	1,540	1,440	1,263	16,941
MCC - Fire Protection Services	896	815	896	815	1,233	876	815	815	815	1,115	1,263	876	2,729	815	1,235	815	815	135	815	1,211
MCC - Plumbing Services	182	190	154	212	150	186	190	293	435	1,018	151	475	190	150	394	219	2,561	365	495	371
MCC - Electrical Services	185	661	185	665	185	685	82	3,725	185	665	1,839	665	185	582	2,745	4,725	185	665	185	665
MCC - Facility Maintenance			173	1,265		173		1,632	151	116,345		1,936			301	4,899		151	116,345	1,681
MCC - Fire Protection Services	418	418	418	418	970	418	418	418	418	917	1,265	318	2,326	418	970	418	418	418	970	11,491
Grand Total	6,916	5,837	9,346	6,739	5,147	7,528	6,307	25,065	19,104	38,388	7,269	88,168	4,439	26,162	19,491	8,851	2,615	7,901	17,216	174,337

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
ROCC - Electrical Services	115	605	185	605	185	605	82	2,225	185	605	1,103	605	185	562	2,745	4,725	155	662	185	605
ROCC - Facility Maintenance			173	1,265		173		1,632	151	116,345		1,936			301	4,899		151	116,345	1,681
ROCC - Fire Protection Services	418	418	418	418	970	418	418	418	418	917	1,265	318	2,326	418	970	418	418	418	970	11,491
Grand Total	618	1,208	767	2,788	1,155	1,777	571	5,348	766	117,948	3,061	2,720	2,723	1,081	4,635	8,772	624	1,266	116,959	272,429

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
MHC - Building Services	2,675	2,881	3,123	3,408	3,734	4,103	4,518	4,980	5,490	6,048	6,665	7,343	8,083	8,887	9,758	10,698	11,708	12,790	13,946	170,237
MHC - Electrical Services	1,540	1,640	1,740	1,840	1,940	2,040	2,140	2,240	2,340	2,440	2,540	2,640	2,740	2,840	2,940	3,040	3,140	3,240	3,340	38,511
MHC - Fire Protection Services	630	610	590	570	550	530	510	490	470	450	430	410	390	370	350	330	310	290	270	4,699
MHC - Plumbing Services	382	390	394	398	402	406	410	414	418	422	426	430	434	438	442	446	450	454	458	9,880
Grand Total	5,227	5,511	5,857	6,256	6,674	7,103	7,558	8,034	8,528	9,046	9,583	10,143	10,722	11,325	11,950	12,598	13,270	13,946	14,636	264,418

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 Inc
Franchise fees																							
Grass	210	210	210	210	210	210	210	210	210	210	210	210	210	210	210	210	210	210	210	210	3,000	210	\$2.96
Synthetic grass																							
Removal	300	310	320	330	340	350	360	370	380	390	400	410	420	430	440	450	460	470	480	490	5,000	310	\$17.1
Material	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	\$1.96
Wickets																							
Resurfacing	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	2,000	200	\$1.8
Internal																							
Paints	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	15,750	315,000	15,750	\$6.00

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