

MEETING NOTICE

A meeting of the
Sport & Recreation Committee
will be held in the Level 2 Conference Room
Bayside Administration Centre, Rockdale
on **Monday 28 October 2019** at **6.30pm**.

AGENDA

1 ACKNOWLEDGEMENT OF COUNTRY

Bayside Council respects the traditional custodians of the land, elders past, present and emerging, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

2 APOLOGIES

3 DISCLOSURES OF INTEREST

4 MINUTES OF PREVIOUS MEETINGS

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20192

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6 GENERAL BUSINESS

7 NEXT MEETING

Meredith Wallace
General Manager

Sport & Recreation Committee

28/10/2019

Item No	4.1
Subject	Minutes of the Sport & Recreation Committee Meeting - 26 August 2019
Report by	Scott Field, Manager Sport and Recreation
File	SF19/221

Officer Recommendation

That the Minutes of the Sport & Recreation Committee meeting held on 26 August 2019 be confirmed as a true record of proceedings.

Present

Councillor James Macdonald
Councillor Scott Morrissey
Debra Dawson, Director City Life
Scott Field, Manager Sports & Recreation
Councillor Liz Barlow
Councillor Vicki Poulos
Councillor Dorothy Rapisardi
Councillor Andrew Tsounis
Michael Mamo, Acting General Manager

Also Present

Gavin Ross, Coordinator Sports & Recreation
Samantha Urquhart, Manager Property
Maritza Abra, Coordinator Infrastructure Projects
Todd McHardy CEO BlueFit Group
Mr Greg Granville & Consortium Members

The Chairperson opened the meeting in the Level 2 Multipurpose Room at the Angelo Anestis Aquatic Centre at 6:30 pm.

1 Acknowledgement of Traditional Owners

The Chairperson affirmed that Bayside Council respects the traditional custodians of the land, elders past and present and future leaders, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

2 Apologies

Apologies were received from Meredith Wallace, General Manager; Councillor Christina Curry; Michael McCabe, Director City Futures; and Clare Harley, Manager Strategic Planning.

3 Disclosures of Interest

There were no disclosures of interest.

4 Minutes of Previous Meetings

4.1 Minutes of the Sport & Recreation Committee Meeting - 24 June 2019

Committee Recommendation

That the Minutes of the Sport & Recreation Committee meeting held on 24 June 2019 be confirmed as a true record of proceedings.

5 Reports

5.1 Presentation from Todd McHardy CEO BlueFit Group

Todd McHardy CEO presented on BlueFit Group's operations at the Angelo Anestis Aquatic Centre and provided a summary of current aquatic centre projects being undertaken by other local Councils across Australia.

Committee Recommendation

That the Sport & Recreation Committee receives and notes the presentation.

5.2 Multi-Sport Facility Options

Mr Greg Glanville and consortium presented on project concept, principles and concept designs

Concerns were raised regarding:

- Identification of land contamination and remediation
- Multiple land owners requiring multiple consents
- Future management structure

The consortium tabled their request for a Letter of Support from Council to submit a grant application.

Committee Recommendation

- 1 That the Sport & Recreation Committee receives and notes the presentation.
- 2 That Council provide in-principle support for a grant submission.
- 3 That Council's commitment will be limited to a formal letter of in-principle support.

5.3 Major Projects Sport & Recreation Projects Related Update

The Committee was presented with a general update on current projects.

Committee Recommendation

That the Sport & Recreation Committee receives and notes the report.

General Business Item 6.1 was brought forward to be considered before Items 5.4 and 5.5.

6.1 Arncliffe Park Restoration Project and Arncliffe Aurora Football Club Presentation

Sam Hassan, the Clubs representative from Arncliffe Aurora Football Club, briefed the Committee on issues pertaining to Arncliffe Park project.

He confirmed that the size of the playing field as per the final designs, indicating a size of 100 m x 64 m.

He raised concerns around:

- The requirement of line markings to also mark out two mini fields, like Ador Avenue Reserve.
- The fencing behind the goals has been set at a height of 2.4 m, this is not sufficient, a height between 3 m -7 m like that used at Ador Avenue Reserve is required in order to be effective.
- Better netting options are required than those used at Ador Avenue Reserve.
- Need for a 3 m runoff bumper zone around the field and a 5 m runoff bumper zone on the sides where player benches are located.

He also requested that the soil excavated be retained so it could be used on site to allow for enhancements such as a potential training field.

Committee Recommendation

That the concerns raised by Sam Hassan be referred to the Major Projects Team.

5.4 Property Update

Samantha Urquhart, Manager Property briefed the Committee with a general update on current property related issues and projects.

Committee Recommendation

That the report be received and noted.

5.4.1 Hensley Athletic Field

The Committee raised concerns that the current track at Hensley Athletic Track did not meet international standards and that a widening of the track to accommodate the required lanes should be considered as part of the rejuvenation of this facility.

Committee Recommendation

That the committee endorses the request to explore the widening of the track at Hensley to international standards as part of the project to replace the running track.

5.4.2 Mutch Park Skate Park

Concerns were raised the foliage in Mutch Park Squash & Tennis Centre creates safety and aesthetic concerns for the skate park and squash facility.

Committee Recommendation

That an assessment of the foliage be included as part of a Safety Plan for the Mutch Park Skate Park which would also consider CCTV and lighting.

5.4.3 Rockdale Illinden Football Club Update

The Committee was advised that the Rockdale Illinden Football Club have rejected Council's market rent evaluation and are seeking a private evaluation.

The Club stated the valuation will be received within three weeks.

Committee Recommendation

That, at the next meeting of the Sport and Recreation Committee, an update be provided on the negotiations with Rockdale Illinden Football Club and a draft lease with conditions be tabled.

5.4.4 Arncliffe Aurora Football Club

The Committee was briefed about a response to the questions with notice from the December and August meetings.

Committee Recommendation

That a draft permit for the use of Arncliffe Park be presented to the next Sports & Recreation Committee meeting in October and to the subsequent GM Briefing Session in October.

5.4.5 Botany Golf Course & Golf Course Strategy

The Manager Property advised the Committee that work is currently underway to develop a Draft Golf Course Strategy for the LGA, expected by the end of September for review.

The Committee was briefed on the Golf Course Strategy options relating to how Council could engage with relevant stakeholders affected by this strategy, including the development of a communication and stakeholder engagement plan.

Committee Recommendation

That the Committee approves a hold-over letter to be issued to the Golf Courses for the next 12 months.

5.4.6 Bexley Bowling Club

The Committee was updated on discussions with AHEPA.

Committee Recommendation

That the Committee noted the update.

5.4.7 Bexley & Scarborough Tennis Courts

The Committee was updated on the current status of negotiations.

Committee Recommendation

- 1 That in relation to Bexley Tennis Courts, the Committee would not support any variation of use or extension of lease beyond 5 years.
- 2 That staff engage with Golden Goal to determine the viability of a 5-year agreement at the Bexley Courts based on acceptable terms for Council. Should agreement not be reached this is to result in a cessation of discussions.

5.5 Preddy's Road Entry - Angelo Anestis Aquatic Centre

The Committee was briefed on the project, identifying that more detailed information is being sought to inform the project and ensuing designs

Time constraints may prevent this project from being completed before the summer season and a decision on the use of contractors to aid the project was pending.

Concerns regarding some maintenance at the Angelo Anestis Aquatic Centre were raised.

Committee Recommendation

- 1 That the Sports & Recreation Committee notes that a budget of \$200,000 is available in the City Projects Program for Angelo Anestis Carpark access improvement.
- 2 That this item be a standing item on the Sports and Recreation Committee Agenda.
- 3 That BlueFit be advised of the issue around car park retaining wall capping being addressed and an alternative solution found to avoid the issue recurring.
- 4 That BlueFit be advised of the issue around exposed pipes in the car park gardens and the requirement for landscaping to address the safety issue.

6 General Business

Item 6.1 – was considered earlier in the meeting, prior to Item 5.4.

6.2 Funding Options for Basketball Courts

It was requested a discussion around funding options for Basketball Courts in the LGA to be put onto the next agenda.

Committee Recommendation

That funding options for Basketball Courts in the LGA be put on the next Sport and Recreation Committee agenda..

6.3 Integrated Outdoor Fitness Station

Councillor Andrew Tsounis provided a proposal from “Mango Racing”, who are offering to provide an integrated outdoor fitness station at no cost. It was advised that this would be referred to the relevant Council planning officers.

Committee Recommendation

That that the proposal from “Mango Racing” be referred to the relevant Council planning officers.

6.4 Condition of Shade Sails

It was asked if there was an audit of the condition of shade sails throughout the LGA. It was advised this would be done by the relevant asset officers.

Committee Recommendation

That advice be provided at a future committee meeting.

6.5 Sports Forum

The committee was advised of Council's intention to host a Sports Forum on the 25th of October, to be presented as a breakfast at the Rockdale Town Hall.

Committee Recommendation

That the Committee noted the update.

7 Next Meeting

That the next meeting be held in the Level 2 Conference Room, Bayside Administration Centre at 6.30pm on Monday, 28 October 2019.

The Chairperson closed the meeting at 9:15 pm.

Attachments

Nil

Sport & Recreation Committee

28/10/2019

Item No	5.1
Subject	Preddey's Road Entry - Angelo Anestis Aquatic Centre
Report by	Gavin Ross, Coordinator Sport and Recreation
File	F19/604

Summary

The Sport & Recreation Committee has requested an update on the progress of the Preddey's Road Entry at the Angelo Anestis Aquatic Centre as a standing item until such time the issues are remedied in full.

Officer Recommendation

That the Sport & Recreation Committee notes an update on the progress of the Preddey's Road Entry at the Angelo Anestis Aquatic Centre by Coordinator Infrastructure Projects, Maritza Abra.

Background

The Committee was briefed on the project at the August Sports & Recreation Committee meeting, identifying more detailed information is being sought to inform the project and ensuing designs.

The Committee was informed that due to time constraints, the project may not be completed before the summer season 2019.

The Committee was informed that a decision on the use of contractors to aid the project was pending.

Concerns regarding some maintenance at the Angelo Anestis Aquatic Centre were raised.

As a result, the Committee requested to have the Preddey's Road Entry added to the agenda as a standing item until such time the issues are remedied in full.

The issue relates to the design of the entry to the carpark, which creates a bottle neck for patrons attempting to enter and exit the carpark.

Attachments

Nil

Sport & Recreation Committee

28/10/2019

Item No	5.2
Subject	Golf Course Strategy
Report by	Camille Abbott, Project Manager - City Life
File	F19/604

Summary

A presentation will be made to update the Committee on the proposed strategy for the public golf courses of Bardwell Valley, Bexley and Botany.

Officer Recommendation

That the Committee receives and notes the presentation on the Golf Course Strategy.

Background

The Committee was briefed on the Botany Golf Course and Golf Course Strategy at its meeting of 26 August 2019.

A presentation will be made at the Committee meeting, updating the Committee on the proposed strategy for the public golf courses of Bardwell Valley, Bexley and Botany.

Attachments

Nil

Sport & Recreation Committee

28/10/2019

Item No	5.3
Subject	Cahill Park tennis court replacement options
Report by	Julie Gee, Senior Project Landscape Architect
File	F19/1069

Summary

The 2019/20 Capital Program includes a design project for the refurbishment/replacement of the existing tennis courts located within Cahill Park, off Levey Street, at Wolli Creek.

The report considers options for court type and other inclusions to inform the design brief and scope of works.

Officer Recommendation

- 1 That the Sport & Recreation Committee endorses Option 1 for three multipurpose courts.
 - 2 That the Sport & Recreation Committee considers the other infrastructure inclusions to inform the design brief.
-

Background

The Council approved the Cahill Park Masterplan. The Draft Social Infrastructure Strategy considers investigation of multi-purpose courts at Cahill Park when the existing tennis courts are refurbished.

Tennis (club/recreational)

34.77 x 17.07 metres with 3.66 metres between courts (unfenced) or 2.75m (fenced).

Basketball

36 x 23 metres, includes 2 metre curtilage around court.

Multi-purpose - basketball and/or netball plus tennis

36.6 x 23 metres, with approx. 3.6m between courts.

There are currently 4 existing tennis courts located between Levey Street to the east and a retaining wall with significant tree plantings to the west and dense tree plantings to the north and south. The space for re-development is defined by these factors. The courts are located generally north-south, which is the preferred orientation.

Two (2) options are presented (*attached*).

Option 1:

Three multi-purpose courts of tennis and netball and/or tennis and basketball. It may be possible to have the markings for all two sports on the court depending on how the rings are configured. It would need to be determined whether the courts are set up for netball/basketball casual play and the tennis net/s are only erected for a booking, or whether a court has the net erected for casual play.

Option 2

Include an additional tennis court to bring the total number of tennis courts to five. This limits the useability to tennis only.

Other Considerations / Infrastructure

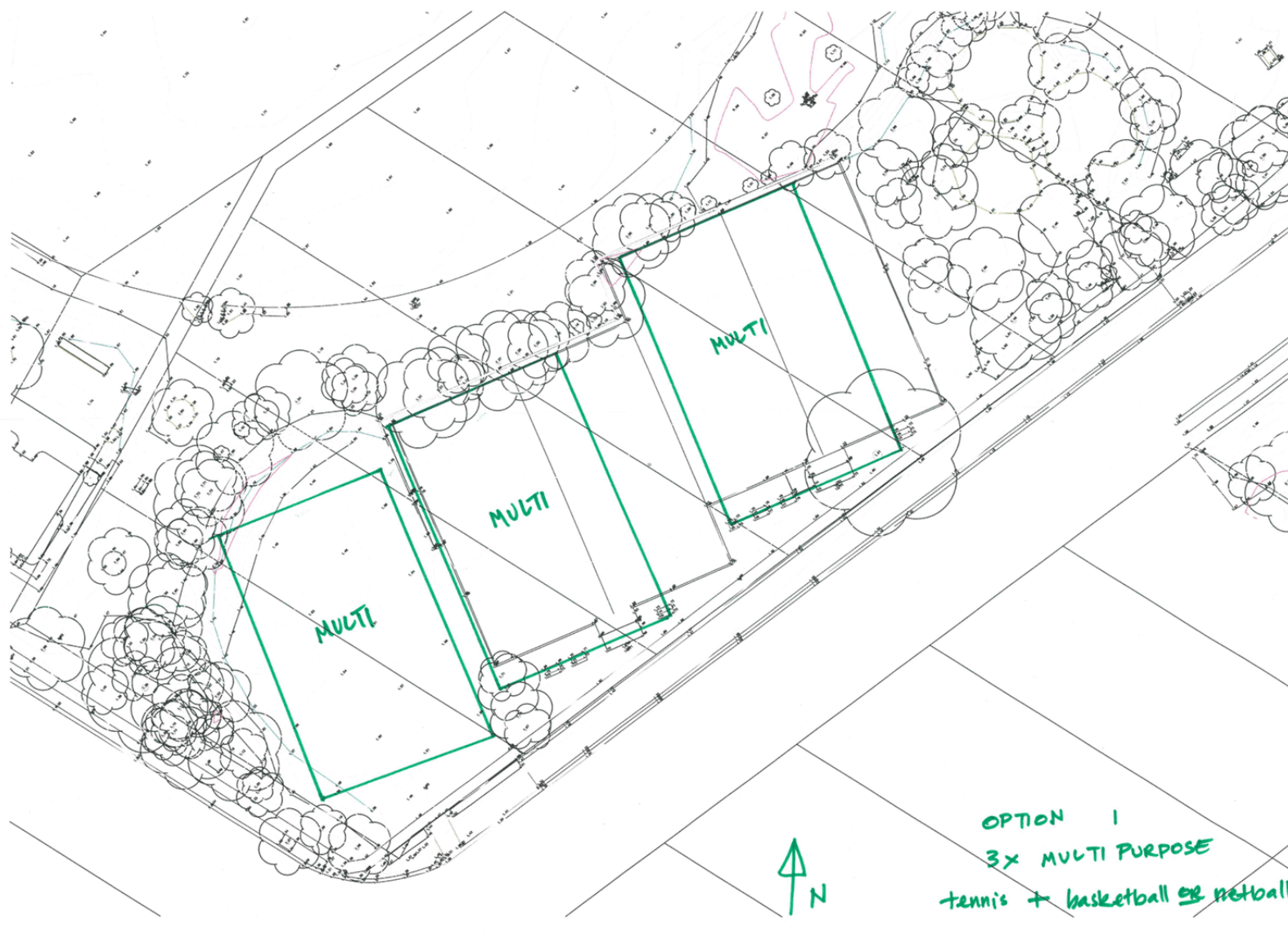
As an integral component of the refurbishment scope of works, a determination will need to be made with regard to:

- How the facility will operate.
- Whether each court is to be fenced and have a gate/locking system, if so which system.
- Shelters.
- Storage for nets.
- Fencing around and between courts. Perimeter fencing as a minimum is considered essential.
- Lighting – whether it is to be provided with consideration of light/noise intrusion impacts and type.
- Furniture such as umpires chairs and other general park furniture.

The above will need to be included in the brief for the design consultant.

Attachments

- 1 Option 1 [↓](#)
- 2 Option 2 [↓](#)





Sport & Recreation Committee

28/10/2019

Item No	5.4
Subject	Property Update
Report by	Samantha Urquhart, Manager Property
File	SF19/17

Summary

This document provides an update on Sport & Recreation related matters that are managed by the Property Unit.

Officer Recommendation

That the Sport & Recreation Committee receives and notes the report.

Background

Update on Property matters listed below.

Standing Items

Bicentennial Lease

Refer to separate report.

Kyeemagh RSL EOI and Hockey Club

As of the date of compiling the update on this matter, the St George Randwick Hockey Club has signed the licence agreement and secured the required bank guarantee. The agreements are pending execution by Council which will draw the licence matter to a close. In regards to the replacement of the synthetic playing surface, the Club has commenced the process to secure lender financing and the current target date for commencement of the works is December 2019/January 2020. This target time frame is dependent on the time taken to secure funding approval and lead times with the installers. The licence agreement notes a requirement for the works to be completed by 1 April 2020.

In relation to the remainder of the RSL building that is not the subject of the licence agreement with the St George Randwick Hockey Club, the GM Briefing Session was conducted on 4 September 2019 and the property will be the subject of a Tender to secure a community tenant, due to commence at the end of October.

F6 Project

Discussions continue with the RMS on the F6 Project. Council officers are currently working through:

- the offset works to the Ador Precinct and Brighton Memorial Fields
- the Re-instatement works for both the Bicentennial site and Arncliffe site
- the Memorandum of Understanding for the project
- the leasehold and freehold acquisition of Council land.

Rockdale PCYC

As per the conditions outlined within the Council Report on 14 August, Council has materially progressed the negotiation with PCYC to confirm initial tenure period in exchange for Condition Precedents related to future renewal works at the PCYC. The short term lease has been through the required statutory process and no formal submissions or objections have been received. The Proposal has been escalated by PCYC's Asset Manager to their CEO for final position on two critical items which remain in abeyance (and are yet to be agreed between the parties), being:

- Confirmed Annual Rental Figure:** Council has significantly subsidised the Market Rent for the site in line with the RASP policy. However the PCYC still wishes to pursue further subsidy, Council will potentially consider this if agreement fails to materialise next week.
- The Capital Works Condition Precedent:** Prior to entering into the lease, the PCYC is required to commit to Capital Renewal of Critical Safety items to ensure that the PCYC building remains habitable for the initial short term 5 year lease period. The monetary value for these Capital works has been revised in line with Council's Building Condition Assessment to account for the pending redevelopment in five years, meaning those capital items which fail beyond this period will not be captured in the initial Capital Works. This was undertaken to expedite an agreement by the PCYC.

Pending these two items being agreed upon, Council and the PCYC will enter into and execute the Short Term Lease and Deed of Agreement for the Long Term lease contemplating Redevelopment of the PCYC site.

Golf Courses Strategy

Refer to separate report.

Bexley Tennis Courts

Refer to separate report.

Bexley Bowling Club

Council has received initial feedback from the independent planner engaged to assess the DA lodged by AHEPA for 72 Laycock Street, Bexley North.

At this initial phase the feedback broadly encapsulates the following items which need to be addressed or further clarified:

- Establishing Existing Use rights for the site, upon which the proposal is based. The proposal requires more detail to ensure that the technical planning requirement for establishing these rights is demonstrated in line with Section 4 of the EP&A Act.
- Addressing setback, bulk and scale requirements, hours of use, parking and DDA.

A Meeting between Council, AHEPA and the Independent Planner has been scheduled for Wednesday 23 October. The aim of this meeting is to agree on a path forward to progress the project in a direction which will align with the planning requirements for the site.

A revised agreement to lease will be finalised once the material Development requirements have been identified following the above meeting.

This agreement will secure:

- an agreed program for delivery
- financial security for Council
- meeting key milestones
- delivery of works to Council's satisfaction.

Attachments

Nil

Sport & Recreation Committee

28/10/2019

Item No	5.5
Subject	Bexley and Scarborough Park Tennis Courts
Report by	Samantha Urquhart, Manager Property
File	F19/806

Summary

This report will detail the current state of the Bexley and Scarborough Park Tennis Courts and look at options for the future of these public spaces.

Officer Recommendation

That the Sport & Recreation Committee recommended either 1(a) or 1(b):

- 1 That the contract negotiations with Golden Goal for Bexley Tennis Courts be terminated and that a further report be prepared on future options for these courts.
 - 2 That the terms of the existing lease for the Scarborough Park tennis courts be enforced including the costs associated with the repair of the courts.
-

Background

In 2011 Council went to tender for both the Bexley Tennis Courts and Scarborough Park Tennis Courts to find an operator for both premises. All submissions received from both tenders were rejected and Council resolved in September 2011 to negotiate with all applicants.

As a result, Council decided to award a 10 year lease for Scarborough Park Tennis Courts and an agreement to lease for a term of 10 years for Bexley Tennis Courts to Golden Goal. The statutory notification for both locations was undertaken. Unfortunately due to objections for Bexley Tennis Courts, the Office of Local Government refused the grant of a 10 year lease.

Subsequently, it was agreed to issue a 10 year lease for Scarborough Park Tennis Courts and a 5 year lease for Bexley Tennis Courts. Given the shortened term for Bexley, it was agreed that all fixtures could be removed by the applicant should the 5 year lease not be renewed, and the Scarborough Park Tennis Courts were granted a 9 year rent free period, considering the capital works intended for both the Scarborough Park Tennis Courts and the delivery of the proposed futsal courts and associated works, totalling \$1.25 million.

The capital works planned for Scarborough Park Tennis Courts, included new fencing and new courts surface. The fencing has been undertaken with the court replacement yet to be completed. The court surface is currently in a state of dis-repair and not fit for purpose.

A development application was lodged in 2015, seeking approval for 4 futsal courts, car park and associated infrastructure for the Bexley Tennis Courts, and was approved in late 2018.

The Development Consent only permitted 2 courts. Given the diminished scale of the futsal courts, Golden Goal have expressed concern regarding the viability of the courts.

Discussions have been ongoing for the past year, Golden Goal were asked to indicate if they would proceed with the Bexley lease or not, considering the 5 year term. A meeting was held on 11 September 2019 to discuss both Bexley Tennis Courts and Scarborough Park Tennis Courts. Discussions consisted of:

Bexley Tennis Courts

The proposed key terms by Council for a new lease for Bexley Tennis Courts being:

- An agreement to Lease with key milestones commencing with:
 - the Construction Certificate
 - delivery of the associated works pertaining to the Development Consent within a set time frame.
- Entering into a 5 year lease.
- Should Council not renew the lease, then Council will pay a portion of the capital expenditure to the tenant (mechanism to be agreed), subject to compliance with their lease and only on the basis that the renewal of the lease was legally permissible.

Further key terms will be discussed with the Sport & Recreation Committee.

Scarborough Park Lease

Council has suggested and Golden Goal have agreed to surrender their current lease for the Scarborough Park Tennis Courts. This site is not heavily utilised, and is no longer financially viable for the tenant.

Prior to surrendering their current lease, Golden Goal will be required to either repair the surface of the courts, or pay an amount equivalent to the amount required to re-surface the courts. Golden Goal have indicated that they did not intend to pay any further money for these courts. This will need to be discussed further with the Sport & Recreation Committee

Upon surrender of the lease it is proposed to place these courts on Councils booking system, enabling them to be booked through Council. Further consideration is required to ascertain the long term vision for this site.

Attachments

Scarborough Park Tennis Court Lease [↓](#)

Deed of Lease

**Premises: Scarborough Park Tennis Courts, 1A and
1B Hawthorne Street, Ramsgate**

R69998

**Scarborough Park (P500421 and R699998) Reserve
Trust the affairs of which are managed by Rockdale
City Council**

and

Golden Goal Pty Limited

and

**Aleksandar Medakovic, Terry Palapanis and
Evangelos Petratos**

HWL
EBSWORTH
LAWYERS

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Ref: BSO:209978

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4 October 2012

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Deed of Lease:

Premises: Scarborough Park Tennis Courts, 1A and 1B Hawthorne Street, Ramsgate

Date

2012

Parties

R61998

Scarborough Park (P500421 and ~~R099008~~) Reserve Trust the affairs of which are managed by Rockdale City Council

(Lessor)

Golden Goal Pty Limited ACN 134 730 644 of 44 Tuffy Avenue, Sans Souci, NSW 2219

(Lessee)

Aleksandar Medakovic, Terry Palapanis and Evangelos Petratos

(Guarantors)

Background

A.

The Lessor is the manager of the Reserve Trust.

B.

The Lessor has agreed at the request of the Lessee and the Guarantors to lease the Premises to the Lessee for the Term upon the following terms and conditions of this Deed.

Deed**1. Definitions and Interpretation****Authority for Grant of Lease**

1.1 The Lessor warrants:

- (a) the Premises comprise part of a reserve within the meaning of Part 5 of the CL Act;
- (b) the Lessor is the Manager of the Reserve Trust under Section 92 of the CL Act;
- (c) the Lessor has power under Section 102 of the CL Act to grant a lease of part of the Reserve subject to the Minister's consent; and
- (d) the Minister has agreed to consent to this Lease.

Effect of this Lease

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[Signature]

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[Signature]

Deed of Lease

**Premises: Scarborough Park Tennis Courts,
1A and 1B Hawthorne Street, Ramsgate**

HWL Ebsworth

- 1.2 The Lessor and the Lessee expressly acknowledge that no rights or interests are conferred on either party by the provisions of this Lease unless the Minister has granted consent under Section 102 of the CL Act to the grant of this Lease.

- 1.3 In this Lease, unless the contrary intention appears:

"Anniversary Date" means each anniversary of the Commencing Date except each Market Rent Review Date.

"Annual Rent" means the initial Annual Rent specified in **Item 4** of the Reference Schedule increased from time to time during the Term in accordance with clauses 2.3 and 2.4.

"Appurtenances" means such mechanical ventilation equipment, stop cocks, hydrants, fire hoses, fire alarm systems, and other fire prevention and extinguishing equipment, water closets, lavatories, grease traps, water apparatus, wash basins, wash rooms, gas fittings, electrical fittings and apparatus, services, plant machinery, fixtures, fittings and equipment and other services as may be contained in or about the Premises as the context requires.

"Bank Guarantee" means the bank guarantee required to be provided and maintained by the Lessee in accordance with clause 17.

"Bexley Agreement for Lease" means the Agreement for Lease made between the Lessor, the Lessee and the Guarantors in relation to the Bexley Lease.

"Bexley Lease" means the lease made between the Lessor and the Lessee in relation to the Bexley Premises in accordance with the Bexley Agreement for Lease.

"Bexley Premises" means the property known as Lots 12 to 20 inclusive in Deposited Plan 4580 at 369E Bexley Road, Bexley.

"Business Day" means any day which is not a Saturday, Sunday or any proclaimed public holiday in New South Wales.

"CL Act" means the *Crown Lands Act*, 1989.

"Commencing Date" means the date specified in **Item 2** of the Reference Schedule.

"Council" means Rockdale City Council (in its capacity as a consent authority).

"Courts" means all of the tennis courts at the Premises.

"CPI" means:

- (a) the Consumer Price Index (All Groups) Sydney; or
- (b) if there is any suspension or discontinuance of that index or its method of calculation is altered, the weighted average for Australia of weekly rises for adult males All Groups as published by the Commonwealth Bureau of Statistics.

"Date for Practical Completion" means the date specified in **Item 17** of the Reference Schedule.

"Defects Liability Period" means twelve (12) months from the date of Practical Completion.

"Development Application" means the development application lodged by the Lessee with the Council in accordance with clause 15.1.

4 October 2012

Page 4

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Deed of Lease

**Premises: Scarborough Park Tennis Courts,
1A and 1B Hawthorne Street, Ramsgate**

HWL Ebsworth

"Development Consent" means the Council's (as the consent authority) approval of the Development Application.

"Environmental Law" means any Law or State protection policy incorporated by reference to or being part of any Law relating to protection of the Environment.

"Guarantors" means the parties specified in **Item 14** of the Reference Schedule.

"Hazardous Substance" means a substance that because of its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, or physical, chemical or infectious characteristics, may pose a hazard to property, human health or the environment when improperly treated, stored, disposed of or otherwise managed.

"Institute" means the Australian Property Institute Inc. New South Wales Division.

"Key Performance Indicators" mean each of the criteria specified in **Item 9** of the Reference Schedule.

"Kiosk" means that part of the Premises used by the Lessee as a kiosk or shop.

"Lease" means this Lease including the Plan.

"Lease Year" means a period of twelve (12) months beginning on the Commencing Date and on each Anniversary Date and each Market Rent Review Date.

"Lessee" means the party specified in **Item 1** of the Reference Schedule.

"Lessee's Business Plan" means the Lessee's business plan provided in the Lessee's Expression of Interest.

"Lessee's Expression of Interest" means the Lessee's expression of interest in response to Council's Invitation for Expressions of Interest No.[F11/231].

"Lessee's Obligations" means all of the Lessee's obligations under this Lease.

"Lessee's Quality Assurance System" means the Lessee's quality assurance system provided in the Lessee's Expression of Interest.

"Lessee's Works" means all of the works specified in **Item 15** of the Reference Schedule.

"Lessor" means Scarborough Park (P 500421 and R699998) Reserve Trust the affairs of which are managed by Rockdale City Council, its successors and assigns.

"Market Rent Review Dates" means the dates specified in **Item 6** of the Reference Schedule

"Minister" means the Minister for the time being administering the CL Act or any act consolidating or replacing that Act;

"Outgoings" means all Council, water, sewerage and drainage rates and land tax which are payable in relation to the whole of the Premises.

"Permitted Operating Hours" means the hours specified in **Item 10** of the Reference Schedule.

"Plan" means the attached Plan marked "A".

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"Plan of Management" means the plan of management for the Reserve as adopted by the Council and the Minister from time to time.

"Practical Completion" means practical completion of all of the Lessee's Works in accordance with the Development Consent and to the Lessor's satisfaction.

"Premises" means the ~~Scarborough Park Tennis Courts~~ ^{Tennis courts located north part of lot 1 DP 117751/1} situated at 1A and 1B Hawthorne Street, Ramsgate as hatched on the Plan including the Appurtenances and where the context so admits such of the fixtures fittings furnishings plant machinery and equipment from time to time installed in the Premises and owned by the Lessor. *king part of Scarborough Park P50421*

"Reference Schedule" means the Reference Schedule to this Lease.

"Regulations" means the Crown Lands Regulation 2006 and successors.

"Reserve" means Scarborough Park (P500421 and ~~R699998~~ ^{R6998}) Reserve.

"Reserve Trust" means the Scarborough Park (P 500421 and ~~R699998~~ ^{R69998}) Reserve Trust.

"Revocation" means the revocation of the Reserve under Sections 83, 84, 89 or 90 of the CL Act.

"Term" means the period commencing on the Commencing Date and expiring on the later of the Terminating Date or the date of termination of the period of any holding over in accordance with clause 16.

"Terminating Date" means the date specified in **Item 3** of the Reference Schedule.

"Security Amount" means the amount specified in **Item 13** of the Reference Schedule.

- 1.4 Covenants or powers implied in leases by virtue of Sections 84 and 85 of the *Conveyancing Act, 1919* will not apply to this Lease save so far as the same are embodied in the covenants and powers herein expressed and such powers (except as aforesaid) are accordingly expressed are expressly negated.
- 1.5 Use in this Lease of any words in any of the forms of words contained in the first column of Part 11 of the Fourth Schedule to the *Conveyancing Act, 1919*, shall not imply any covenant under Section 86 of the said Act.
- 1.6 Words importing the singular or plural number include the plural and singular numbers respectively and words of each gender shall include any other gender.
- 1.7 The word "person" shall include a corporation.
- 1.8 References to Statutes Regulations Ordinances or By-Laws shall be deemed to extend to all Statutes Regulations Ordinances or By-Laws amending consolidating or replacing same.
- 1.9 Headings and sub-headings are included in this Lease for the sake of ease of reference and none of the terms covenants conditions or restrictions appearing herein are to be construed or interpreted by reference to such headings or sub-headings.
- 1.10 Where a party to this Lease comprises more than one person or corporation the covenants of that party herein shall bind the person and/or corporations constituting that party jointly and severally.
- 1.11 All reference to dollars (\$) is Australian dollars (A\$).

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2. Rent, GST, Rent Review, Outgoings, Charges And Costs**2.1 Rent**

Subject to clause 2.5, the Lessee must pay to the Lessor in each year during the Term without demand and without any deduction whatsoever:

- (a) the Annual Rent such rent to be paid in advance by regular and consecutive monthly payments each equal to one twelfth (1/12th) of the Annual Rent on the 1st day of each month in each year during the Term; and
- (b) GST in accordance with clause 2.2.

2.2 GST

- (a) In this Lease, unless the contrary intention appears:

"Consideration" means any amount of consideration payable or to be provided under any provision of this Lease other than this Clause 2.2.

"GST" means any form of goods and services, value added, consumption, purchase, retail or similar Tax calculated by reference to the price or value of a Supply.

"GST Amount" means the Consideration (after deducting the GST Exempt Component) multiplied by the Rate.

"GST Exempt Component" means any part of the Consideration which relates solely to a Supply that is free or exempt from the imposition of GST under GST Law.

"GST Law" means any Law, which imposes, levies, implements or varies a GST.

"Input Tax Credit" has the same meaning given under GST Law.

"Law" includes the common law, any statute of any parliament, and any ordinance, regulation, rule, by-law or order made under any such statute.

"Rate" means the rate from time to time at which GST Law imposes or levies GST on a Supply.

"Supply" means anything supplied, provided or performed for the purposes of this Lease which is taxable under GST Law, including, without limitation, the supply of the Premises by the Lessor to the Lessee and the supply of goods, services, rights or benefits.

"Tax" means a tax, levy, impost, deduction, withholding or charge, however described imposed by Law (including, without limitation, stamp and transaction duty) together with any related interest, penalty, fine or expense concerning any of them and the costs of challenging any of them, but excludes any tax, levy, impost, deduction, withholding or charge imposed on the Lessor's net income or capital gains.

"Tax Invoice" means a tax invoice in the form and containing the information required under GST Law for the purpose of collecting GST and obtaining Input Tax Credits.

"Third Party Supplier" means a third party who makes a Supply to the Lessor.

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- (b) Any Consideration payable by the Lessee to the Lessor under this Lease:
- (i) stated as a figure, is stated exclusive of GST; or
 - (ii) described by a formula, is described and must be calculated without regard to GST.
- (c) Where this Lease requires the Lessee to pay Consideration for a Supply and that Supply is made directly by the Lessor to the Lessee then, on presentation of a Tax Invoice by the Lessor to the Lessee, the Lessee must simultaneously pay:
- (i) the Consideration; and
 - (ii) the GST Amount.
- (d) Where this Lease requires the Lessee to pay Consideration for a Supply and that Supply is:
- (i) made to the Lessor by a Third Party Supplier; and
 - (ii) passed on by the Lessor to the Lessee (whether alone or together with other occupants or users of the Premises); and
 - (iii) one for which the Third Party Supplier has rendered an invoice to the Lessor and that invoice includes GST,
- then, on presentation of a Tax Invoice by the Lessor to the Lessee, the Lessee must simultaneously pay:
- (i) the Consideration being:
 - (A) where the Supply is made to the Lessee alone, the amount shown in the invoice rendered by the Third Party Supplier, excluding the GST included in that invoice; and
 - (B) where the Supply is made to the Lessee together with other occupants or users of the Premises, the Lessee's proportion of the amount shown in the invoice rendered by the Third Party Supplier, excluding the GST included in that invoice; and
 - (ii) the GST Amount.
- (e) Where this Lease requires the Lessee to pay Consideration for a Supply:
- (i) to which clause (d) applies; and
 - (ii) for which the Lessor is not entitled to receive and retain an Input Tax Credit
- the Lessee must simultaneously pay, in addition to the Consideration and the GST Amount payable by the Lessee under clause (d):
- (i) where the Supply is made to the Lessee alone, the GST included in the invoice rendered by the Third Party Supplier; or
 - (ii) where the Supply is made to the Lessee together with other occupants or users of the Premises, the Lessee's proportion of the GST included in the invoice rendered by the Third Party Supplier.

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- (f) The Lessor and the Lessee agree:
- (i) that clauses (a) to (e) inclusive are intended to ensure that all GST is passed on to the Lessee so that the Lessor does not receive an amount less than the Annual Rent and all other amounts payable by the Lessee to the Lessor under this Lease;
 - (ii) that the Lessor will not, by virtue of GST, receive an amount less than the Annual Rent and the other amounts payable by the Lessee to the Lessor under this Lease; and
 - (iii) that the Lessee will be liable for and will indemnify and keep the Lessor fully indemnified in relation to any GST payable on any taxable supply made by the Lessor under this Lease.

2.3 Fixed Rent Review

Subject to clause 2.5, the Annual Rent payable from and including each Anniversary Date shall be the Annual Rent for the prior Lease Year increased by the greater of:

- (a) increase in the CPI during that prior Lease Year; or
- (b) five per cent (5%).

2.4 Market Rent Review

Subject to clause 2.5, the Annual Rent payable as from each Market Rent Review Date shall subject to clause 2.4(d)(vii), be the market rent for the Premises from and including the relevant Market Rent Review Date as agreed between the Lessor and the Lessee in writing within twenty one (21) days after the date on which the Lessor gives written notice to the Lessee setting out the amount which the Lessor assesses to be the current market rent for the Premises as at the relevant Market Rent Review Date ("**Lessor's Review Notice**") and failing that agreement, as determined in accordance with the following provisions:

- (a) In determining the annual market rent for the Premises as at the relevant Market Rent Review Date, the Lessor must have regard to any restrictions, conditions or term to which the Premises are subject.
- (b) Should the Lessor and the Lessee be unable to agree in writing within two (2) months after the delivery to the Lessee of the Lessor's Review Notice or within such other period as agreed between the Lessor and the Lessee in writing, the annual market rent for the Premises to apply from and including the relevant Market Rent Review Date, the Lessee may notify the Lessor in writing that the Lessee requires that rent to be determined in accordance with clause 2.4(d) ("**Lessee's Dispute Notice**").
- (c) Unless the Lessee's Dispute Notice is given by the Lessee to the Lessor within two (2) months of the delivery of the Lessor's Review Notice or within such later period as agreed between the Lessor and the Lessee in writing, the amount stated in the Lessor's Review Notice must become the Annual Rent from and including the relevant Market Rent Review Date.
- (d) If the Lessee disagrees with the annual market rent for the Premises from and including the relevant Market Rent Review Date as specified in the Lessor's Review Notice, the following must apply:
 - (i) The Lessee must within two (2) months of the delivery to the Lessee of the Lessor's Review Notice or within such other period as agreed between the

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Lessor and the Lessee in writing, give to the Lessor the Lessee's Dispute Notice and with that notice the Lessee must in writing nominate to the Lessor a valuer registered with the Institute ("**Institute Valuer**") to act on behalf of the Lessee.

- (ii) Within one (1) month after the giving to the Lessor by the Lessee of the Lessee's Dispute Notice and the Institute Valuer nomination, the Lessor must in writing nominate an Institute Valuer to act on behalf of the Lessor.
- (iii) The Institute Valuer nominated by the Lessee and the Institute Valuer nominated by the Lessor must within one (1) month of their appointment endeavour to jointly determine the annual market rent for the Premises from and including the relevant Market Rent Review Date.
- (iv) If the Lessee fails to nominate an Institute Valuer in accordance with clause 2.4(d)(i) or the Lessor fails to nominate an Institute Valuer in accordance with clause 2.4(d)(ii), the determination of the annual market rent for the Premises from and including the relevant Market Rent Review Date must be made in accordance with clause 2.4(d)(v).
- (v) If the annual market rent for the Premises from and including the relevant Market Rent Review Date has not been determined in accordance with clause 2.4(d)(iii) or if clause 2.4(d)(iv) applies, then either the Lessor or the Lessee may request the President of the New South Wales Division of the Institute to nominate a registered valuer to determine within one (1) month of that nomination the annual market rent for the Premises from and including the relevant Market Rent Review Date and that determination must be final and binding upon the parties.
- (vi) In determining the annual market rent for the Premises from and including the relevant Market Rent Review Date, any Institute Valuer appointed by the Lessor and any Institute Valuer appointed by the Lessee or any valuer appointed in accordance with clause 2.4(d)(v) ("**Umpire**") must:
 - (A) be deemed to be acting as an expert and not as an arbitrator;
 - (B) have regard to the terms and conditions of this Lease including but not limited to the permitted use of the Premises and the length of the Term but disregarding the rent free period under clause 2.5 and the fact that part of the Term has elapsed at the relevant Market Rent Review Date;
 - (C) have regard to any refurbishment of the Premises and any improvements to the Premises undertaken by the Lessor during the term;
 - (D) disregard the value of the Lessee's fixtures and fittings in and upon the Premises;
 - (E) disregard any improvements to the Premises effected by the Lessee;
 - (F) have regard to the rental value of comparable premises in the vicinity of the Premises;
 - (G) disregard any goodwill which adheres to the Premises as a result of the Lessee's use thereof;

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- (H) disregard any impaired condition of any structures or improvements on the Premises if such condition results from any work carried out or not carried out on the Premises by the Lessee or from any breach of this Lease by the Lessee;
- (I) if any structures or improvements on the Premises have been damaged, destroyed or rendered inaccessible assume that all such structures or improvements have been reinstated or made accessible; and
- (J) have regard to the highest and best uses of the Premises permitted under the zoning of the Premises and the applicable local environmental plan in relation to the Premises as at the New Commencing Date.
- (vii) The annual market rent from and including the relevant Market Rent Review Date shall not be less than the Annual Rent for the prior Lease Year increased in accordance with clause 2.3.
- (viii) The costs incurred by the Umpire in determining the market rent of the Premises as from the third Anniversary Date pursuant to Clause 2.4(d)(vi) must be borne equally by the Lessor and the Lessee.

2.5 Rent Free Period

- (a) The parties acknowledge that in consideration of the Lessee entering into this Lease and the Bexley Agreement for Lease, the Lessor has agreed that no rent shall be payable by the Lessee under this Lease during the first nine (9) years of the Term.
- (b) Until the parties enter into the Bexley Lease, clauses 2.1, 2.3 and 2.4 of this Lease shall apply.
- (c) Subject to the parties entering into the Bexley Lease, clauses 2.1, 2.3 and 2.4 of this Lease shall not apply until the earlier of:
 - (i) the date on which the Bexley Lease is terminated; or
 - (ii) the expiration of the first nine (9) years of the Term.

2.6 Outgoings

- (a) The Lessee must within fourteen (14) days after written demand by the Lessor, pay to the Lessor the proportion of the Outgoings as specified in **Item 7** of the Reference Schedule.
- (b) As the Premises is on land owned by the Council, the Lessee may be assessed liable to pay land tax in accordance with the Land Tax Management Act and if so, the Lessee must pay such land tax when due without any reimbursement from the Lessor.

2.7 Service Charges

In addition to the Annual Rent, GST and Outgoings, the Lessee must during the Term pay by the due date for payment all charges for:

- (a) all water usage charges for the supply of water services to the Premises;
- (b) supply of electricity services to the Premises;

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- (c) telephone services supplied to the Premises;
- (d) removal and disposal of all rubbish and trade waste from the Premises;
- (e) all security, pest control and fire protection services provided to the Premises; and
- (f) all government charges and levies arising from the Lessee's use and occupation of the Premises

(Service Charges).**2.8 Lease Establishment Fees**

The Lessee must pay within fourteen (14) days after written demand by the Lessor all:

- (a) legal costs (assessed on an indemnity basis) and out of pocket expenses incurred by the Lessor of and incidental to preparation, negotiation, execution, stamping and registration of this Lease;
- (b) stamp duty and title registration fees incurred by the Lessor with respect to stamping and registration of this Lease; and
- (c) valuation, advertising, survey plan fees and any other costs incurred by the Lessor of and incidental to the grant of this Lease.

2.9 Other Costs and Expenses

The Lessee must upon demand by the Lessor, pay all reasonable costs and expenses including all legal fees (assessed on an indemnity basis) and out of pocket disbursements including all reasonable consultants' costs reasonably incurred by the Lessor in relation to the following:

- (a) any notice lawfully given to the Lessee pursuant to this Lease;
- (b) the lawful determination or attempted determination of this Lease;
- (c) the lawful re-entry or attempted re-entry by the Lessor into the Premises;
- (d) the surrender of this Lease (including any stamp duties and registration fees thereon);
- (e) the granting of any consents by the Lessor as provided in this clause;
- (f) the re-letting of the Premises if this Lease is terminated due to default by the Lessee; and
- (g) the investigation by the Lessor and its servants and agents of any new lessee of the Premises if this Lease is terminated due to default by the Lessee

and any such costs or expenses incurred by the Lessor must constitute a liquidated debt due and owing by the Lessee to the Lessor and must be paid by the Lessee to the Lessor on demand.

2.10 Payment of Rent, GST, Outgoings, Service Charges and Costs

All Annual Rent, GST, Outgoings, Service Charges and Costs payable by the Lessee under this Lease must be paid to the Lessor or otherwise as the Lessor must direct from time to

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time.

3. Abatement of Rent and Outgoings

3.1 Termination or Abatement on Damage or Destruction of Premises

If the whole or any part of the Premises is destroyed or damaged by fire, flood, lightning, storm, tempest or other disabling cause so as to render the Premises during the Term substantially unfit for the permitted use and occupation of the Lessee in accordance with this Lease or so as to deprive the Lessee of substantial use of the same or so as to render the rebuilding or reconstruction of the Premises or the destroyed or damaged part of the Premises in its previous form impracticable or undesirable in the opinion of the Lessor or the Lessee, then subject to clause 3.2:

- (a) this Lease may be terminated without compensation by either the Lessor or the Lessee by notice in writing to the other;
- (b) any such termination will be without prejudice to the rights of either party in respect of any antecedent breach matter or thing;
- (c) nothing in this clause contained or implied will be deemed to impose any obligation upon the Lessor to rebuild or reinstate or make fit for occupation the Premises;
- (d) upon the happening of any destruction or damage as aforesaid, the Annual Rent, the Lessee's proportion of Outgoings and the other outgoings specified in clause 2.6(b) paid or payable by the Lessee or a proportionate part thereof according to the nature and extent of the damage sustained, will abate and all or any remedies for the recovery of such monies or such proportionate part thereof will be suspended until the Premises shall have been rebuilt or reinstated or made fit for occupation and use of the Lessee and the Lessee will have had a reasonable time in which to rebuild or reinstate the Lessee's fixtures or until this Lease will be terminated pursuant to the provisions of sub-clause (a) of this clause as the case may be;
- (e) the Lessee must during any period of reconstruction or repair of the Premises continue the operation of its business in the Premises so far as it may be reasonably practicable for the Lessee so to do having regard to the nature of the Lessee's business and the nature and extent of the damage sustained;
- (f) for the purposes of this clause 3, the term "Premises" will not include the Lessee's fixtures; and
- (g) in the event of any dispute arising out of this clause the same will be referred to arbitration under the provisions of the laws for the time being in force in the State of New South Wales.

3.2 Notwithstanding anything to the contrary herein contained or implied:

- (a) the Lessee will have no such right of termination and rent, Outgoings and the other outgoings referred to in clause 2.6(b) will not abate if the destruction of or damage to the Premises was caused or contributed to by a deliberate act of the Lessee or any servant, agent, invitee or licensee of the Lessee; and
- (b) rent, Outgoings and the other outgoings referred to in clause 2.6(b) will not abate because of or during the period of the Upgrade Works.

4. Use of the Premises

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- 4.1 The Lessor reserves the right and liberty at all times during the Term to the Lessor and all persons claiming through or authorised by the Lessor, to install, maintain, use, repair, alter and replace all signs, drains, sewers, pipes, vents, flues, ducts, conduits, cables and wires passing through or along or in the Premises and to pass and run water, air, electricity, sewerage, drainage, soil, gas, smoke, fumes and other utility services through such drains, sewers, pipes, vents, flues, ducts, conduits, cables and wires and to enter upon such Premises for such purposes provided that in exercising such rights the Lessor must not interfere with the Lessee in its use and occupation of the Premises to any greater extent than may be reasonably necessary.
- 4.2 The Lessee must:
- (a) use the Premises or permit the Premises or any part thereof to be used only for the purpose specified in **Item 8** of the Reference Schedule and at all times fully comply with the Plan of Management in relation to use of the Premises;
 - (b) at the Lessee's expense, obtain and maintain all permits and licences required in relation to the supply and sale of food at the Premises;
 - (c) not at any time during the Term:
 - (i) permit noxious, immoral, noisome, offensive or illegal act, trade, business, occupation or calling to be exercised, carried on, permitted or suffered in or upon the Premises; or
 - (ii) permit any act, matter or thing whatsoever to be done in or upon the Premises which causes or may cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of adjoining or neighbouring lands or buildings;
 - (iii) hold or apply for any liquor licence in relation to the Premises or any certificate of registration under the *Registered Clubs Act 1976*,
 - (iv) sell or offer to sell from the Premises any liquor or alcohol or tobacco products;
 - (v) permit any liquor or alcohol to be consumed on the Premises;
 - (vi) permit any betting on the Premises; or
 - (vii) keep any animals or birds on the Premises or permit any animals or birds to enter the Premises.

5. Operation of the Premises

- 5.1 The Lessee must operate the Premises in accordance with all of the requirements specified in clauses 5.2 to 5.10 inclusive, with the Lessee being aware that in accordance with clause (b), the Lessor will during the Term regularly observe and monitor (including reference to the audit referred to in clause (c) and the reports provided in accordance with clause (d)) operation of the Premises and performance of the Lessee's Obligations having regard to the Key Performance Indicators.
- (a) The Lessee acknowledges and agrees:
 - (i) during the Term, the Lessor will regularly observe and monitor (including reference to the audit referred to in clause 5.1(c) and the reports provided in

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accordance with clause 5.1(d) operation of the Premises and/or performance of the Lessee's Obligations in accordance with this Lease having regard to the Key Performance Indicators;

- (ii) from time to time the Lessor may give directions to the Lessee in relation to operation of the Premises or performance of the Lessee's Obligations in accordance with this Lease having regard to the Key Performance Indicators;
- (iii) the Lessor will notify the Lessee in writing of any consistent failure by the Lessee to comply with such directions in relation to the Premises and/or performance of the Lessee's Obligations in accordance with this Lease having regard to the Key Performance Indicators; and
- (iv) subject to clause 5.1(b)(iii), if in the reasonable opinion of the Lessor, the Lessee:
 - (A) consistently fails to operate the Premises or perform the Lessee's Obligations in accordance with this Lease having regard to the Key Performance Indicators and any such directions given by the Lessor in accordance with clause 5.1(b)(ii); and
 - (B) fails to show cause to the Lessor's satisfaction (acting reasonably) why the Lessor should not terminate this Lease because of the Lessee's consistent failure to operate the Premises or perform the Lessee's Obligations in accordance with this Lease

the Lessor may by written notice to the Lessee terminate this Lease as at the date of termination specified in that notice.

(b) The Lessee agrees:

- (i) the Lessor may wish to conduct periodic audits during the Term to ensure the Lessee is complying with the terms and conditions of this Lease; and
- (ii) if required by the Lessor with reasonable notice, the Lessee must:
 - (A) meet with the Lessor from time to time to discuss any matter relating to this Lease; and
 - (B) permit the Lessor and/or its servants or agents to have access to the Premises from time to time at reasonable times for the purpose of conducting any such audit.
- (c) The Lessee must at the Lessee's expense provide to the Lessor by each Anniversary Date and each Market Rent Review Date, detailed written reports regarding the Lessee's management of the Premises during the prior Lease Year (such reports to be fully compliant with the Lessor's reporting requirements as notified by the Lessor to the Lessee from time to time).

5.2 Furnishing, Plant & Equipment

The Lessee must at the Lessee's expense, supply all furniture, furnishings, plant and equipment required by the Lessee for operation of the Premises all such items to be of such quality and quantity as the Lessor reasonably specifies.

5.3 Operating Hours

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During the Term, the Lessee must:

- (a) keep the Premises open for use as permitted under this Lease during:
 - (i) the Permitted Operating Hours; and
 - (ii) such other hours and times permitted by the Council (as the consent authority) from time to time in accordance with any development consent applicable to the Premises;
- (b) not use or permit the Premises to be used or open for use between the hours of 10:00 p.m. on any day to 6:00 a.m. the following day;
- (c) cause all lighting of the Courts to be extinguished between the hours of 10:00 p.m. on any day to 6:00 a.m. the following day;
- (d) ensure that the toilets included in the Premises remain open to the public during the Permitted Operating Hours of the Premises and at such other times as the Lessor directs; and
- (e) ensure that the toilets and the change rooms included in the Premises are securely locked whenever the Premises is closed.

5.4 Courts

If the Premises or any part of the Premises is used as tennis courts, the Lessee must during the Term:

- (a) maintain an online booking system for hire of the Courts;
- (b) keep all Courts, Court lighting and Court netting in good and substantial repair and condition to the reasonable satisfaction of the Lessor, in all respects and as nearly as possible in the same condition as at:
 - (i) the Commencing Date; or
 - (ii) the date of any installation, upgrading, replacement or renewal if any such items are installed, upgraded, replaced or renewed after the Commencing Date unreasonable wear and tear excepted;
- (c) maintain the Courts in proper playable condition;
- (d) provide all equipment (including Court netting) necessary to maintain the Courts in a proper and playable condition;
- (e) regularly inspect all Court netting to ensure they are in a good condition;
- (f) fully comply with all relevant standards regarding height and condition, promptly replace all Court netting as required, regularly inspect and promptly rectify all Court netting posts to ensure that footings are secure and nothing protrudes from the posts that may cause injury to users of the Courts and ensure that all post winders are operating correctly and are promptly replaced as required; and
- (g) regularly inspect the surface of all Courts to ensure there are no splits in the seams or depressions in the base that could be a hazard to users of the Courts and ensure there is no build-up of soil in the pile or mould that may create a slip hazard for users of the Courts.

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5.5 Compliance with Lessee's Business Plan

The Lessee must at all times during the Term, fully comply with the Lessee's Business Plan in relation to operation of the Premises.

5.6 Minimum Service Standards

The Lessee must at all times during the Term ensure:

- (a) all food preparation, serving and other working areas within the Kiosk are maintained in a clean and tidy condition and that all relevant health and hygiene standards are met;
- (b) all equipment and fittings (including the Lessor's fixtures and fittings) used in food preparation, serving and other working areas within the Kiosk are maintained in a safe, clean, tidy and hygienic condition and that all relevant standards are met;
- (c) the Kiosk is kept clean at all times including all tables and chairs being regularly cleaned;
- (d) all tables, chairs, umbrellas and shade cloths provided by the Lessee in the Kiosk must at all times be acceptable to the Lessor (acting reasonably) having regard to presentation and safety aspects;
- (e) focus on customer service including:
 - (i) provide all services in a prompt, courteous and efficient manner;
 - (ii) perform all services competently;
 - (iii) in all dealings with members of the public, exercise the highest standards of honesty, integrity, fair dealing and ethical conduct and always represent the Premises in a positive manner; and
 - (iv) refrain from doing or permitting to be done anything which would discredit, dishonour, reflect adversely upon or in any manner injure the reputation of the Lessor or the Premises; and
- (f) co-operation with the Lessor, its employees and agents to provide and promote the Premises and encourage and assist the local community in their use and enjoyment of the Premises.

5.7 Stock of Kiosk

The Lessee must at all times:

- (a) as regards food items, stock only healthy foods;
- (b) maintain adequate stock to meet customer demand; and
- (c) ensure all stock is sold or removed from sale by the relevant use by date.

5.8 Quality and Range of Food

The Lessee must at all times comply with all applicable food legislation and food safety standards.

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5.9 Pricing Policy

The Lessee must maintain prices consistent with local market rates for all food, drinks and other products sold from the Kiosk.

5.10 Compliance with Statutes and Notices

The Lessee must at all times promptly comply with all applicable:

- (a) Work Health & Safety legislation and requirements in relation to the Premises;
- (b) WorkCover requirements in relation to all employees of the Lessee; and
- (c) requirements of all other relevant statutes and statutory notices.

6. Maintenance, Repair and Cleaning**6.1 To Repair and Maintain**

- (a) The Lessee must at all times during the Term at the Lessee's expense:

- (i) keep all buildings, Appurtenances, lighting, fencing, gates, posts and all other structures on the Premises in good and substantial repair and condition to the reasonable satisfaction of the Lessor, in all respects and as nearly as possible in the same condition as at:
 - (A) the Commencing Date; or
 - (B) the date of any installation, upgrading, replacement or renewal if any such items are installed, upgraded, replaced or renewed after the Commencing Date

reasonable wear and tear excepted;
- (ii) keep tidy and in regularly and closely mown all grass surfaces;
- (iii) regularly inspect all Court lighting to ensure there are no indication of rust or cracks in the lighting posts and structures;
- (iv) promptly rectify any rust, cracks or other faults found on the lighting posts and structures to ensure there is no further deterioration which may affect the structural integrity of the posts and structures;
- (v) provide replacement light globes and tubes within twenty four (24) hours of failure of any globes and tubes in the Premises to ensure that all lighting meets all relevant standards;
- (vi) regularly inspect all fencing at the Premises to ensure that all posts, joints, gates and wire are all in good and serviceable condition with no signs of rust and promptly rectify all observed faults at the time of inspection;
- (vii) regularly inspect and clean all drains and drainage pits to ensure they are free flowing;
- (viii) regularly inspect all shelters to ensure they are maintained to a high standard for the comfort and safety of all patrons at the Premises;

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- (ix) engage a qualified lighting contractor to undertake annual inspections of all light poles and structures and to provide a written condition report to the Lessee;
- (x) promptly provide all such conditions reports to the Lessor;
- (xi) paint the interior of the Kiosk and all woodwork and ironwork of all structures now or usually painted in colours acceptable to the Lessor in a proper and workmanlike manner every two (2) years and prior to the later of the Terminating Date or the expiration of any holding over in accordance with Part 16 and/or at such other times as may be reasonably required by the Lessor; and
- (xii) regularly foliar spray annual weeds on all concrete paths around the Premises; and
- (xiii) regularly maintain all existing garden beds at the Premises.
- (xiv) Subject to clause 15 and except for the Lessee's Works, the Lessee will not be required to carry out work of a structural nature to the Premises unless the need for such work arises as a result of the particular use to which the Lessee has put in the Premises or unless the work is required as a result of damage caused to the Premises by the Lessee its servants agents or invitees.

6.2 To Keep Clean

- (a) The Lessee must at the Lessee's expense at all times during the Term:
 - (i) subject to clause 6.2(b), cause the Premises to be kept clean and free from dirt and rubbish; and
 - (ii) promptly remove and clean off all graffiti on any surface within the Premises.
- (b) Notwithstanding clause 6.2(a), the Lessor will regularly clean the toilets in the Premises.
- (c) The Lessee must promptly notify the Lessor if the toilets in the Premises are left unclean or require cleaning at any time.

6.3 Waste Bins, Rubbish and Trade Waste Removal

The Lessee must at the Lessee's expense:

- (a) provide and maintain at all times during the Term, in positions nominated by the Lessor, adequate garbage bins for the storage of rubbish and trade waste from the Premises;
- (b) at all times during the Term, store and keep all rubbish and trade waste for the Premises in the bins provided by the Lessee in accordance with clause (a);
- (c) at all times during the Term, ensure that all rubbish and trade waste bins used in connection with the Premises are not visible from outside the Premises except during nights when rubbish and garbage from the waste bins is collected by the garbage collector;
- (d) not allow rubbish, garbage or waste to accumulate except in the waste bins provided by the Lessee in accordance with clause (a);

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- (e) not burn any rubbish or waste upon the Premises;
- (f) cause all wet refuse (if any) to be removed from the Premises daily outside the normal trading hours of the Kiosk;
- (g) cause to be removed from the Premises from time to time all packing materials, cartons, containers and other waste material of every description which do not form part of the normal refuse removed by the Council;
- (h) enter into a trade waste agreement with an approved provider and provide annual certification of this agreement to the Lessor; and
- (i) cause all rubbish and trade bins to be regularly put out and available for collection by the Council as regards all rubbish and the approved trade waste contractor as regards all trade waste.

6.4 Communication Apparatus

The Lessee must not without the consent in writing of the Lessor which shall not be unreasonably withheld erect or place upon or within or without the Premises any radio or television aerial or antenna or any loudspeakers, screens or similar devices or equipment and will not without the like consent use or permit to be used any musical instrument, loudspeaker, radio, gramophone, television or other like media or equipment likely to be heard or seen from outside the Premises.

6.5 To Maintain Signs etc

The Lessee must during the Term, maintain all signs notices and advertisements approved by the Lessor and the Council in good repair and the Lessee indemnifies and agrees to keep indemnified the Lessor and the Lessor's servants and agents against all actions, claims, demands, suits whatsoever arising out of or relating to such signs, notices or advertisements.

6.6 Breakages

The Lessee must immediately make good any breakage defect or damage to the Premises and Appurtenances or to any adjoining premises or any facility or appurtenance thereof occasioned by want of care misuse or abuse on the part of the Lessee or its invitees or otherwise occasioned by any breach or default of the Lessee hereunder.

6.7 Broken Glass

The Lessee must promptly at its expense properly replace all broken, cracked or damaged glass and signs on or about the Premises not caused by the negligence of the Lessor.

6.8 Locks, Keys etc

The Lessee must at all times during the Term at its expense keep and maintain the doors, locks, window fittings of the Premises in good and efficient working order and at the expiration of the Term or sooner determination of this Lease return all keys of the Premises to the Lessor.

6.9 Waste Pipes, Drains etc

The Lessee must:

- (a) keep and maintain the waste pipes, drains and conduits originating within the Premises in a clean, clear and free flowing condition between their points of origin and

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their entry into any trunk drain and must at its expense employ licensed tradesmen to clear any blockage which may occur therein; and

- (b) give the Lessor prompt written notice of any defect in any pipes, drains or conduits within the Premises.

6.10 Lessor's Powers to Inspect and Repair

- (a) The Lessor must be entitled at all reasonable times and upon reasonable notice to enter upon the Premises with agents, workmen and other persons authorised by the Lessor and with all necessary equipment to view the state of repair of the Premises and thereafter to serve upon the Lessee a notice in writing specifying any defect of the Premises requiring the Lessee to repair the same in accordance with any covenant or provision herein contained. If the Lessee shall not repair the defect or defects specified in such notice or any of them within fourteen (14) days from the date of such notice the Lessor may with its agents and workmen and any other persons authorised by the Lessor and all necessary materials and equipment enter upon the Premises and repair all or any of the defects specified in such notice as the Lessor shall think fit and in addition to the Lessor's other remedies the Lessor may recover from the Lessee as a liquidated debt due and owing by the Lessee the cost of such repairs as the Lessee ought to have effected. If any such repairs are carried out by the Lessor, the Lessor shall carry out such repairs without undue or necessary interference with the occupation and use of the Premises by the Lessee.
- (b) The Lessor must be entitled at any time and without previous notice to enter upon the Premises with agents, workmen and other persons authorised by the Lessor and with all necessary materials and equipment to carry out any repairs which in the opinion of the Lessor are of an emergency nature. In the event that the Lessor shall pursuant to this clause carry out repairs which should in accordance with any covenant or condition herein contained or implied have been carried out by the Lessee the Lessor may recover from the Lessee as a liquidated debt due and owing by the Lessee the cost of carrying out such repairs. If any such repairs are carried out by the Lessor, the Lessor shall carry out such repairs without undue or unnecessary interference with the occupation and use of the Premises by the Lessee.
- (c) The Lessor must be entitled at all reasonable times and upon reasonable notice to enter upon the Premises with agents workmen and other persons authorised by the Lessor and with all necessary equipment to carry out any works or make any repairs or alterations or additions or other work which the Lessor reasonably deems is necessary for reasons of safety or for structural repairs to any part of the premises and which the Lessor may consider necessary or desirable to any building adjacent thereto from time to time but such repairs alterations or additions or other works shall be carried out by the Lessor without undue or unnecessary interference with the occupation and use of the Premises by the Lessee.

6.11 Notice of Damage

The Lessee must promptly give to the Lessor written notice of any substantial or permanent damage to the Premises or serious malfunction of any ventilation system or similar service at the Premises.

6.12 Pest Control

The Lessee must take all reasonable precautions to keep the Premises free of rodents vermin insects pests birds and animals and in the event of failing so to do will if so required by the Lessor but at the cost of the Lessee employ from time to time or periodically pest exterminators approved by the Lessor.

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6.13 Failure of Services

The Lessor will not be under any liability for any loss injury or damage sustained by the Lessee or any other person at any time as a result of or arising in any way out of the failure of the electricity or water supply or any other services or facilities provided by the Lessor or enjoyed by the Lessee in conjunction with the Premises.

7. Alterations and Additions

- 7.1 The Lessee must not nor must the Lessee permit any person to partition the Premises or make any alteration or addition to any structure on the Premises or to any partitions therein or any additions or alterations thereto without the prior written consent of the Lessor (as the owner of the Premises) which consent may in the Lessor's absolute discretion be withheld or given conditionally and the Council (as the consent authority) and the Lessee shall in the course of any such partitioning, alterations or additions made with the written consent of the Lessor and the Council observe and comply with all requirements of the Lessor, the Council and all public authorities.
- 7.2 Without prejudice to clause 7.1, the Lessee must when applying for the Lessor's approval to any alterations or additions to the Premises, submit with the application drawings and specifications in respect thereof prepared by a suitably qualified person.
- 7.3 Work in respect of alterations or additions to the Premises approved by the Lessor must only be carried out by contractors or qualified tradesmen reasonably approved by the Lessor and if required by the Lessor the Lessee must on completion of such work hand to the Lessor a certificate by a suitably qualified person to the effect that such work has been carried out in accordance with the drawings and specifications relating thereto as approved by the Council and in accordance with the requirements of all relevant public authorities.
- 7.4 The Lessee acknowledges and agrees:
- (a) the Council is the consent authority in relation to any development application in connection with the Premises; and
 - (b) nothing in this Lease is to be construed as fettering or restricting the Council's rights, powers and discretions as such consent authority.

8. Assignment, Subletting, Etc

- 8.1 The Lessee must not during the Term, sublet, assign, licence, part with possession, mortgage, charge or otherwise encumber its interest in:
- (a) the Premises or any part of the Premises; or
 - (b) this Lease
- or otherwise deal with the Premises.
- 8.2 Subject to clause 8.3, if the Lessee is a proprietary company, any transfer or transfers of shares in the Lessee during the Term having in the aggregate during the Term the effect of changing the identity of the person or persons having the right to cast twenty-five (25%) per cent or more of votes at meetings of shareholders of the Lessee must be deemed to be an assignment of the Lessee's interest in the Premises within the meaning of this clause 8.
- 8.3 Clause 8.2 will not apply to any transfer of shares between the existing shareholders of the Lessee as at the Commencing Date in relation to any sale of shares in the Lessee by an

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existing shareholder of the Lessee as at the Commencing Date to another existing shareholder of the Lessee as at the Commencing Date.

9. Insurance**9.1 Public Risk**

The Lessee must at the Lessee's expense, effect and maintain in respect of the Premises and any area outside the Premises in which the Lessee is required to undertake any work in accordance with this Lease at all times during the Term, in the name of the Lessee:

- (a) a public liability policy in such amount as may be reasonably required from time to time by the Lessor but in any event for not less than the amount specified in **Item 11** of the Reference Schedule for any one claim, bearing an endorsement extending the indemnity to such other risks of an insurable nature for which the Lessee is obliged to indemnify the Lessor, Her Majesty the Queen Her Heirs and Successors, the State of New South Wales and the Minister by this Lease and noting the interest of the Lessor; and
- (b) a workers compensation policy in respect of all employees and all employees of subcontractors with unlimited common law indemnity.

9.2 Building and Contents

The Lessee must at all times during the Term, insure and keep insured against all usual risks, including damage and destruction, all buildings at the Premises and the contents of the Premises for their respective full replacement value or on a reinstatement basis as required by the Lessor.

9.3 Additional Insurance Premiums

The Lessee must (in case the Lessor approves in writing any proposal by the Lessee to increase the risk), pay all extra premiums of insurance on the Premises or any part thereof if any be required on account of extra risk caused by the use of which the Premises are put by the Lessee.

9.4 Policies

The Lessee must by 31 May of each year of the Term, produce to the Lessor certificates of currency of the insurance policies which the Lessee is required to effect and maintain under this Lease for the following year commencing 1st June.

9.5 Fire Regulations

The Lessee must comply with insurance, sprinkler and/or fire alarm regulations in respect of any partitions which may be erected by the Lessee or by the Lessor at the Lessee's request upon the Premises and the Lessee must pay to the Lessor the cost of any alterations to the sprinklers and/or fire alarm installation which may become necessary by reason of non-compliance by the Lessee with the recommendations of the Insurance Council of Australia or the requirements of any Insurer.

9.6 Reputable Insurer

All policies of insurance required to be effected by the Lessee hereunder must be taken out with a reputable insurance office or company of sound financial standing.

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10. Indemnities and Release**10.1 Occupation at Risk of Lessee**

- (a) The Lessee agrees to occupy and use and keep the Premises at the risk of the Lessee and the Lessee indemnifies and must keep fully indemnified and releases to the full extent permitted by law, the Lessor, Her Majesty the Queen Her Heirs and Successors, the State of New South Wales and the Minister and their respective agents servants contractors and employees from all claims and demands of every kind and from all liability which may arise in respect of any accident or damage to property or death of or injury to any person of whatsoever nature or kind and that may be sustained:
- (i) when using or entering or near the Premises or adjoining land, roads or parks whether in the occupation of the Lessor, the Lessee or any other person where such injury arises or has arisen as a result of the negligence of or as a result of the creation of some dangerous thing or state of affairs by the Lessee or by any employee, agent or contractor of the Lessee and whether or not the existence of such dangerous thing or dangerous state of affairs was or ought to have been known to the Lessor other than as may be caused by the lack of care, deliberate act or negligence of the Lessor its agents servants contractors or employees;
- (ii) by the Lessee or any servant, agent, or contractor of the Lessee whilst undertaking any work outside the Premises in accordance with this Lease;
- (b) The Lessee agrees that the Lessor must have no responsibility or liability for any loss of or damage to fixtures or personal property of the Lessee other than as may be caused by the deliberate act or negligence of the Lessor its agents servants contractors or employees.

10.2 Indemnity

- (a) Without limiting the generality of clause 10.1, the Lessee agrees to indemnify and keep indemnified the Lessor, Her Majesty the Queen Her Heirs and Successors, the State of New South Wales and the Minister in respect of any claim which may arise out of the Lessee's use and occupation of the Premises and from and against all actions, suits, claims, debts, obligations, demands losses damages costs and expenses for which the Lessor may become liable in respect of or arising from:
- (i) the negligent or careless use, misuse, waste or abuse by the Lessee or any contractor, sub-contractor, licensee, invitee, client, customer or visitor of the Lessee or any other person claiming through or under the Lessee of the water, gas, electricity lighting or other services and facilities of the Premises or arising from any faulty fitting or fixture of the Lessee;
- (ii) overflow or leakage or other penetration of water (including rain water) fire gas electricity or any other harmful agent in or from the Premises caused or contributed to by any act or omission on the part of the Lessee or other persons as aforesaid;
- (iii) loss, damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the Premises by the Lessee or other persons as aforesaid;
- (iv) loss, damage or injury from any cause whatsoever to the Premises or to any

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property or person within or without the Premises occasioned or contributed to by an act, omission, neglect, breach or default of the Lessee or other persons as aforesaid; and

- (v) loss, damage, injury or death of the Lessee or any servant, agent or contractor of the Lessee whilst undertaking any work outside the Premises in accordance with this Lease.

- (b) The indemnity under clauses (a)(ii) to (a)(iv) inclusive shall not apply if the occurrence is wholly caused by the Lessor.

10.3 Supply Failure

Notwithstanding any implication or rule of law to the contrary, the Lessor shall not in any circumstances be liable to the Lessee for any loss or damages suffered by the Lessee for any malfunction, failure to function of the water gas or electricity services or the appurtenances contained in the Premises or for blockage of any sewers, wasters, drains, gutters, downpipes or storm water drains from any cause whatsoever.

11. Signs and Advertising

- 11.1 2 The Lessee must not paint, erect or affix or permit to be painted, erected or affixed any signs, notices or advertisements to any part of the Premises without the prior written consent of:

- (i) the Lessor (as the owner of the Premises); and
- (ii) the Council (as the consent authority in relation to the Premises).

- (c) The Lessee acknowledges and agrees with the Lessor:

- (i) that any application to the Lessor for consent to the painting, erection or affixing of any signs, notices or advertisements to any part of the Premises must be accompanied by full particulars of the proposed signs, notices or advertisements including plans with sufficient details of dimension, design, location, colour and structure; and
- (ii) that the Lessor may in its absolute discretion refuse to give its consent to any such application provided the Lessor acts reasonably.

- (d) The Lessee must not without first obtaining the Lessor's written consent (which consent may in the Lessor's absolute discretion be withheld or given conditionally) change the colour, size, location or composition of any sign, symbol, notice or advertisements that may have been approved by the Lessor and the Council as the consent authority.

11.2 Services

The Lessee must not interfere with any drains, water supply, gas, electrical, plumbing or other services contained in or about the Premises any of the Appurtenances in or about the Premises without the prior consent in writing of the Lessor provided that nothing in this clause shall limit or restrict the Lessee's obligation to employ a licensed tradesman to clear any blockage which may occur in the waste pipes, drains and conduits originating within the Premises.

11.3 Use of Appurtenances

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The Lessee must not use the Appurtenances in or about the Premises for any purpose other than those for which they are constructed and shall not place therein any tea leaves, sweepings, rubbish, rags or other harmful substances.

11.4 Infectious Illness

In the event of any notifiable infectious disease happening upon the Premises the Lessee must give all the necessary notices and any other information which may be required in respect thereof to the proper authorities and shall give notice in writing thereof to the Lessor and must at its own cost and expense thoroughly fumigate and disinfect the Premises.

11.5 Notice of Defects

The Lessee must advise the Lessor promptly and in writing of any damage sustained to the Premises or the non operation of any of the Appurtenances.

11.6 Make Good Surfaces

The Lessee must upon expiration of the Term or sooner determination of this Lease, make good any damage to any walls, ceilings or floors of the Premises caused by the Lessee affixing any signs, posters or other things to such surfaces.

11.7 Obstruction of Premises

- (a) The Lessee must not obstruct or permit to be obstructed by its employees, suppliers and others over whom it may have control any part of the Premises and in particular vestibules, entrances, passageways and stairways therein by leaving or placing therein any article or thing or by any meeting of persons.
- (b) The Lessee must not display or leave any goods outside the Premises.

11.8 Secure Premises

- (a) The Lessee must:
 - (i) cause all external openings of the Premises to be securely locked and fastened at all times when the Premises are not being used;
 - (ii) install and maintain at the Lessee's expense, a movement sensor, alarm system and smoke detectors within the Kiosk; and
 - (iii) bear the expense of all repairs and other costs arising from any trespass to the Premises.
- (b) The Lessee hereby irrevocably authorises the Lessor or the Lessor's employees or agents from time to time to enter the Premises for the purpose of locking any door or window of the Premises left unlocked or unfastened.
- (c) The Lessee must not permit any keys provided to the Lessee for access to the Premises to be used to provide unlawful access to the Premises by anyone other than the Lessee.

12. Quiet Enjoyment**12.1 Quiet Enjoyment**

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Subject to the Lessee paying the rent hereby reserved and duly and punctually observing and performing the covenants obligations and provisions in this Lease on the part of the Lessee to be observed and performed, the Lessee may peaceably possess and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by from or under the Lessor.

13. Default Termination etc**13.1 Essential Terms**

The parties expressly covenant and agree that each of the following covenants by the Lessee are essential terms of this Lease:

- (a) payment by the Lessee of rent and all other moneys payable by the Lessee under this Lease within fourteen (14) days of the due date (whether demanded or not);
- (b) observance by the Lessee of the covenants to use the Premises only as specified in **Item 8** of the Reference Schedule;
- (c) performance by the Lessee of the other covenants contained in clause 2;
- (d) performance by the Lessee of the covenants contained in clause 5;
- (e) performance by the Lessee of the covenants contained in clause 6.1;
- (f) performance by the Lessee of the covenants contained in clause 8;
- (g) performance by the Lessee of the covenants contained in clause 9;
- (h) performance by the Lessee of the covenants contained in clause 15;
- (i) performance by the Lessee of the covenants contained in clause 16;
- (j) performance by the Lessee of the covenants contained in clause 17; and
- (k) observance and performance by the Lessee of the covenants terms and conditions contained in this Lease which on the part of the Lessee are or ought to be performed within fourteen (14) days of the Lessor serving on the Lessee written notice requiring the Lessee to observe or perform any such covenant term or condition.

13.2 Re-entry or surrender on Default

In the event that the Lessee defaults in the observance of any essential term of the Lease or repudiates the Lease, the Lessor notwithstanding any delay omission extension or laches may (without prejudice to any other rights of the Lessor) immediately thereon or at any time thereafter and without any notice or demand:

- (a) re-enter (forcibly if necessary) the Premises or any part thereof and thereby determine the estate and interest therein of the Lessee and expel and remove from the Premises the effects of the Lessee and those claiming under the Lessee without being guilty of any manner of trespass and without the Lessor or any person authorised by it being liable for any loss damage or injury directly or indirectly suffered by the Lessee or those claiming under the Lessee or any of the effects;
- (b) determine this Lease and thereupon this Lease shall determine and cease but without releasing the Lessee from liability in respect of the breach or non-observance of any

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covenant, agreement, condition or stipulation or any non-payment of rental; and

- (c) elect to convert the Term into a tenancy from month to month and in this event this Lease will be determined as from the giving of such notice and thereafter the Lessee will hold the Premises from the Lessor as tenant from month to month (with the period of that month to month tenancy not to continue beyond the Terminating Date) at a monthly rental equal to the aggregate of the monthly instalment on account of the rental and the proportion of increases in Outgoings payable under this Lease at the date of giving such notice such rental being payable monthly in advance but otherwise on the terms and conditions of this Lease as far as they can be applied to a monthly tenancy.

13.3 Acceptance of Rent

- (a) Demand or acceptance of rent by the Lessor after default by the Lessee under this Lease shall be without prejudice to the exercise by the Lessor of the powers conferred upon it by clause 13.2 or any other right power or privilege of the Lessor under the Lease and will not operate as an election by the Lessor either to exercise or not to exercise any of such rights powers or privileges.
- (b) In respect of the Lessee's obligations to pay rent, the acceptance by the Lessee of arrears or of any late payment of rent will not constitute a waiver of the essentiality of the Lessee's obligations to pay rent in respect of the Lessee's continuing obligation to pay rent during the Term of this Lease.

13.4 Compensation for Breach

- (a) The Lessee must compensate the Lessor in respect of any breach of an essential term of this Lease in respect of such breaches.
- (b) The Lessor's entitlement under clause 13.4(a) is in addition to any other remedy or entitlement to which the Lessor is entitled (including to terminate this Lease).

13.5 Repudiation by Lessee

- (a) If the Lessee's conduct (whether acts or omissions) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any lease covenants, the Lessee must compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.
- (b) The Lessor will be entitled to recover damages against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the entire Term.
- (c) The Lessor's entitlement to recover damages must not be affected or limited by any of the following:
 - (i) abandonment or vacation of the Premises by the Lessee;
 - (ii) re-entry or termination of this Lease by the Lessor;
 - (iii) acceptance by the Lessor of the Lessee's repudiation;
 - (iv) conduct by the parties that constitutes a surrender by operation of law.
- (d) The Lessor will be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire Term of the Lease, including the periods before and

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after the Lessee has vacated the Premises, and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in clause 13.5(c), whether the proceedings are instituted before or after such conduct.

- (e) If the Lessee vacates the Premises, with or without the Lessor's consent, the Lessor will be obliged to take reasonable steps to mitigate its damages and to endeavour to lease the Premises at a reasonable rent and on reasonable terms. The Lessor's entitlement to damages must be assessed on the basis that the Lessor should have observed the obligation to mitigate damages contained in this paragraph. The Lessor's conduct taken in pursuance of the duty to mitigate damages must not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

13.6 Lessor May Remedy Lessee's Default

If the Lessee fails to pay any monies or charges as required under this Lease to any person other than the Lessor or if the Lessee fails to perform any affirmative covenant on the part of the Lessee under this Lease the Lessor may at its option as the agent of the Lessee make all such payments and do all such acts and things and incur all such expenses as may be necessary to perform such covenants and the full amount of any payments made or expenses incurred by the Lessor may constitute a liquidated debt due and owing by the Lessee to the Lessor and must be paid by the Lessee to the Lessor.

13.7 Interest

If the Lessee fails to pay to the Lessor any monies which are payable under this Lease within twenty eight (28) days from the due date for the payment thereof the Lessee must pay to the Lessor interest thereon such interest to be:

- (a) calculated at the rate specified in **Item 12** of the Reference Schedule;
- (b) computed from the due date for payment on daily balances; and
- (c) payable upon demand.

- 13.8 The Lessee acknowledges that the requirement of interest on overdue payments at the rate specified in **Item 12** of the Reference Schedule represents a genuine endeavour by the parties to compensate the Lessor for losses which the Lessor will suffer as a result of the late payment of monies owing under this Lease.

13.9 Separate Suits

The Lessor may without prejudice to any other remedy sue the Lessee for any monies which may from time to time become due and owing under the terms of this Lease and in particular the Lessor may sue for any instalments of rental or proportion of increases in Outgoings as and when they become due and by separate suit or suits sue for any further sum or sums which may be found to be due and owing upon the completion of the calculations required to be made at the end of each Lease year. Neither the institution of any such suit nor the entering of judgment therein shall bar the Lessor from bringing a separate or subsequent suit or suits for the balance of any rental or other monies due to the Lessor under the terms of the Lease.

13.10 Removal of Lessee's Contents on Default

The Lessor may upon re-entry or determination as aforesaid remove from the Premises any contents of every description including but without limiting the generality of the foregoing the Lessee's fixtures and stock in trade. Such contents shall be stored in a public warehouse or

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elsewhere at the cost of the Lessee without the Lessor being deemed guilty of conversion or becoming liable for any loss or damage occasioned by or during removal or storage. Any costs incurred by the Lessor in or about such removal and/or storage must be paid by the Lessee to the Lessor on demand.

13.11 Application of Monies Received after Termination

All monies tendered by the Lessee after any termination of this Lease and accepted by the Lessor may be and (in the absence of any express election by the Lessor) must be applied firstly on account of any rental and other monies accrued due hereunder but unpaid at the date of determination and secondly on account of the Lessor's costs of re-entry.

13.12 Yielding Up

The Lessee must at the expiration of the Term or sooner determination of this Lease, peaceably surrender and yield up to the Lessor the whole of the Premises in good and substantial repair, order and condition in all respects (having regard to their condition at the Commencing Date and the condition of any authorised improvements at the date of completion of those authorised improvement) and clean and free from rubbish, damage by fire, flood, lightning, storm, tempest, Act of God, war and reasonable wear and tear only excepted.

13.13 Removal of Fixtures, Fittings and Equipment

(a) The Lessee must within fourteen (14) days of expiration of the Term or sooner determination of this Lease, remove from the Premises:

- (i) any item of the Lessee's Works nominated by the Lessor to be removed; and
- (ii) all other fixtures, fittings, floor coverings, signs and notices which have been erected or installed by the Lessee prior to the Commencing Date or during the Term which are not then to vest in the Lessor in accordance with clause 15.10

and make good any damage to the Premises caused by such removal.

(b) Any fixtures, fittings, floor coverings, signs and notices not removed by the Lessee in accordance with clause 13.13(a) will at the option of the Lessor become the property of and vest in the Lessor or shall be removed by the Lessor with the cost of such removal and make good being recoverable by the Lessor from the Lessee.

13.14 Effect of Termination on any Antecedent Breach

The determination of this Lease must not prejudice or affect any rights or remedies of the Lessor against the Lessee on account of any antecedent breach by the Lessee of any covenant or provision herein contained and on the part of the Lessee to be performed and observed.

14. General Provisions**14.1 Exclusion of Warranties**

The Lessor does not warrant that the Premises are suitable for the purpose or purposes set out in **Item 8** of the Reference Schedule or for any other purpose and the Lessee shall take such steps and do all such acts, matters and things as may be necessary or desirable to enable the Premises to be used for the purposes for which they are leased.

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14.2 Whole Agreement

Each party hereby acknowledges that this Lease is not entered into on reliance of any representation or warranty express or implied save as may be specifically set out in the Lease and further that this Lease embodies the entire agreement between the parties and any written or oral agreement between the parties have ceased to have any effect immediately prior to the execution of this Lease. This Lease may be amended only by an instrument in writing executed by both the Lessor and the Lessee.

14.3 Waiver

No consent or waiver express or implied by the Lessor to or of any breach of any covenant, condition, agreement or obligation of the Lessee hereunder will be construed as a consent to or waiver of any other breach of the same or of any other covenant, condition, agreement or obligation of the Lessee hereunder.

14.4 Notices

Any notice direction or request hereunder may be served in the manner mentioned in Section 170 of the *Conveyancing Act 1919* and may be signed on behalf of the Lessor by its managing agent solicitor or attorney or by an authorised officer of the Lessor and any notice so signed will be conclusive evidence as to its execution and authority of the person whose name appears therein to sign the same.

14.5 Consents

Subject to any specific provision to the contrary, in any case where pursuant to this Lease the doing or execution of any act matter or thing by the Lessee is dependent upon the consent or approval of the Lessor, that consent or approval must not be arbitrarily or unreasonably refused or withheld.

14.6 Relationship of Parties

No provision contained herein nor any acts of the parties hereto will be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant upon the terms and conditions only as provided in this Lease.

14.7 Rent and Outgoings to Accrue on Daily Basis

In the event of the determination of this Lease at any time other than at the end of a rental year the Lessee must pay to the Lessor that proportion of the rental and the proportion of Outgoings accruing due prior to the date of that determination and any monies found to be due and owing by either party to the other hereunder will subject to any right of set off be paid within one (1) month of the date of determination. The rental and Outgoings shall be deemed to accrue from day to day.

14.8 Default by Lessor

- (a) Notwithstanding anything herein contained or implied to the contrary the Lessor must not in the case of a remediable default be or be deemed to be in default in the observance and performance of its obligations hereunder unless the Lessee shall have given notice in writing to the Lessor of such default and the Lessor has failed within a reasonable time thereafter to take proper steps to rectify such default.
- (b) The Lessee may by notice in writing require the Lessor to repair any defect of the Premises for which the Lessor is liable and the Lessor shall repair the defect specified in such notice within twenty eight (28) days from the date of such notice.

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14.9 Application of Rent Monies

A payment by the Lessee or receipt by the Lessor of a lesser amount than the total rental then outstanding will be deemed to be a payment or receipt of that part of such rental which has been outstanding for the longest time. No endorsement or payment on any cheque or letter accompanying any letter or payment as rental shall be deemed an accord and satisfaction and the Lessor may accept such cheque or payment without prejudice to the Lessor's right to recover the balance of such rental or to pursue any other remedy in this Lease provided.

14.10 Severability

If any term covenant or condition of this Lease or the application thereof is or becomes valid or unenforceable, the remaining terms covenants and conditions will not be affected thereby and each term covenant and condition of this Lease will be valid and enforceable to the fullest extent permitted by law.

14.11 Governing Law

This Lease must be governed by and construed in accordance with the laws applicable in the State of New South Wales.

14.12 Hazardous Substances

The Lessee must not bring on to the Premises or keep any Hazardous Substance on the Premises without the prior consent of the Lessor, which consent shall not be unreasonably withheld.

14.13 Artefacts

All fossils, artefacts, coins, articles of value, articles of antiquity, structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall be deemed to be the absolute property of the Lessor and the Lessee will as authorised by the Lessor watch or examine any excavations and the Lessee will take all reasonable precautions to prevent such articles or things being removed or damaged and will as soon as practicable after discovery thereof notify the Lessor of such discovery and carry out the Lessor's orders as to the delivery up to or disposal of such articles or things at the Lessee's expense.

14.14 Hazardous Chemicals

The Lessor warrants that it has not received any notice pursuant to the Environmentally Hazardous Chemical Act, 1985 (NSW).

14.15 Lessee to Comply with Environmental Laws

In relation to its use of the Premises, the Lessee must, during the Term, and in relation to the Premises:

- (a) comply with relevant Environmental Law;
- (b) use its best endeavours to prevent a breach of any Environmental Law;
- (c) report any breach even if accidental; and
- (d) provide to the Lessor as soon as reasonably practicable details of notices received by or proceedings commenced against the Lessee pursuant to an Environmental Law:

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- (i) relating to a breach or alleged breach by the Lessee of an Environmental Law; or
- (ii) requiring the Lessee to carry out works to decrease the affectation of the Premises by any Hazardous Substance.

15. Lessee's Works**15.1 Development Application and Development Consent**

The Lessee must at the Lessee's expense:

- (a) within two (2) months from the Commencing Date, lodge with the Council (as the consent authority) a development application for all of the Lessee's Works which require development consent; and
- (b) thereafter, use all reasonable endeavours to obtain as soon as practicable but in any event within three (3) months from the date of lodgement of the Development Application the Council's approval (as the consent authority) of the development application referred to in clause 15.1 (a).

15.2 Commencement and Practical Completion

- (a) The Lessee must commence the Lessee's Works by the date provided in **Item 16** of the Reference Schedule.
- (b) The Lessee must undertake the Lessee's Works at the Lessee's expense and not vary the Lessee's Works without the Lessor's written approval.
- (c) The Lessee must use all reasonable endeavours to complete the Lessee's Works in a proper and workmanlike manner as soon practicable but in any event by the Date for Practical Completion in accordance with the Development Consent and the Lessor's satisfaction.
- (d) The Lessee must at the Lessee's expense, promptly repair and make good to the Lessor's satisfaction, any damage to the Premises caused by the Lessee's Works.

15.3 Lessee's indemnity

- (a) The Lessee agrees to undertake the Lessee's Works at the risk of the Lessee and the Lessee indemnifies and must keep fully indemnified and releases to the full extent permitted by law, the Lessor, Her Majesty the Queen, Her Heirs and Successors, the State of New South Wales, the Minister and the respective agents, servants, contractors and employees of the Lessor, Her Majesty the Queen, Her Heirs and Successors, the State of New South Wales, the Minister from all claims and demands of every kind and from all liability which may arise in respect of any accident or damage to property or death of or injury to any person of whatsoever nature or kind and that may be sustained with respect to the Lessee undertaking the Lessee's Works, and the Lessee agrees that the Lessor must have no responsibility or liability for any such loss of or damage to fixtures or personal property of the Lessee other than as may be caused by the deliberate act or negligence of the Lessor its agents servants contractors or employees.
- (b) Without limiting the generality of clause 15.3(a), the Lessee to indemnify and keep indemnified the Lessor, Her Majesty the Queen, Her Heirs and Successors, the State of New South Wales and the Minister in respect of any claim which may arise out of

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the Lessee's use of the Premises to undertake the Lessee's Works and from and against all actions, suits, claims, debts, obligations, demands, losses, damages, costs and expenses for which the Lessor may become liable in respect of or arising from:

- (i) the negligent or careless use, misuse, waste or abuse by the Lessee or any contractor, sub-contractor, licensee, invitee, client, customer or visitor of the Lessee or any other person claiming through or under the Lessee of the water, gas, electricity lighting or other services and facilities of the Premises or arising from any faulty fitting or fixture of the Lessee;
 - (ii) overflow or leakage or other penetration of water (including rain water) fire gas electricity or any other harmful agent in or from the Premises caused or contributed to by any act or omission on the part of the Lessee or other persons as aforesaid;
 - (iii) loss, damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the Premises by the Lessee or other persons as aforesaid; and
 - (iv) loss, damage or injury from any cause whatsoever to the Premises or to any property or person within or without the Premises occasioned or contributed to by an act, omission, neglect, breach or default of the Lessee or other persons as aforesaid.
- (c) The indemnity under clauses 15.3(a) and 15.3(b) and shall not apply if the occurrence is wholly caused by the Lessor.

15.4 Lessee's Insurance

- (a) The Lessee must effect and keep current during construction of the Lessee's Works (and ensure all contractors of the Lessee have) policies of insurance as follows:
 - (i) public liability insurance in the joint names of the Lessor and the Lessee in the sum of \$20 Million for any one claim;
 - (ii) contractor's all risk insurance to the full value of the Lessee's Works;
 - (iii) an unlimited policy of workers compensation insurance; and
 - (iv) any other insurance reasonably required by the Lessor.
- (b) The Lessee's insurances must be endorsed with both the Lessor and the Lessee named as principals with cross-liability and waiver of subrogation clauses and must contain terms and conditions reasonably satisfactory to the Lessor.
- (c) Before the Lessee commences the Lessee's Works, the Lessee must give the Lessor:
 - (i) certificates of currency of each such insurance policy; and
 - (ii) a letter from each insurer stating that the insurance policy will not lapse or be cancelled without the insurer giving the Lessor 30 days' written notice.

15.5 Maintenance and Defects Liability

The Lessee must at its expense, promptly remedy to the Lessor's satisfaction, any defects in the Lessee's Works arising during the Defects Liability Period.

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15.6 Lessor not liable for Structural Defects

The Lessor shall not be required by the Lessee or be liable to undertake repair of any structural or latent in the Premises.

15.7 If the Lessee fails to complete all of the Lessee's Works by the Date for Practical Completion in accordance with the Development Consent and to the Lessor's satisfaction, the Lessee must pay to the Lessor on demand as additional rent the cost of all such uncompleted works (excluding GST) as determined by the Lessor (acting reasonably).

15.8 The Lessee must within two years after the Lessee resurfaces the Courts, engage at the Lessee's expense, an independent consultant to inspect the Courts and advise the Lessee whether it is necessary or desirable that the Lessee undertake any remedial works to the surface of the Courts and if so, the Lessee must prior to the Terminating Date, undertake all such remedial work at the Lessee's expense to the Lessor's satisfaction.

15.9 The Lessee acknowledges that the Lessee is not entitled to any refund by the Lessor or any credit against rent or any other compensation by the Lessor for any amount incurred by the Lessee in relation to undertaking and completing the Lessee's Works.

15.10 The Lessee acknowledges and agrees that upon expiration of the Term or sooner determination of this Lease, subject to clause 13.13, ownership of all the Lessee's Works (including the lighting of the Courts) shall vest in and become the unencumbered property of the Lessor with no compensation payable by the Lessor to the Lessee.

16. Holding Over

16.1 If the Lessee holds over after the Terminating Date with the written consent of the Lessor, the Lessee shall become a monthly tenant only of the Lessor for a period not exceeding twelve (12) months at a monthly rental equivalent to the monthly proportion of the Annual Rent payable by the Lessee in accordance with clause 16.2 and otherwise on the same terms and conditions as contained in this Lease (as applicable).

16.2 The monthly proportion of the Annual Rent payable by the Lessee from and including the first day of any holding over shall be the Annual Rent for the prior Lease Year increased in accordance with clause 2.3.

16.3 Any holding over in accordance with clause 16.1 must not exceed twelve (12) months and may be terminated by either party at any time with one (1) month's written notice.

17. Bank Guarantee

17.1 Simultaneously upon execution of this Lease, the Lessee must deliver to the Lessor a unconditional bank guarantees in a form acceptable to the Lessor and in favour of the Lessor for the amount specified in **Item 13** of the Reference Schedule as security for the performance of the Lessee's Obligations.

17.2 Subject to clauses 17.3 and 17.5, as at each Anniversary Date and each Market Rent Review Date, the Bank Guarantee may, if required by the Lessee be reduced by thirty thousand dollars (exclusive of GST) by the Lessee providing to the Lessor a substitute unconditional Bank Guarantee for the reduced Security Amount.

17.3 When during the Term there is a rent review in accordance with this Lease, the Lessee must within one (1) month after each rent review, provide to the Lessor as additional security for

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performance of the Lessee's Obligations an additional bank guarantee in a form acceptable to the Lessor and in favour of the Lessor for the amount equivalent to the increase in the Annual Rent inclusive of GST payable from the relevant Anniversary Date less the amount of the Bank Guarantee then held by the Lessor under this Lease.

- 17.4 The Bank Guarantee must be held by the Lessor during the Term as security for performance of the Lessee's Obligations and the Lessor may from time to time without prejudice to the Lessor's other rights under this Lease, call in any amount upon the Bank Guarantee and apply that amount in or towards satisfaction of any amount of rent or other monies payable by the Lessee to the Lessor under this Lease, which may become due and payable as a result of any breach of the Lessee's Obligations.
- 17.5 If the Lessor makes a call against the Bank Guarantee, the Lessee must within one (1) month after written notification from the Lessor, provide the Lessor with an additional unconditional bank guarantee in a form acceptable to the Lessor and in favour of the Lessor equivalent to the amount of the Bank Guarantee called upon.
- 17.6 The Lessee irrevocably and unconditionally agrees:
- (a) that any calling in of the Bank Guarantee in accordance with this Lease must not operate or be deemed to constitute a waiver or release of any breach of the Lessee's Obligations;
 - (b) that the Lessee must not assign or encumber or purport to assign or encumber the Bank Guarantee; and
 - (c) that the Lessor must not be bound by any such assignment or encumbrance or purported assignment or encumbrance.

18. Personal Guarantee

- 18.1 In consideration of the Lessor entering into this Lease, the Guarantors (as witnessed by their execution of this Lease), each irrevocably and unconditionally covenant and agree with the Lessor as follows:
- (a) the Guarantors each guarantee to the Lessor that they will with the Lessee be jointly and severally liable to the Lessor for the due payment of all moneys to be paid by the Lessee under this Lease including the payment of rent and the due performance and observance by the Lessee of the Lessee's Obligations;
 - (b) the Guarantors will jointly and severally indemnify the Lessor and the Minister and agree at all times thereafter to jointly and severally keep the Lessor and the Minister fully indemnified from and against all losses and expenses which the Lessor may suffer or incur in consequence of any breach or non observance of any of the Lessee's Obligations and the Guarantors each agree that the Guarantors must remain jointly and severally liable to the Lessor under this indemnity notwithstanding as a consequence of such breach or non observance the Lessor has exercised all of its rights under this Lease and notwithstanding the Lessee may be wound up or dissolved and notwithstanding that the guarantee given by the Guarantors may for any reason whatsoever be unenforceable either in whole or in part;
 - (c) on any default or failure by the Lessee to observe and perform any of the Lessee's Obligations, the Guarantors will forthwith on demand by the Lessor pay and make good to the Lessor all losses and expenses sustained or incurred by the Lessor by reason or in consequence of any such default or failure by the Lessee in performing or observing any of the Lessee's Obligations without the necessity of any prior demand having been made on the Lessee;

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- (d) the liability of the Guarantors under this guarantee and indemnity must not be affected by the granting of time or any other indulgence to the Lessee or by the compounding, compromise, release, abandonment, waiver, variation or renewal of any of the rights of the Lessor against the Lessee or by any neglect or omission to enforce such rights or by any other thing which under the law relating to the sureties would or might but for this provision release the Guarantors in whole or in part from their obligations under this guarantee and indemnity;
- (e) notwithstanding that as between the Guarantors and the Lessee, the Guarantors may be as surety only, nevertheless as between the Guarantors and the Lessor, the Guarantors must be deemed jointly and severally to be primary debtors and contractors with the Lessor;
- (f) to the fullest extent permitted by law, the Guarantors waive such of their rights as surety or indemnifier (legal, equitable, statutory or otherwise) which may at any time be inconsistent with any of the provisions of the guarantee and indemnity contained in this clause 18.1; and
- (g) the obligations of the Guarantors under the guarantee and indemnity contained in this clause 18.1 must continue to remain in force until all moneys payable by the Lessee pursuant to this Lease have been paid and until all of the Lessee's Obligations have been performed, observed and satisfied and such obligations must not be reduced or affected by the insolvency, liquidation or dissolution of the Lessee or the bankruptcy of any of the Guarantors.

19. Termination of Lease Under Section 109 of CL Act

- 19.1 The Lessor and Lessee acknowledge that, subject to clause 19.2, this Lease will terminate under Section 109 of the CL Act if the Reserve is revoked or that part of the Reserve is revoked that comprises the whole or part of the Premises unless the revocation notification otherwise provides.
- 19.2 Where only part of Premises is affected by a Revocation or proposed Revocation, the Lessor undertakes to consult with the Lessee and the Lessee undertakes to consult with the Lessor to determine if an agreement under Section 109(3) of the CL Act can be reached for the continuation of this Lease in respect to that part of the Premises not affected by the revocation.
- 19.3 The Lessee expressly acknowledges that as provided by Section 109(5) of the CL Act, no compensation is payable in respect of the termination of this Lease by the operation of Section 109 and no compensation shall be payable.

20. Interdependency

- 20.1 This Lease is interdependent with the Bexley Lease and any breach by the Lessee under the Bexley Lease shall be a breach of this Lease.
- 20.2 If the Bexley Lease is terminated, this Lease shall terminate as at the date of termination of the Bexley Lease.

21. New Lease

- 21.1 The parties agree that if at any time during the Term, a separate Torrens Title Folio issues for the Premises:

- (a) the parties must upon written request by the Lessor promptly terminate this Lease

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(with the Lessee executing a surrender of this Lease) and simultaneously execute a new Lease of the Premises with reference to the Folio for the remainder of the Term upon the terms and conditions of this Lease

- (b) each party must pay their own legal costs in relation to any such termination of this Lease and execution of any such new Lease; and
- (c) the Lessee must pay the registration fees payable to register any such surrender of this Lease and new Lease.

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Reference Schedule

Item 1	Lessee:	Golden Goal Pty Limited ACN 134 730 644
Item 2	Commencing Date:	1 OCTOBER 2013
Item 3	Terminating Date:	30 SEPTEMBER 2023
Item 4	Annual Rent:	Thirty thousand dollars (\$30,000) excluding GST subject to clauses 2.3 to 2.5 inclusive.
Item 5	Rent Review:	<p>(a) Fixed: Subject to clause 2.5, the greater of CPI or 5% as at each Anniversary Date in accordance with clause 2.3.</p> <p>(b) Market Subject to clause 2.5 Market rent review as at each Market Rent Review Date in accordance with clause 2.4.</p>
Item 6	Market Rent Review Dates:	2015, 2018 and 2021 subject to clause 2.5.
Item 7	Lessee's Proportion of Outgoings:	One hundred per cent (100%).
Item 8	Permitted Use of Premises:	Tennis Facility
Item 9	Key performance Indicators:	<ol style="list-style-type: none"> 1. Compliance with the requirements of this Lease. 2. Level of use the Premises by various sectors of the community. 3. Satisfactory ongoing maintenance program for the Courts and surrounding infrastructure. 4. Satisfactory delivery of the Lessee's Works. 5. Annual compliance audits conducted by the Lessor.
Item 10	Permitted Operating Hours:	From 8:00 am to 11:00 pm each day except Christmas Day.
Item 11	Public Liability Insurance:	Twenty million dollars (\$20 million) or such higher amount as recently required by the Lessor.
Item 12	Interest Rate:	The rate payable from time to time on Supreme Court judgment debts in accordance with the Rules of the Supreme Court of New South Wales.
Item 13	Bank Guarantee:	Three months passing rent
Item 14	Guarantors:	Aleksandar Medakovic Terry Palapanis Evangelos Petratos

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* THE COMMON SEAL OF THE COUNCIL OF THE CITY
OF ROCKDALE WAS HEREUNTO AFFIXED ON THE
4TH DAY OF DECEMBER 2012 IN PURSUANCE OF A
RESOLUTION PASSED ON THE 20TH DAY OF JUNE 2012.

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Item 15 Lessee's Works:
Item 16 Date for Commencement of
Lessee's Works:
Item 17 Date for Practical
Completion of Lessee's
Works:

ATTACHED AS ANNEXURE B

Shane O'Brien
COUNCILLOR SHANE O'BRIEN
MAYOR

Executed as a Deed

R 69998
Signed on behalf of Scarborough Park (P 500)
421 And R 6999 98 Reserve Trust the Affairs)
of which are managed by Rockdale City
Council by its duly authorised officer pursuant to
a Resolution of the Council passed on 20th day of JUNE
2012 in the presence of:

Witness

Director

TODD AULSON
Name (please print)

Executed by Golden Goal Pty Limited ACN
134 730 644 in accordance with section 127 of
the Corporations Act 2001 (Cth):

Director

(Print) Full Name

SIGNED SEALED AND DELIVERED by the said)
Aleksandar Medakovic)
in the presence of:)

Signature of Witness

Director/Secretary

(Print) Full Name

ALEKSANDAR MEDAKOVIC

Signature of Guarantor

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TERRY PALAPANIS
Name of Witness

Aleksandar Medakovic

SIGNED SEALED AND DELIVERED by the said)
Terry Palapanis in the presence of:)

Aleksandar Medakovic
Signature of Witness

ALEKSANDAR MEDAKOVIC
Name of Witness

Terry Palapanis
Signature of Guarantor
Terry Palapanis

SIGNED SEALED AND DELIVERED by the said)
Evangelos Petratos in the presence of:)

Aleksandar Medakovic
Signature of Witness

ALEKSANDAR MEDAKOVIC
Name of Witness

Evangelos Petratos
Signature of Guarantor
Evangelos Petratos

CONSENT

Stephen Fenn
Stephen Fenn

Signed by the Delegate of the Minister
Administering the Crown Lands Act
Date: *6/9/13*

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Deed of Lease
Premises: Scarborough Park Tennis Courts,
1A and 1B Hawthorne Street, Ramsgate

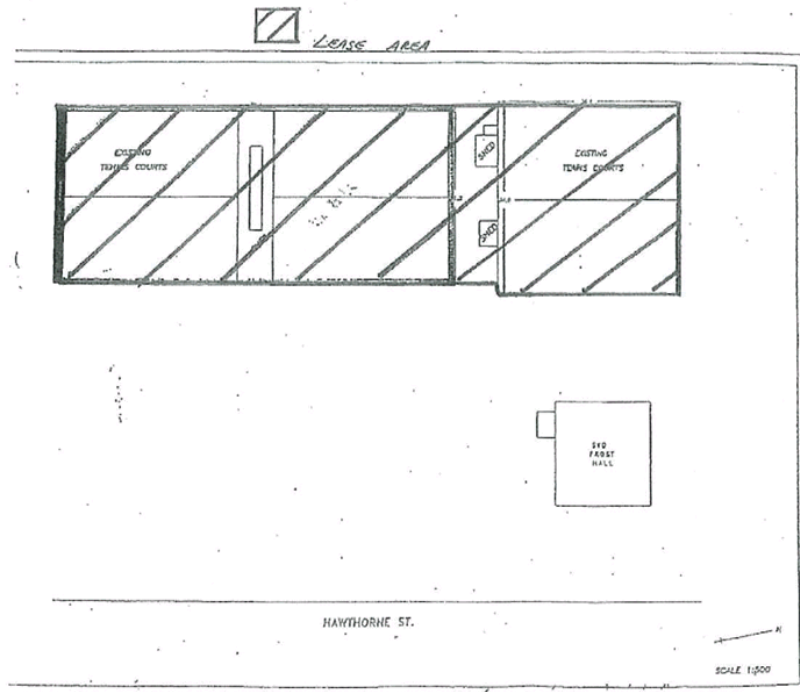
HWL Ebsworth

Annexure "A" Plan

"A"

THIS IS THE ANNEXURE "A" REFERRED TO IN THE DEED OF
 LEASE PREMISES: SCARBOROUGH PARK TENNIS COURTS, 1A
 AND 1B HAWTHORNE STREET, RAMSGATE MADE
 2012 BETWEEN
 SCARBOROUGH PARK (P500421 and ~~P6000000~~) RESERVE
 TRUST THE AFFAIRS OF WHICH ARE MANAGED BY ROCKDALE
 CITY COUNCIL AND GOLDEN GOAL PTY LIMITED ACN 134 730
 644

R69998



4 October 2012

Error! Unknown document property name.

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Annexure B**Lessee's Schedule of Works**

The below works form the content of Items 15, 16 and 17 of the Reference Schedule of this Lease:

Work to be Undertaken	Commencement Date of Work	Completion Date of Work	Standard to be Met
Repair, Clean and Sand Court Surfaces	Within three months of commencement of lease	Within three months of commencement of lease	N/A
Rewire and reinforce existing fencing	Within three months of commencement of lease	Within three months of commencement of lease	N/A
Submit DA to erect lighting poles on all courts	Within two months of commencement of lease	Within two months of commencement of lease	Standards to be set by DA process
Replace all hinges and light fittings	Within three months of commencement of lease	Within three months of commencement of lease	N/A
Resurface Courts 1 and 2	Within two years of commencement of lease	Within two years of commencement of lease	Tennis Australia approved standards
Resurface Courts 3 and 4	Within five years of commencement of lease	Within five years of commencement of lease	Tennis Australia approved standards
Resurface Courts 5 and 6	Within seven years of commencement of lease	Within seven years of commencement of lease	Tennis Australia approved standards

It is noted that in addition to these works, the Lessee is required to clean and maintain the property at all times during the term of the Lease.

TP AM AD

Sport & Recreation Committee

28/10/2019

Item No	5.6
Subject	Licence Agreement With Rockdale Ilinden Soccer Club Inc - Bicentennial Park South
Report by	Samantha Urquhart, Manager Property
File	SF19/4611

Summary

This report tables a response from Rockdale Ilinden Soccer Club Inc. pertaining to the following items which relate to Bicentennial Park South:

- Market Rent Review.
- Maintenance.
- Future replacement costs and management of the playing surface.

A presentation will accompany this report to allow the Sport & Recreation Committee to consider the Club's Proposal and options for a response.

Officer Recommendation

- 1 That the attachments to this report be withheld from the press and public as they are confidential for the following reason:

With reference to Section 10(A) (2) (c) of the Local Government Act 1993, the attachment relates to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.
 - 2 That the Sport & Recreation Committee notes the proposal received from the Rockdale Ilinden Soccer Club Inc.
 - 3 That the Sport & Recreation Committee considers the options outlined in the presentation and continues negotiations centring on a rent equivalent to the anticipated annualised replacement costs of the synthetic playing surface, implemented in a staged manner not to affect the Clubs operation.
 - 4 That the additional rent received be held in the Council reserve for future city wide synthetic playing surface replacements.
-

Background

Rockdale Ilinden Soccer Club (the Club) hold two separate licence agreements within the open space precinct known as Bicentennial Park, namely:

- Bicentennial Park South – Expiring 30 September 2030.
- Bicentennial Park East – Expiring 13 September 2030 (however likely to end June-October 2020 due to the RMS requirements for the land).

The agreement relating to Bicentennial Park South has been a long standing matter on the agenda item with the Sport and Recreation Committee.

As a summary of the background, in 2018 Council installed a synthetic playing surface at Bicentennial Park South. The installation of the synthetic instigated a requirement to address three (coinciding) items relating to the licence agreement, these being:

- 1 Market Rent Review.
- 2 Maintenance.
- 3 Future replacement costs and management of the playing surface.

The above, in part, requires an amendment to the agreement, specifically around the aspect of future replacement.

Council has long sought a formal response from the Club on the above three items, for which this was received (by way of email) on 10 October 2019. A copy of this response is tabled as Annexure 1.

Market Rent Review

In relation to the market rent review, this fell due 1 October 2017, however clause 14.5 provides that where the Licensor does not re-determine the rent provided for in subclause 14.5(a) [being the market rent review] it may subsequently re-determine the Rent at any time before the next Market Rent Review Date [1 October 2020], with no succeeding Market Rent Review Date being postponed by reason of the operation of clause 14.5(c).

The Market Rent Review was undertaken post the commission of the new synthetic playing surface. Council commissioned Southern Alliance Valuation Services to assess the market, with that assessment noting the rent to be between \$62,000 to \$78,000 per annum excl GST (Annexure 2 – Council Valuation). The Club has challenged this assessment and submitted their own valuation advice (Annexure 3 – Club's Valuation).

Maintenance

In relation to the maintenance, the existing agreement provides capacity for an ancillary maintenance schedule as the Club currently maintain the site, including the former turf playing area. The updated maintenance schedule (replacing the existing) is to be based on the manufactures specification, once the contacted maintenance contract (as part of the original build contract) concludes.

Replacement Costs

In relation to the future replacement, the Club agrees to Council holding a sinking fund for the future replacement, however advise they are not in a position to make payment equivalent to the full cost of replacement.

The estimated replacement of the playing surface, as an annualised amount, is within the range of \$56,004 to \$64,155, excluding uncosted elements such as removal, disposal etc. The estimated replacement of the shock pad, as an annualised amount, is \$7,088 per annum based on a 20 - 25 year life span. This amount excludes any minor/major works that may be required in conjunction with the first playing surface replacement.

Next Steps

A presentation will be tabled with the Committee to discuss and agree a position on a suitable market rent, considering replacement costs.

Attachments

- 1 Annexure 1 - Club's Proposal (confidential)
- 2 Annexure 2 - Council Valuation (confidential)
- 3 Annexure 3 - Club Valuation (confidential)

Sport & Recreation Committee

Item No 5.7
Subject
Report by
File SF19/7712

Summary

This report provides an update on the Sport and Recreation related projects that are managed by the Major Projects Unit.

Officer Recommendation

That the Sport and Recreation Committee receives and notes the report.

Background

Update on Major Projects:

Ador Reserve Sporting Amenities

The Contractor has commenced on site and the project is due to be completed in April 2020.

Arncliffe Park Synthetic Field

The Contractor has commenced on site and the project is due to be completed in April 2020.

AS Tanner Reserve Amenities and Arches Hall

Construction is due to be completed in November 2019.

Cahill Park Tennis Courts

An options report will be presented to the Sport & Recreation Committee.

Gardiner Park Synthetic Field

A consultant has been engaged and the detailed design is underway. The Banksia Tigers and the St George Football Association have requested for construction commencement to be delayed until after the soccer season 2019/20. The commencement of construction has been agreed for 17 August 2020.

Hensley Reserve Athletic Synthetic Track Renewal

The tender for the running track renewal works was advertised on 15 October and the recommendations on the preferred tenderer are scheduled to be presented to Council at the December Council meeting.

L'Estrange Sporting Amenities

The Major Projects team are currently compiling survey, geotechnical and flood information on the park and an architect has commenced concept and detailed design. A report with the concept/detail of the project will be presented in December 2019.

Mutch Park Skate Park

The construction works are complete and the official opening is scheduled for Sunday 27 October 2019.

Mutch Park toilets for skate park in Squash Centre

The existing squash centre toilets are to be refurbished to accommodate external toilets to cater for the skate park. The Major Projects team are currently procuring building services for the implementation of the works.

Rowland Park Sporting Amenities and Playground

The construction works are complete and the official opening was held on 21 September 2019.

Syd Frost Hall and Amenities

The Tender for the construction works was approved by Council on 11 September. The builder will commence on site early November 2019 to align with the opening of AS Tanner, this way the booking for Syd Frost Hall can be accommodated at AS Tanner for the duration of the construction.

Attachments

Nil

Sport & Recreation Committee

28/10/2019

Item No	5.8
Subject	Hensley Athletic Field Update
Report by	Gavin Ross, Coordinator Sport and Recreation
File	F19/604

Summary

It was requested that Sport and Recreation Manager explore the feasibility of widening the track at Hensley Athletic Field to international standards. This widening was to be incorporated as part of a planned project to refurbish the existing track surface.

Officer Recommendation

That Council does not proceed with the suggested widening of the track at Hensley Athletic Field due to the fact:

- 1 That there would be significant costs associated to the relocation of drainage to accommodate for the additional lanes, there is no funding allocated to such works.
 - 2 That the widening of the track would require the relocation of fencing due to an unsafe proximity between the outer lane and the existing fence line. This would both require the relocation of the fence and potentially a change to the existing boundary, increasing the footprint of the facility to allow for the repositioning of the fence. Such work would potentially require a Development Application and incur unbudgeted costs.
-

Background

The Hensley Athletic Field is scheduled to receive programmed maintenance to refurbish the existing track in response to general wear and tear. It has been noted by Council that the track is not compliant with international standards. It was requested that Council explore the feasibility of expanding on this scheduled maintenance to include the widening of the track to meet international standards.

Attachments

Nil

Sport & Recreation Committee

28/10/2019

Item No	5.9
Subject	Arncliffe Aurora Football Club
Report by	Gavin Ross, Coordinator Sport and Recreation
File	F19/604

Summary

It was requested that a draft permit for the use of Arncliffe Park by Arncliffe Aurora be presented at the next Sport & Recreation Committee meeting in October.

Officer Recommendation

- 1 That the Committee notes the example permit tabled.
 - 2 That the Committee endorses the example permit.
 - 3 That the Sports & Recreation team will issue a permit upon receipt of the next seasonal booking application made by Arncliffe Aurora Football Club.
-

Background

Council issues permits for the hire and use of its community and recreational facilities.

Attachments

Annexure 1 - Arncliffe Aurora Example Permit [↓](#)

SEASONAL PERMIT 2020 WINTER ALLOCATION



Trim Ref: 19/123456
Date of Issue: 7 March 2019
Applicant Name: Arncliffe Aurora
Contact: Sam Hassan
Address: 7 Barden Street, Arncliffe 2205
Contact Details: Mobile: 0405 129 351
Location: Arncliffe Park
Dates & Hours of Usage: 4 April 2020 to 30 August 2020
Monday – Friday, 6:00pm to 10:00pm
Saturday – Sunday, 9:00am to 4:00pm
Fees to be invoiced: Administration Fee: \$115.00
Weekday Fee Per Hour: \$33.00
Weekend Fee Per Day: \$125.00

Conditions under which approval is given, is in line with Council's Schedule of Terms and Conditions of Hire – Community & Recreational Facilities.

Special Conditions of Use

- a) No vehicles to be taken onto reserve without Council's prior consent.
- b) No liquor to be taken onto reserve or adjoining areas.
- c) Proper supervision to be given at all times to ensure that other park users are not put at risk.
- d) No amplified music to be played.
- g) The Reserve to be left in a clean and tidy condition, failure to do so will result in an invoice being sent for cleaning costs incurred by Council.
- h) Wet Weather – Please note a decision to close fields is NOT made until after 2:00pm on any given day.
For inquiries please contact as follows:
Call the wet weather line on 9562 1637
Council's Website at www.bayside.nsw.gov.au/stateofplay
Council's social media channels on Facebook and Twitter (@BaysideNSW)
Wet weather advice will NOT be updated over the weekend.

Recreation Booking Officer

Please keep this permit available for inspection by authorised Council Officers.

Bayside Customer Service Centres: Rockdale Library, 444-446 Princes Highway, Rockdale | Mon-Fri 8:30am-4:30pm
Westfield Eastgardens, 152 Bunnerong Road, Eastgardens | Saturday 9am-1pm
Phone **1300 581 299** | **9562 1666** Email council@bayside.nsw.gov.au Website www.bayside.nsw.gov.au
Telephone Interpreter Services: 131 450 Τηλεφωνικές Υπηρεσίες Διερμηνέων | خدمة الترجمة الهاتفية | 電話傳譯服務處 | Служба за преведување по телефон