EXPRESSION OF INTEREST

Saratoga Tennis Club Recreation Facility

|  |
| --- |
|  |

Gosford City Council is inviting Expressions of Interest (EOI) from all parties interested in the Recreation Facility Licence of Saratoga Tennis Club. The premise is located on Willaroo Rd, Saratoga, R1007, Lot 7035 DP 1023234.

The facility will be placed under a Community Licence for the period of three (3) years from the date of the signed agreement. The purpose of the Community Licence is for the management, maintenance and operations of the facilities as per the obligations of the Licensee under the terms and conditions of the Community Licence.

The facility comprises two (2) tennis courts, four (4) floodlighting poles and associated infrastructure, one (1) clubroom and two (2) picnic tables.



 Denotes Saratoga Tennis Facility

**Submission**

Interested parties are invited to submit an EOI to Gosford City Council by 1:00pm 4th December 2015.

Submissions involve completion of a Business Plan stating the position of the applicant and intentions of management, maintenance and operation of the facility for the community. This includes demonstrated ability to operate an organisation in a profitable manner, whilst servicing the community thus satisfying the terms and conditions of the Community Licence. A copy of the Community Licence is attached.

The Business Plan will need to include current or intention of Incorporation as an Association, whereby involving five (5) or more individuals who intend to authorise the association, a statement of the associations’ objectives and a draft constitution. [http://www.fairtrading.nsw.gov.au/ftw/Cooperatives\_and\_associations/Incorporating\_an\_association.page?#Incorporating\_a\_new\_association](http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Incorporating_an_association.page#Incorporating_a_new_association)

All enquiries relating to the Community Licence should be directed to Juana Phillips, Property and Economic Development on 4304 7257 or email juana.phillips@gosford.nsw.gov.au. All other enquires relating to the EOI should be directed to Coralie McPhie, Culture Services on 4325 8429 or email coralie.mcphie@gosford.nsw.gov.au.

EOI documents are available to download free of charge from Tenderlink’s website at <https://www.tenderlink.com/gosford/>

 *The Tenderlink website includes a registration feature which enables Council to provide information to prospective respondents in relation to this tender. If this document has been received from another source you are required to access Tenderlink’s website and register your intent as a prospective respondent.*

 **Lodgement Method**

Lodging an Electronic Response by the deadline via;

* Tenderlink’s website [www.tenderlink.com/gosford/](http://www.tenderlink.com/gosford/)

*Confirm you have uploaded your documents to the correct EOI. Council will not be held responsible for submissions uploaded incorrectly.*

**Note:** Electronic Lodgement must be completed prior to the closing deadline; once deadline is reached the tender will no longer be accessible on the website for the uploading of documents.

**OR**

An **original** (*hardcopy*) of the EOI along with an electronic copy on either USB, *CD or DVD* must be in the Tender Box by the deadline.

Formal EOI submissions MUST be enclosed in a sealed envelope or package and clearly endorsed:

|  |
| --- |
| **EOI for Saratoga Tennis Club** |
| **Closing: 1:00pm 4 December 2015****The Tender Box – Gosford City Council** |
| **Reception Area, Council Works Depot** |
| **Pateman Road, ERINA NSW 2250** |

**Assessment Process**

All submissions will be assessed on merit and ability to service the community through management, maintenance and operation of the community facility. Please complete the attached EOI registration form and address the following in your submission:

* Functional Business Plan
* Current Incorporation as an Association or intention of Incorporation as an Association
* Demonstrated ability to operate an organisation in a profitable manner, servicing the community

**Submission Attachments Checklist**

* EOI registration form
* Business Plan Template
	+ Incorporation as an Association
	+ Profit and Loss Statement
	+ Audited Financial Statement
	+ Two referees

**SCHEDULE**

**RESPONDENT’S DECLARATION**

|  |  |
| --- | --- |
| **PROJECT:** | **EOI SARATOGA TENNIS CLUB** |
| **Respondent:** (*full trading or Association name*)**:** | Gosford District Tennis Association Incorporated |
| **ACN:** |  | **ABN:** | 52 377 103 934 |
| **Contact Person:** | Robert Eldridge | **Title**: | President |
| **Address:** |  |
|  |
| **Telephone:** | 0422 974 749 | **Email:** | rob@gdta.com.au |
| **Legal Status:**  | Incorporated Entity – Non for Profit |

***Note: If the Respondent is a Trust or a Trustee of a Trust, then a full copy of the trust deed MUST be submitted with the EOI.***

The Respondent named above, has fully acquainted itself with this request for an EOI and all matters relating to the proposed Community License Agreement and agrees to be bound by the *EOI*  and the Community License Agreement*.*

By submitting an EOI, the Respondent warrants and represents that:

1. All of the information provided in its EOI is true and correct.

**CONFLICTS OF INTEREST**

The Respondent shall confirm whether there exists any interests, relationships (including those of family members and employees) or clients that may or do give rise to a conflict of interest ***Yes* ✓ *No* X**

**X**

If “*Yes*”, as an attachment to this declaration, the Respondent shall detail the area in which that conflict or potential conflict does or may arise and provide details of strategies for preventing conflicts of interest.

|  |  |
| --- | --- |
| **Executed by Authorised Officer of Respondent** **who has delegated authority to enter into a contract:** |  |
| **(Print Name & Title):** | Robert Eldridge |
| **Date of declaration:** | 11 December 2015 |
| **Signature of witness:**  |  |
| **(Print Name & Title):** | Tony Haworth |

Robert Eldridge

President

Gosford District Tennis Assoc

10 Racecourse Rd, Gosford, NSW 2250

**Gosford District Tennis Association**

Business Plan

Prepared by: Robert Eldridge / 0422 974 749

**Business Plan**

1. **Executive Summary**

The Gosford District Tennis Association has been in existence since 1936, and incorporated in May 2001 to become the main tennis body within the Gosford LGA. The purpose of the GDTA as defined in the objectives of the Constitution is to promote the game of tennis within the Council boundaries. It is also has a purpose under affiliation with Tennis Australia and Tennis NSW to ensure successful tennis venues are operated within 4 pillars - accessibility, sustainability, community benefit, and accountability. This document will demonstrate how these 4 pillars will contribute to the future success of Saratoga Tennis Club Recreation Facility.

1. **Organisation details**

|  |  |
| --- | --- |
| Organisation Name  | Gosford District Tennis Association Incorporated |
| ABN  | 52 377 103 934 |
| ACN  |  |
| Date established  | Association Established 1936 and incorporated in May 2001 |

1. **Incorporation**

The GDTA consists of 16 tennis centres, and 71 tennis courts with over 1800 active registered players.

The objectives of the GDTA as stated under incorporation are:

1. To sponsor, promote and control tennis competitions and tournaments and tennis in general particularly within the boundaries of the Association (1.4.1) and to encourage and promote the goodwill in tennis.
2. To co-operate with other bodies for the purpose of furthering the interest in the game of tennis
3. To purchase, take on lease, exchange, hire or otherwise acquire, and to lease, sell, exchange or otherwise deal with tennis courts, grounds, buildings and accessories thereto.
4. To construct tennis courts and/or buildings and to lease or purchase or otherwise acquire, and to lease, sell, exchange or otherwise deal with tennis courts, grounds, buildings and accessories thereto.
5. To form any club in connection with the Association for the purpose of furthering the social or private comfort of the membership.
6. To borrow, raise and lend money on security or without security in the interests of the Association.
7. To settle all questions or disputes or matter relating to tennis which may be submitted as its adjudication.
8. To affiliate with or accept affiliation from other bodies as may, from time to time be decided upon in the interest of tennis.

A copy of the full constitution can be accessed via <http://gdta.com.au/constitution/>

1. **Vision and Mission**

GDTA’s mission is to contribute to Tennis Australia’s vision of “Making Australia the greatest tennis nation on the planet”. To achieve this vision and to assist Tennis Australia and Tennis NSW to reach a national participation goal of 4 million participants per annum and one (more) Grand Slam Champion, the GDTA ‘s role is to meet its key constitutional objectives as set out in item (3) and execute on an overall plan with TA to develop the growth of the sport within the Gosford LGA.

As a key driver of this mission and vision, Tennis Australia and its Member Associations are responsible for growing the game from initial player engagement through to performance on the international stage. Continued success will come through a collaborative blend of strategies by all key stakeholders at all levels supporting the sport. Tennis Australia’s Places to Play, Athlete Development, MLC Tennis Hot Shots, Cardio Tennis, Tournaments and Events teams collaboratively focus on providing opportunities for everybody at all levels to participate in the game.

Tennis Australia, Tennis NSW and the GDTA are committed that the community has access to a wide range and mix of welcoming tennis venues and quality services that will attract, engage and immerse people into the game of tennis.

1. **Achievements to Date**

To date, GDTA achievements have been:

* The 16 tennis centres within the Gosford Council boundaries are fully self funded and support the upgrading of tennis facilities within current lease arrangements
* Over 150 Volunteers represent committees at each local centre for the purpose of promoting the games within their tennis centre area
* 1800 tennis players are currently registered through Tennis NSW and there are many thousands who use the facilities for social play during the tennis year.
* The last Australian Open Tennis Champion, Mark Edmondson, was a member of Gosford Tennis Centre in the early 1960’s and 70’s
* Approximate 1000 juniors participate via tennis tournaments, coaching clinics and local competitions each week.
1. **The Market - Saratoga Tennis Centre**

The target market for the GDTA is diverse – all ages can play the game however our target market are - junior players, family’s, and senior players over the age of 35. The GDTA caters to these groups through various local competitions, coaching and school holiday camps, Regional, State and National tournaments for elite players. For the Saratoga Tennis Centre, these target market groups would use the courts for either social or practice play.

|  |  |
| --- | --- |
| **Strengths**  | **Weaknesses**  |
| * Access to 2 tennis courts and facilities at reasonable court hire rates
* Coaching and Tennis clinics for all ages
* Car Parking
* Toilet facilities
* Nice location
* Affiliation to GDTA
 | * State of the courts that require infrastructure spend.
* Low revenues to replenish capital works and maintenance of the facility
* Low membership numbers
* Location is not exposed to major roads or higher traffic levels
* Limitations to night time play
 |
| **Opportunities**  | **Threats**  |
| * Improvement in facilities leads to higher revenue generation from court hire
* Affiliated with the GDTA allowing the association to gain funding Tennis Australia rebates for infrastructure improvements
* Grow membership through local marketing
* Introduce a automated court hire system that will require less on site management time
 | * Other sporting organisations who may use the facility for their own requirements other then tennis
* The local community unable to have access to tennis courts and would need to travel further to play
* Private operator wishing to take over the centre
* Short licence terms that are insufficient to recover funds through court hire to upgrade existing infrastructure
 |

Our unique position is that we have tennis courts affiliated under the GDTA for the local community to play tennis within a safe and high standard recreational facility.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Competitor  | Established date  | Value to customers  | Strengths  | Weaknesses  |
| Not Applicable |  |  |  |  |
|  |  |  |  |  |

**To be advised**

|  |  |  |  |
| --- | --- | --- | --- |
| Promotion/advertising type  | Expected outcome  | Cost ($)  | Timeframe  |
|  |  |  |  |
|  |  |  |  |

1. **Three to Five Year Strategy**

Where is the Tennis Facility is planning to be heading over the longer term; 3-5 years.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Strategy**  | **Current**  | **Year 1**  | **Year 2**  | **Year 3**  | **Year 4**  | **Year 5**  |
| Tennis Courts | Upgrade | Maintain | Maintain | Maintain | Maintain | Maintain |
| Court Hire | Increase court hire to cover tennis court improvements | Allocate $3000 per annum into a sinking fund | $6,000 | $9,000 | $12,000 | $15,000 |
| Registered Players | 50 | 100 | 150 | 200 | 250 | 300 |

1. **Management**

The Saratoga Centre would be managed by the GDTA

Insurance and Risk Management would be met within current Tennis NSW & Australia Public Liability and Personal Injury insurance covers provided to Associations and Affiliates, and this is extended to registered tennis players with Tennis NSW.

1. **Finance**

**Schedule of Fees**

|  |  |  |  |
| --- | --- | --- | --- |
| Item  | Date  | Fees  | Life-span  |
| Court-hire  | 2016 | Day - $10 per hour/ Night - $20 per hour | Increases to be reviewed by GDTA committee annually and based on player use. |
| Court-hire - coaching | TBA | TBA | 10 years |

**Profit and Loss Statement** - We have no access to the current operators P&L.

**Capital Works Expenditure [*Performed and Proposed*]**

|  |  |  |  |
| --- | --- | --- | --- |
| Item  | Date  | Cost  | Life-span  |
| Tennis Court Improvements  | 2016 | $40,000 | 7-10 years |
| Fencing and Lighting  | 2020 | $20,000 | 10 years |

The audited accounts for the GDTA as at 30 June 2015 are included with this submission

**Additional**

Referees – Letter from Tennis NSW in support of the GDTA dated 10 December 2015 (refer attached)

Signed

|  |  |
| --- | --- |
| Name Robert Eldridge | Date 11/12/15 |
| Name Tony Haworth | Date 11/12/15 |

**Community Licence**

**Gosford City Council**

**licence to**

**Saratoga and District Sport and Recreation Association Incorporated**

**Premises: Saratoga Tennis Courts R1007 Willaroo Road, Saratoga**

**Date: TBC**

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Introduction

The Building is a community asset owned or administered by Council for community use. The Licensee has requested Council licence the Premises for the Permitted Use to the Licensee.

The Licensee acknowledges that the Licence Fee is not at market rent but a concessional charge for community use and it agrees that it will promptly and fully perform its obligations under this Deed including payment of all money due to Council, using the Premises for the Permitted Use only and not licencing the Premises for any reason or purpose without Council’s prior consent.

The Licensee acknowledges that any default of the terms of this Deed by the Licensee may result in the Licence being terminated by Council and the Licensee being required to vacate the Premises.

The Licensee acknowledges that Council has a duty to the community as a whole to make facilities available for community use and agrees to cooperate with Council to make available the Building and Premises, when not used by the Licensee, for other community uses.

Council has agreed to grant the Licensee a licence of the Premises on the terms of this Deed.

Principal Terms Schedule

|  |  |
| --- | --- |
| **Term** | **Meaning of Term** |
| **Council:** | The Council of the City of GosfordABN 78 303 458 861 of 49 Mann Street, Gosford |
| **Licensee** |  (ABN  )  |
| **Premises:** | Saratoga Tennis Courts R64760 Willaroo Road, Saratoga |
| **Building:** | The facility comprises two (2) tennis courts, four (4) floodlighting poles and associated infrastructure, one (1) clubroom and two (2) picnic tables. |
| **Occupancy Hours** | 24 hours per day |
| **Term:** |  3 years from the date of the signed agreement. |
| **Licence Fee:** | $464 per annum. |
| **Percentage Review Date:** | One year from the date of the signed agreement |
| **Review Percentage:** |  3.00% |
| **Licensee’s Proportion:** | 100% |
| **Permitted Use:** | In accordance with Gosford City Council’s Sportsground Plan of Management, Tennis Playing and coaching on tennis courts. |

# Definitions and interpretations

## **Definitions**

In this Deed, unless the contrary intention appears:

### **Authority** means any governmental, statutory, public, local government or other authority or body having jurisdiction over any part of the Land or relating to its use including Council.

### **Claims** means all or any claims, proceedings, actions, rights of action, liabilities, damages, losses, remedies, expenses, fines and penalties (including associated expenses and legal costs on a full indemnity basis).

### **Common Areas** means those parts of the Building from time to time intended for common use including entrance, foyer and passageways and those parts of the Building from time to time designated for common use by Council.

### **Consumer Price Index** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

### **Deed** means this document including any attachment.

### **Emergency Services** means NSW Police Force, NSW Rural Fire Service, Fire and Rescue NSW, NSW Ambulance, Roads and Maritime Services, Council when providing emergency services, State Emergency Services and similar government bodies.

### **GST** means the goods and services tax payable under the GST Legislation and notional GST payable by a State entity under the *Intergovernmental Agreement Implementation (GST) Act 2000* *(NSW)*.

### **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and related Acts and Regulations.

### **Licence** means the licence to use the Premises granted under this Deed.

### **Licensee’s Invitees** means the Licensee’s employees, agents, contractors, clients, customers, visitors, hirers and other persons on the Premises with the consent of the Licensee.

### **Outgoings** means the total of all outgoings paid or payable by Council in respect of the Building and Premises as relevant including:

#### *Rates, taxes and assessments*: all rates taxes charges assessments duties impositions and fees payable to any government, local government, semi government or other competent authority including land tax at the rate payable by Council;

#### *Water, sewerage and waste*: all charges for and costs in relation to the supply of water, sewerage and drainage and the removal of all waste and other garbage;

#### *Insurances*: all amounts payable in respect of insurances effected from time to time by Council relating to the Building, the use and occupancy of the Building and the equipment and appliances in the Building including plate glass insurance, public risk insurance, insurance for fire and loss of rental and insurance for machinery breakdowns, explosions or terrorist attack;

#### *Security services*: all charges for security services including the installation, maintenance and repair of alarms and call out fees;

#### *Any other services*: all proper and reasonable costs (including wages and other employment overheads) of the operation maintenance and supply of any services provided by Council including caretaking, supervision, airconditioning, lifts, pest control, ventilation, the provision of light and power to Common Areas, hot and cold water and supplies for the washrooms and lavatories, cleansing, maintaining, decorating, lawn mowing, gardening and landscaping and any other amenities and services;

#### *Repairs*: the cost of the maintenance, repair, cleaning, servicing, redecoration and renovation of the Building and all carpets, window coverings, fixtures, fittings, plant and equipment in the Building or servicing the Building including amounts paid under proper and reasonable service and maintenance contracts but not including repairs and maintenance of a structural nature;

#### *Essential Services*: the cost of all necessary inspections and testing of essential services and fire safety and the preparation of certificates and reports including an annual Fire Safety Statement under the *Environmental Planning and Assessment Regulation 2000* (NSW*)*.

### **Premises**includes all plant and equipment (mechanical and otherwise, including airconditioning and fire services) fittings, fixtures, furniture and furnishings of any kind from time to time on the Premises owned or supplied by Council.

### **Prescribed Rate** means the rate prescribed from time to time under the *Uniform Civil Procedure Rules 2005* as the rate of interest on judgment debts plus 2%, calculated daily and compounded on the last day of each month.

## **Interpretation**

### **Number, gender and corporation**

### Words importing the singular number include the plural and vice versa, words importing a person include a corporation and vice versa and each gender includes every other gender.

### **Jointly and severally**

### Any provision of this Deed to be performed by two or more persons binds those persons jointly and each of them severally.

### **Bodies and Associations**

### References to authorities, institutes, associations and bodies, whether statutory or otherwise, will in the event of any such organisation ceasing to exist, being reconstituted, renamed or replaced or the powers or functions or any such organisation being transferred to any other organisation, be deemed to refer respectively to the organisation established or constituted in lieu of any such organisation.

### **Statutes and Regulations**

### Reference to a statute or ordinance includes all regulations under and amendments to that statute or ordinance whether by subsequent statute or otherwise and a statute or ordinance passed in substitution for the statute or ordinance.

### **Headings and Parts**

### Headings and any marginal notes have been inserted for convenience only and do not in any way limit or govern the construction of the terms of this Deed. Each numbered section is a Part as specified in the Table of Contents

### **Monthly and Yearly**

### A reference to month and year means respectively calendar month and calendar year.

### **Entire Agreement**

### This Deed constitutes the entire agreement of the parties on everything connected with the subject matter of this Deed and supersedes all prior agreements, understandings and negotiations in relation to those matters. Each party agrees and represents that it has not relied on any prior representations with respect to the subject matter of this Deed except those set out in this Deed.

### **Counterparts**

### This document may be executed in any number of counterparts all of which taken together constitute one instrument.

### **Business Days**

### Where under or pursuant to the Deed the day on or by which any act, matter or thing is to be done is a Saturday, Sunday or public holiday in the State or place in which the Premises are situated, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

### **Include**

### The word *include* (in any form) when introducing one or more specific items does not limit the meaning of the general words to those items or to items of a similar kind.

### **Rule of Construction**

### In the interpretation of this Deed no rule of construction applies to the disadvantage of one party on the basis that that party put forward this Deed.

### **Severance**

### If a term of this Deed is or becomes wholly or partly void, voidable, or unenforceable Council may at its option either terminate this Deed or sever the offending term without affecting the enforceability or validity of the remainder of the Deed.

### **Defined Terms**

### Each term specified in the Principal Terms Schedule has the meaning specified for it in the Principal Terms Schedule. Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

### **Notices etc**

### Any notices, notification, nomination, request, direction, demand, authorisation, approval or consent must be in writing and will be properly executed if signed by an officer, manager or solicitor of the party giving it.

### **Service**

### A document may be served by leaving it at or sending it by pre-paid post to the relevant officer or manager at the address of the party set out in this Deed or such other address subsequently notified. A document sent by post will be deemed to be delivered at the time when it would be delivered in the ordinary course of post.

### **Deed ends**

A reference to the end of this Deed is a reference to the expiration of the Term (or where occupation continues under a holding over, the end of the holding over) or the earlier determination of the Term by default or otherwise.

### **Continuing Obligations**

### The obligations of the parties arising prior to the end of this Deed continue until they are fulfilled.

### **Obligations and Payments of Licensee**

### The Licensee must perform the obligations of the Licensee under this Deed at the expense and risk of the Licensee. An amount to be paid under this Deed is due for payment on the earlier of demand or the date specified in the notice or invoice except the Licence Fee which is payable without demand, notice or invoice. Payments must be made as Council may direct including by bank cheque, direct deposit or electronic funds transfer.

### **Implied Covenants**

### Any present or future legislation or any implied term (including a duty of good faith or anything similar) which operates to vary the obligations of the Licensee in connection with this Deed with the result that Council's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded, except to the extent that its exclusion is prohibited or rendered ineffective by law.

## **No Restriction on Council’s powers**

## This Deed or anything done or to be done under this Deed:

### is not to be taken as approval or consent by Council as a regulatory authority: and

### does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,

## pursuant to or under any legislation including the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979*.

# Licence

## **Grant**

## The Council grants the Licensee a non‑exclusive licence to occupy and use the Premises during the Occupancy Hours for the Term.

## **No Tenancy**

## This Deed does not create and must not be taken or construed to create a tenancy or lease or any rights or interest in the Premises or a relation of landlord and tenant between the Licensee and Council.

## **Emergency Services**

## Despite the grant of Licence to the Licensee, the Building may be used by Emergency Services who may from time to time occupy the Building including the Premises to the exclusion of the Licensee when required by the Emergency Services.

## **Community Use**

### The Licensee must cooperate with Council to maximise the community use of the Building, making the Building accessible to other community groups and members and assisting Council in providing for community needs as expressed in Council’s policies and guidelines. In particular, the Licensee must at the request of Council:

#### allow access to the Premises at times other than the Occupancy Hours;

#### remove or secure in the Premises any property of the Licensee; and

#### occupy and use the Premises as reasonably required by Council to enable other community uses.

### Council will inform the Licensee when a new licence is granted in respect of the Building.

### The Licensee acknowledges that, in accordance with clause 9.3:

#### the Licensee occupies the Premises at its own risk; and

#### all property of the Licensee in the Premises is at the sole risk of the Licensee.

###

## **Relocation**

## Where Council requires the Premises or the Building for other community services or Council requirements and can make available to the Licensee premises that in the reasonable opinion of Council are suitable alternative premises, the following procedure will apply:

### Council will notify the Licensee of the proposed relocation and the alternative premises available (**Relocation Notice**);

### the Licensee will promptly consider the alternative premises offered in the Relocation Notice and within 21 days of service of the Relocation Notice notify Council if the alternative premises are acceptable or are not acceptable;

### if requested by the Licensee, Council officers will meet to discuss the proposed relocation and the alternative premises available;

### where the Licensee has notified Council it will accept the alternative premises, Council will promptly issue the Licensee with a licence for the alternative premises which will be substantially the same as this Licence except that:

#### the Premises and the Building will be updated to refer to the relocation premises;

#### the term will be for the balance remaining of the Term to the Terminating Date, unless Council offers a further term; and

#### the Licensee Fee will be current Licence Fee as at the date of the commencement of the new Licence with the rent review and review dates adjusted accordingly.

#### This Licence will terminate on the date prior to the commencement of the licence for the alternative premises;

### where the Licensee does not accept a licence of the alternative premises, this Licence will terminate on the day 3 months after service of the Relocation Notice.

## **Holding Over**

If the Licensee continues to occupy the Premises after the Term with Council’s consent then:

### the Licensee occupies the Premises under a monthly tenancy which either party may end by giving 1 months notice expiring on any day; and

### this licence will be on the same terms as this Deed so far as they apply to a periodic licence with the Licence Fee being the Licence Fee payable immediately prior to the Terminating Date reviewed as provided in this Deed except that Council may prior to the Terminating Date or subsequently on not less than one month’s notice vary the Licence Fee.

# Licence Fee and Licence Fee reviews

## **Licence Fee**

The Licensee must pay to Council without deduction or set off the Licence Fee by equal monthly instalments in advance with the first payment due on the Commencement Date.

## **Consumer Price Index Review**

## On each CPI Review Date the Licence Fee will be increased to the greater of:

### the Licence Fee payable immediately prior to the CPI Review Date; and

### the Licence Fee payable immediately prior to the CPI Review Date increased by the same percentage as the annual percentage change, if any, in the Consumer Price Index most recently published prior to the CPI Review Date.

## **Percentage Licence Fee Review**

## On each Percentage Review Date the Licence Fee payable immediately prior to that Percentage Review Date will be increased by the Review Percentage.

# Outgoings and expenses

## **Payment of Outgoings**

## The Licensee must pay to Council on demand the Licensee’s Proportion of the Outgoings, incurred or for which Council becomes liable during the Term.

## **Estimate and monthly instalments**

## The Council may notify the Licensee of Council’s reasonable estimate of the Licensee’s Proportion of the Outgoings payable by the Licensee in advance each year. The Licensee must pay Council the estimate by equal monthly instalments at the same time as payment of Licence Fee. At the end of each year Council must provide the Licensee with a copy of a statement giving details of the Licensee’s Proportion of the Outgoings and any necessary adjustment between the estimated and actual Licensee’s Proportion of the Outgoings will be made between the parties within one month.

## **Licensee’s expenses**

## The Licensee must pay on time all charges for electricity, gas, water, sewage use, telephone and other services where they are separately metered or supplied to the Premises and where appropriate install any necessary meters. Where there are no separate meters, the Licensee must pay the proportion determined by Council as directed by Council. The Licensee must pay any for garbage and waste removal services required in respect of the Premises.

# Goods and Services Tax

## **Payments Exclusive of GST**

All payments or other consideration paid or payable under this Deed are exclusive of GST.

## **Payment of GST**

## In addition to payment for a supply in connection with this Deed (including Licence Fee and outgoings contributions) on which GST is paid or payable, the Licensee must pay, at the same time and in the same manner, the amount of the GST which is paid or payable in respect of that supply.

## **Tax invoice**

## The Council will at the request of the Licensee provide the Licensee with a tax invoice as prescribed in the GST Legislation.

## **Late payment**

## If Council becomes subject to penalties or interest resulting from late payment of GST because of the Licensee’s failure to comply with this Part, then the Licensee must pay on demand an additional amount equal to the amount of those penalties and interest.

## **Outgoings net of GST**

## Notwithstanding anything else to the contrary, in calculating Outgoings, any GST forming part of those Outgoings on which Council is entitled to claim an input tax credit under the relevant GST Legislation, cannot be included in the Outgoings payable by the Licensee.

# Use of Premises

## **Permitted Use**

### The Licensee must only use the Premises for the Permitted Use.

### The Council does not warrant that the Premises are suitable for or may be used for the Permitted Use.

### If:

#### the Licensee ceases to use the Premises for the Permitted Use; or

#### any part of the Premises is not used for the Permitted Use,

#### without the Council’s prior consent (which may be granted or withheld at Council’s absolute discretion), then Council may by notice to the Licensee terminate this Licence.

## **Restrictions on Use**

## The Licensee must not and must not permit the Licensee’s Invitees to:

### use the Premises as a residence or for any activity that is dangerous, offensive, noxious or illegal or that may become a nuisance for any neighbouring property or other occupants of the Building including Council;

### overload the floors or walls of the Premises, the electrical system or any other services to the Premises;

### damage the Premises or the Building;

### make any alterations or additions to the Premises or the Building without Council’s prior consent;

### make any alterations or additions other than minor changes to the Licensee’s fixtures, fittings, equipment or furnishings without Council’s prior consent;

### use or store inflammable or explosive materials, liquids or gas in the Building;

### do anything that may prejudice, invalidate or increase the premium payable for an insurance policy covering the Premises or the Building;

### paint, affix or erect on the interior or exterior of the Premises or the Building any notices, advertisements or signs without the prior written approval of Council;

### drive nails or screws into or in any way damage or deface any floors, walls, partitions or other part of the Building;

### obstruct or otherwise improperly interfere with the use of the Common Areas;

### improperly interfere with the fittings, equipment and services (including plumbing, air-conditioning and fire services) serving the Premises or forming part of the Building or otherwise provided by Council;

### smoke in the Premises or the Building;

### hold any auction, bankruptcy or fire sale;

### throw, place or allow to fall any waste, rubbish or debris on the Building or the Land; or

### cook food or sell any alcoholic beverages on the Premises.

## **Requirements of Authorities**

### The Licensee must comply and ensure the Licensee’s Invitees comply with all laws and all notices, orders and directives from any Authority relating to the use or occupation of the Premises, obtain the consents or licences needed, comply with any conditions of consent and keep current any licences or registrations needed for the use of the Premises by the Licensee PROVIDED THAT the Licensee is not required to effect structural works unless they are directly attributable to the Licensee’s business in the Premises.

### The Licensee must provide promptly to Council a copy of any law or requirement in respect of the Premises notified to the Licensee.

## **Licensee’s obligations**

The Licensee must:

### lock all exterior doors and windows when the Premises are not occupied and be responsible for the security of the Premises;

### comply with and ensure the Licensee’s Invitees comply with all building rules issued by Council from time to time;

### give notice to Council promptly of any damage, accident to or defect in the Premises or any circumstances within the Building likely to cause any damage or injury of which the Licensee is aware;

### participate and direct the Licensee’s Invitees to participate in emergency evacuation procedures; and

### store and remove all waste and garbage as directed by Council.

## **Common Areas**

### The Licensee and the Licensee’s Invitees may use the Common Areas in common with Council, Council’s employees, agents and contractors, other lessees or licensees and their employees, agents, contractors, clients, customers and visitors and other occupiers of the Building and persons authorised by them.

### The Licensee acknowledges that the Common Areas may vary from time to time and Council may vary the Common Areas serving the Premises including the entrance and foyer of the Building. The Licensee cannot make a claim or otherwise object to a variation in the Common Areas.

# Maintenance and repair

## **Licensee’s obligation to repair**

## The Licensee must keep the Premises in good repair and condition subject to the condition of the Premises at the Commencing Date except for:

### fair wear and tear;

### structural repairs unless they are required as a result of the default or neglect of the Licensee or the Licensee’s Invitees.

## **Licensee’s further obligations**

## The Licensee must in addition to the Licensee’s obligations under the previous clause:

### keep the Premises tidy, clean and free of all rubbish and debris;

### keep the Premises free from pests including rodents, cockroaches and termites;

### repair or replace any stained, worn or damaged carpet in the Premises;

### replace broken or faulty light bulbs and tubes in the Premises;

### replace broken glass in the Premises;

### clean, maintain in good repair and working order all plant, equipment, fixtures and fittings exclusively servicing the Premises; and

### maintain the grounds, lawns and gardens of the Building in a clean and tidy condition.

## **Access by Council**

## The Licensee must, upon receiving reasonable notice, except in an emergency when no notice is required, give Council or anyone authorised in writing by Council access to the Premises at any reasonable time for the purpose of:

### inspecting the condition of the Premises;

### doing anything that Council can or must do under this Deed or must do by law;

### undertaking maintenance, repairs, renovations and redecorating of the Building;

### assisting in any emergency or for security or safety;

### viewing the Premises by a valuer, prospective buyer, tenant or licensee; and

### fixing a notice in a reasonable position on the outside of the Premises saying it is for sale or for lease.

## **Damage to Building**

## If the Building is damaged and as a result the Licensee cannot use or gain access to the whole or a significant part of the Premises then either party may by notice to the other party terminate the Licence.

## **Maintenance Schedule**

## The Licensee must in addition to the Licensee’s obligations under the other clauses in this Part undertake the items listed as ‘Occupant’s Responsibility’ in the Maintenance Schedule attached.

# No assignment or sublicensing

## **Prohibited dealings**

## The Licensee must not:

### assign, sublet, licence, hire, part with possession or otherwise deal with any part of the Premises or this Deed; nor

### create or allow to come into existence any charge, mortgage or a security interest affecting the Licensee’s estate or interest in the Premises.

## **Hire of Premises**

## Notwithstanding the previous clause, the Licensee may hire the Premises but only if before the hiring commences:

### the Licensee submits to Council details of the proposed hiring, including details of all income to be received from the proposed hiring, in such form as Council may require;

### provides such further information as Council may require; and

### obtains the consent of Council to the proposed hiring.

## **Hire at Direction of Council**

### This clause applies notwithstanding any other provisions in this Deed.

### The Licensee must licence the Premises at the direction of Council where:

#### Council receives a request for a community use of the Building (**Requested Use**);

#### the Requested Use is compatible with the Permitted Use;

#### the Licensee does not actively use the Premises at the time proposed for or during the period proposed for the Requested Use; and

#### Council notifies the Licensee of the Requested Use and the proposed terms for the licence of the Premises not less than 21 days prior to the commencement of the proposed New Use.

### The licence for the Requested Use granted by the Licensee must be on substantially the same terms as this Deed modified as appropriate. The Licensee must promptly after execution provide Council with a copy of the signed licence deed for the Requested Use.

####

### Where the Licensee fails to grant a licence for the Premises in accordance with the directions of Council not less than 7 days prior to the proposed commencement of the Requested Use, then Council may grant this licence. The grant of the licence by Council for the Requested Use will not be a breach of this Deed and the Licensee cannot make a Claim in respect of the grant of the licence for the Requested Use or the use and occupation of the Premises during the period of this licence for the Requested Use.

## **Change of control of Licensee**

## Where the Licensee is a corporation a change in shareholding (including any variation in the beneficial ownership of the shares) of the Licensee or its holding company that gives control of the Licensee to a different person or group of persons will be deemed to be an assignment of this Deed.

## **Income from Hire of Premises**

### All income from the hire of the Premises by the Licensee must be shared equally between Council and the Licensee.

### The Licensee’s share of any income from the hire of the Premises by the Licensee must be allocated in the following priority:

#### to payment of the Licence Fee and all charges under the Deed;

#### to maintain and improve the Building; and

#### for the community service objectives of the Licensee.

### Prior to 15 April and 15 October each year the Licensee must provide Council with:

#### a statement of all income from the hire of the Premises by the Licensee in the 6 months prior to 31 March or 30 September, as relevant, (certified as true and correct by a director, responsible officer or independent auditor of the Licensee); and

#### payment of Council’s share of the income from the hire of the Premises by the Licensee in the 6 months prior to 31 March or 30 September, as relevant.

## **Sale of Building**

## If Council transfers its interest in the Land or grants a lease over the Premises the Licensee must within 21 days after the request of Council enter into those documents Council may reasonably require to enable the transferee or lessor in its name to enforce the benefits of the Licensee’s obligations under this Deed.

## **Default**

### The Licensee acknowledges that, in accordance with Part 11 *Default*, if the Licensee fails to comply with any obligation of the Licensee under this Part within 7 days after Council gives the Licensee notice requiring compliance then Council may enter and take possession of the Premises or by notice to the Licensee terminate the Licence.

# Insurance, release and indemnity

## **Licensee’s insurance**

## The Licensee must keep current an insurance policy covering:

### public risk for at least $20,000,000 for each accident or event or for such higher amount as Council may reasonably notify noting Council’s interest under the policy; and

### the Licensee’s property in the Premises for its full insurable value,

## and must produce evidence of this insurance on each anniversary of the Commencing Date and at the request of Council.

## **Insurance terms**

## All insurance policies must:

### be with a reputable insurer acceptable to Council;

### be for such amounts and cover such risks as are reasonably required by Council and contain such conditions as are reasonably acceptable to Council; and

### have endorsed upon them the rights and interests of Council.

## If any loss or damage arises from any cause covered by the Licensee’s insurance, the Licensee must immediately apply for the insurance money and expend it together with the Licensee’s money to promptly rectify the loss or damage.

## **Assumption of risk by Licensee**

## The Licensee occupies the Premises and carries out any building work in the Premises at its own risk. All property of the Licensee in the Premises is at the sole risk of the Licensee.

## **Licensee’s release and indemnity**

## The Licensee cannot make a Claim against Council and releases Council from and indemnifies it against all Claims for damages, loss, injury or death which:

### occur in or around the Premises;

### arise from the use of the Premises by the Licensee or the Licensee’s Invitees;

### occur in connection with any building work undertaken by the Licensee for the Premises;

### arise from any activity undertaken on the Building by the Licensee or the Licensee’s Invitees; or

### arise from the misuse of the services in the Building,

## except to the extent that it is caused by the wilful act or omission or negligence of Council, its employees, agents or contractors.

## **To pay all extra premiums**

## The Licensee will from time to time, as and when required by notice in writing from Council, pay all extra premiums and stamp duties payable by Council on account of extra risk caused by the use to which the Premises are put by the Licensee.

## **Work Health and Safety**

## The Licensee must comply with all professional, licensing and legislative requirements in relation to work health and safety and all rules, regulations, policies or guidelines issued by WorkCover, the Licensee’s insurer or any relevant authority in respect of any activity undertaken on the Premises by the Licensee.

# Reporting to Council

## **Performance Statements**

## On each anniversary of the Licensee (or any such other time as requested by Council) the Licensee must provide Council with statements certified as true and correct by the Licensee outlining the use of the Premises, the repair, maintenance and cleaning of the Premises, the hiring of the Premises (including hiring fees and dates) and other performance indicators requested by Council in such format as Council may reasonably require.

## **Financial Records**

## In July each year of the Term, the Licensee must provide Council with audited annual financial reports of the Licensee (certified as true and correct by a director, responsible officer or independent auditor of the Licensee) including:

### expenditure of Council grants received by the Licensee; and

### allocation of revenue raised from:

#### the Permitted Use;

#### the hire of the Premises; and

#### any other activity undertaken at the Premises (with the consent of Council) by the Licensee or the Licensee’s Invitees.

## When providing Council with its audited annual financial reports the Licensee must also pay to Council without deduction or set off Council’s share of any hiring fees earned by the Licensee for that financial year pursuant to clause 8.2.

## **Licensee Information**

## The Licensee must provide at the request of Council details of the Licensee including the names and address of office holders, registered office, a copy of the constitution of the Licensee, copies of bank statements and such other information as Council may reasonably request.

# Default

## **Default and termination**

## The Licensee will be in default under this Deed if:

### the Licensee has repudiated this Deed;

### Licence Fee or any other money payable by the Licensee under this Deed is more than 7 days overdue for payment;

### the Licensee fails to comply with any obligation of the Licensee under this Deed within 7 days after Council gives the Licensee notice requiring compliance; or

### the Licensee:

#### being a corporation – resolves to or enters into any arrangement for the benefit of creditors, resolves to or is wound up or internally reconstructed, takes any step to obtain protection or is granted protection from its creditors, becomes an externally administered body corporate, becomes insolvent or anything analogous or having a substantially similar effect occurs; or

#### being an individual – enters into an assignment or arrangement for the benefit of creditors, becomes bankrupt or dies,

## and then Council may enter and take possession of the Premises or by notice to the Licensee terminate the Licence.

## **Waiver**

## A provision or a right created under this Deed may not be waived or varied except in writing signed by the party to be bound. No failure to exercise and no delay in exercising any right, power or remedy under this Deed or any custom or practice existing between the parties in relation to this Deed operates as a waiver. No single or partial exercise of any right, power or remedy precludes any other or further exercise of that or any other right, power or remedy. No waiver by a party of one breach of a provision under this Deed by the other party is a waiver of another breach of that provision or any other.

## The demand of or subsequent acceptance of any money under this Deed by a party is not to be deemed a waiver of any preceding breach of this Deed by the other party, except only in relation to the failure to make that particular payment when due.

## Money tendered by the Licensee and accepted by Council may be applied in the manner Council decides.

## **Power of Attorney**

## The Licensee irrevocably appoints Council to be the attorney of the Licensee to do on behalf of the Licensee only if the Licensee is in default under the Deed and Council has legally entered into possession of the Premises anything the Licensee may lawfully authorise an attorney to do including anything which confers a benefit on Council.

## **Council may rectify**

## The Council may remedy at any time, without notice, any breach of this Deed by the Licensee as the agent of the Licensee and at the risk of the Licensee. The Licensee must pay all reasonable costs incurred by Council in remedying a default.

## **Costs on default**

## The Licensee must pay Council’s expenses including internal management costs and legal fees and disbursements on an indemnity basis in connection with any breach of a provision of this Deed or default by the Licensee.

## **Interest on overdue payments**

## The Licensee must pay interest on any money due to Council but not paid on the due date from the date payment was due at the Prescribed Rate.

## **Council’s certificate**

## A certificate executed by Council is, in the absence of manifest error notified to Council within 7 days of receipt, conclusive evidence of the matters stated in the certificate including the overdue Licence Fee and interest payable.

# Termination

## **Licensee to yield up and remove its property**

When this Deed ends the Licensee must:

### return the Premises to Council in the condition that this Deed requires the Licensee to keep it in; and

### have removed all property of the Licensee and the Licensee’s Invitees and anything the Licensee fixed to the Premises during the Term or the prior occupation of the Premises and have made good any damage caused by the removal.

## **Abandoned property**

## Anything not removed within 14 days after the end of this Deed becomes the property of Council who can keep it or remove and dispose of it and recover from the Licensee the cost of removal, making good and disposal.

## **Failure of Licensee**

## If the Licensee fails to comply with its obligations under this Part (in which respect time is of the essence) Council may at the Licensee’s expense payable on demand perform these obligations. Notwithstanding the termination of this Deed and vacation of the Premises the Licensee’s obligations to pay Licence Fee and contributions to outgoings will continue until the Licensee has properly complied with its obligations under this Part or the failure has been rectified by Council.

# Maintenance Schedule

| **MAINTENANCE ITEM** | **OCCUPANT'S RESPONSIBILITY** | **COUNCIL'S RESPONSIBILITY** |
| --- | --- | --- |
| Heating and cooling fixtures (not installed by Council) | Pay all gas and electricity bills, service, replacement and repair as required | No responsibility |
| Building alterations | Determine and document specific needs of the building relating to any requests to Council for building alterations | Assess all requests submitted and, if approved by Council, ensure satisfactory completion of work by responsible parties |
| Curtains, blinds and window fittings, solar film | Installation, if required Regular cleaning and repair | No responsibility |
| Ceilings | Regular cleaning and repairs due to misuse | Major repair and/or replacement due to structural faults, age, etc. |
| Doors (incl. cupboard doors, door fittings, closers and screens) | Regular cleaning and repair of internal doors due to misuse, (with the same hardware) | Replacement due to age or structural fault on internal doors. Repair on all external doors |
| Electrical wiring and fittings in building | Repair and replacement due to misuse - must be undertaken by licensed electrical contractor | All building wiring from main supply to and including switchboard, power points, switches and light fittings |
| Fire extinguishers | Fill when discharged | Testing, maintenance and replacement due to age |
| Fire Panel | No responsibility | Testing, maintenance and rectification of any problems |
| Floor surfaces, coverings, including tennis court surfaces, coverings and nets | All regular cleaning and maintenance. Replacement due to age or compliance | No responsibility |
| Window glass and flyscreens | Clean and replace internal breakages, with compliant glass | Replace externally if breakage occurs due to vandalism |
| Vandalism | No external responsibility unless the vandalism is caused by the Licensee or the Licensee’s Invitees | Removal of graffiti from external areas unless caused by the Licensee or the Licensee’s Invitees |
| Keys and locks | Purchase, install and maintain all locks | No responsibility |
| Pest inspection | Internal inspection and treatment of any infestation as required | Internal and external inspection and treatment of any infestation |
| Fences, including tennis court fencing | Maintain and replace when necessary | No responsibility |
| Security system including call out | Purchase, installation, service and maintenance, in line with Council's masterkey and security patrol systems | Masterkey register and co-ordination of security patrol contract |
| Light globes and fittings (external) | Replacement of general lighting globes | Replacement and maintenance of security lighting where installed by Council |
| Accessible Light globes (internal) | Replacement | No responsibility |
| Plumbing & Fixtures | Internal repairs and any add-on fixtures not standard in the building, leaking taps and cisterns, replacement of washers | Repair and renewal of all external plumbing, leaking pipes |
| Plumbing waste pipes, drains and storm water pits | Keep clear of foreign objects, mud etc. and clear if blocked by these materials | General maintenance, stormwater and sewer blockages/house drains |
| Other permanent fixtures | Regular cleaning of all fixtures and repair/or replace if due to misuse | Handrails/disability access fixtures |
| Hygiene | To keep all areas in a clean and hygienic state | No responsibility |
| Painting | Internal painting if damaged through misuse, to match existing | Internal and external painting and Cyclic Maintenance Program |
| Roofs, guttering and skyliqhts | Regular gutter cleaning | All maintenance and repair as required |
| Walls | Regular cleaning and repair of any damage through misuse or wear and tear | Structural maintenance |
| Building External | No responsibility | General maintenance |
| Food handling areas and equipment | To comply with relevant Health legislations and maintain equipment required by legislation | No responsibility |
| Lawns, yards and gardens | Prune trees to ensure they do not overhang roof or pathways, mow lawns, maintain gardens and keep site tidy Removal of any rubbish | No responsibility |
| Fences | Maintenance, replace when/where necessary | No responsibility |
| Water tanks | Regular maintenance and cleaning of filters and leaf traps | Repair, maintenance and/or replacement due to age. |

# Legal Advice Acknowledgement

## The Licensee warrants that it has received legal advice on this Deed on the grant of the Licence from[[1]](#footnote-1)

## prior to entering into this Deed.

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by the LICENSEE  in the presence of: |  |  |
|  Signature of Witness Name of Witness |  |   Signature |

Signing Page

Executed as a Deed on day of 2015

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by **GOSFORD CITY COUNCIL** by its attorney pursuant to Power of Attorney Book No. in the presence of: |  |  |
|  Signature of Attorney |  |   Signature of Witness  Name of Witness |

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by the LICENSEE  in the presence of: |  |  |
|  Signature of Witness Name of Witness |  |  Signature  Name  Office Held |

1. Insert name of lawyer or law firm. [↑](#footnote-ref-1)