

Management Licence for use of Changerooms & Clubrooms of John Leckie Pavilion, College Park

City of Nedlands

Western Suburbs Cricket Club (Inc)



McLEODS

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Details

Parties

City of Nedlands

of 71 Stirling Highway, Nedlands, Western Australia, 6009
(City)

Western Suburbs Cricket Club (Inc)

of PO Box 499, Nedlands, Western Australia, 6909
(Registration Number A1001633C)
(Group)

Background

- A The City is the management body of Reserve 1670 known as College Park (**Land**) on which the Facility is located.
- B The City has agreed to grant to the Group a licence to use that part of the Facility described in **Item 2** of the Schedule (**Licensed Area**), together with any additional rights that are specified in this agreement
- C The licence granted reflects the City's standard approach in granting facility licences to community groups.
- D The objective of the City's standard approach is to provide and maintain the Facility, and to partially offset the cost of doing so by charging user groups a licence fee designed to recoup some of the cost of providing and maintaining the proportion of the facility used by the Group.
- E The City and the Group enter into this agreement to set out the terms and conditions of this agreement.

Agreed terms

1. Definitions

In this Licence, unless otherwise required by the context or subject matter -

Agreed Hours means the hours agreed in advance with the City from time to time and booked through the City's booking system pursuant to **clause 6** during which the Group is permitted to use the Licensed Area and Other Amenities.

CEO means the Chief Executive Officer of the City.

City means the City of Nedlands and its employees and agents.

Commencement Date means the date that the Licence commences.

Facility means the facility described in **Item 1** of the Schedule.

Group means the group or club to which this licence is granted.

Land means the land on which the Facility is located.

Last Day of the Licence means the date on which the Licence ends.

Licence means the licence granted under this agreement.

Licensed Area means the part of the Facility that the Group is permitted to use in accordance with the terms of this Licence.

Licence Fee means the fee stipulated in **Item 6** of the Schedule.

Other Amenities means any part of the Facility or its surrounds that the Group is permitted to use in conjunction with the other users of the Facility.

Schedule means the schedule to this Licence.

Term means the period of time for which the Licence is granted.

2. Conditions

This Licence is subject to and conditional on the approval of the Minister for Lands under the *Land Administration Act 1997*.

3. Grant of Licence

The City grants a licence to the Group to use, under the terms and conditions provided for in this agreement, the Licensed Area and any Other Amenities for the Term.

4. Term

The Licence commences on the Commencement Date as specified in **Item 3** of the Schedule and ends at midnight on the Last Day of the Licence as specified in **Item 4** of the Schedule.

5. Other Amenities

The Licence includes the right to use, in conjunction with other users of the Facility, the Other Amenities specified in **Item 5** of the Schedule in accordance with any particular conditions of use specified in **Item 5**.

6. Agreed Hours

- (1) The Group is to use the Licensed Area and the Other Amenities only on days and during hours agreed in advance with the City from time to time and booked through the City's booking system (**Agreed Hours**).
- (2) The Group must advise the City in writing of their preferred hours for the following calendar year by 1 August in each year of the Term.

7. Licence Fee

Licence Fee

The Group must pay upon receipt of the City's invoice at the expiration of each financial year during the Term the Licence Fee.

Review of Licence Fee

- (1) The Licence Fee will be reviewed on the dates specified in **Item 9** of the Schedule. The Licence Fee will be reviewed by the City, acting reasonably, in accordance with requirements of the City's policy in respect of standard management licences (as amended from time to time). The Group acknowledges and agrees that the determination of the Licence Fee in accordance with the City's policy will be based on the operating costs of the Licensed Area and Other Amenities and apportioned by the City for the Group's use of the Licensed Area and Other Amenities as determined by the City. The Group acknowledges and agrees that the Licence Fee will also incorporate an administration fee.
- (2) The reviewed Licence Fee shall take effect from the appropriate review date but until such time as a determination of the reviewed Licence Fee is made the Group shall pay on account thereof Licence Fee at the rate payable immediately prior to the appropriate review date until the date of determination whereupon the Group shall pay to the City the amount by which such payment on account falls short of the amount.

GST

If any GST is payable on the Licence Fee or any other supply made as a result of this Licence, the Group must pay that GST.

8. Use

- (1) The Group must use the Licensed Area only for the purpose specified in **Item 7** of the Schedule.
- (2) The Group acknowledges the receipt of the keys, and any other security device, specified in **Item 8** of the Schedule.
- (3) The Group must use and keep the keys, and any other security device, strictly in accordance with any instructions specified in **Item 8** of the Schedule.
- (4) The Group must not copy any key or other security device, and must account for all keys and security devices at the end of the Term.
- (5) The Group must not use the Licensed Area, or any part of the Facility, for any purpose, or in any manner, that is not lawful and must comply with any statute, or lawful order, affecting its use of the Licensed Area and Other Amenities.
- (6) The Group shall use the Licensed Area and the Other Amenities only during the Agreed Hours.

9. Condition of Facility and Licensed Area

The Licensed Area and the Other Amenities are made available to the Group in the condition that they are in at the Commencement Date.

10. Alterations

- (1) The City is not obliged to make any alterations to the Licensed Area or Other Amenities or install any fixtures or fittings that are additional to those installed at the Commencement Date.
- (2) The Group must not make any alterations to the Licensed Area or Other Amenities or install any fixtures, fittings, signs or advertisements without the prior written permission of the City, which may be withheld at the absolute discretion of the City.
- (3) To apply for the City's permission to do any of the things referred to in paragraph (2) above, the Group must submit an application in writing to the City at least one month prior to when the Group wishes to commence any work to effect the alteration or installation.
- (4) The Group must not commence any work to effect a proposed alteration or installation until it has received the City's written permission to do the work and, if such permission is granted, the Group must comply with any conditions specified in the permission.
- (5) Any alteration or installation effected by the Group will be at the sole cost of the Group.
- (6) The Group agrees that if it effects any alteration or installation in a manner that does not meet the City's standards, the City may, at the Group's cost, take any action the City considers necessary to remove or rectify the alteration or installation, and the cost of doing so will be a liquidated debt payable by the Group on demand and recoverable in a Court of competent jurisdiction.

11. Maintenance and Cleaning

- (1) Subject to the Group's payment of the Licence Fee, the City will maintain the Facility including the Licensed Area and Other Amenities in accordance with the City's maintenance standards.
- (2) Maintenance for the purposes of paragraph (1) above covers:
 - (a) all structural maintenance of the Facility;
 - (b) general building repairs; and
 - (c) the ongoing repair and replacement of fixtures and fittings.
- (3) The standard of the maintenance and the frequency of the repairs and replacements identified in paragraph (2) above will be dependent on the City's general building maintenance program and budgetary considerations and may vary from time to time.
- (4) The Group must keep the Licensed Area clean, tidy and free from rubbish.
- (5) The Group, in common with other users of the Facility, must keep the Other Amenities clean, tidy and free from rubbish.
- (6) The Group must leave the Licensed Area and Other Amenities at the end of each period of use in the condition those areas were in at the beginning of the period of use.

12. Indemnity

- (1) The Group agrees to indemnify the City and the Minister for Lands from and against all claims, demands, writs, actions and suits of any kind which may be brought or made against the City and/or the Minister for Lands as a result of the Group's use of the Licensed Area, Other Amenities or its access to the Facility.

- (2) The Group agrees that the City or the Minister for Lands will not be responsible for, or liable in any way in regard to, any property of the Group, or its members, that might be brought onto the Facility as a result of the Group's use of the Licensed Area and Other Amenities.

13. Insurance

- (1) The Group must take out and maintain for the Term, a public liability insurance policy with an insurer approved by the City.
- (2) The insurance policy identified in paragraph (1) above must cover both the City and the Group for any public liability claim that arises out of, or is connected in any way with, the Group's use of the Licensed Area, Other Amenities or the Facility generally.
- (3) The amount of the cover given by the insurance policy identified in paragraph (1) above must be a minimum of \$10,000,000 for any one claim or such greater amount as the City may reasonably require from time to time.
- (4) The Group must not do anything in the Licensed Area, Other Amenities or the Facility generally that may affect any insurance taken out by the City, or render any such insurance void.

14. Default

- (1) This Licence is granted subject to the terms and conditions in this agreement and any failure by the Group to comply with any of those terms or conditions may result in the termination of the Licence by the City.
- (2) To terminate the Licence, the City must give the Group a written notice stipulating the default and requiring the Group to remedy the default within one month of the service of the notice.
- (3) If the default is not remedied to the satisfaction of the City within one month of the service of a notice under paragraph (2) above the Licence will be terminated on the date of the expiration of the notice without prejudice to any rights the City may have under this agreement.
- (4) A notice under paragraph (2) above is to be sent by prepaid post to the Group at the address given in this agreement and will be deemed to have been served on the date it would have been delivered in the ordinary course of the post.

15. Dispute Resolution

- (1) Any dispute between the Group and the City in regard to anything arising from the Licence or this agreement is to be addressed in the first instance by a meeting between representatives of the Group, appointed for that purpose, and the officer of the City responsible for administering the Facility.
- (2) If the dispute cannot be resolved, in a manner that is satisfactory to both parties through such a meeting, the Group agrees that the CEO of the City will have the power to make a final determination in resolution of the dispute, but only after giving due consideration to all of the matters discussed at the meeting referred to in paragraph (1) above and setting out in writing the reasons for his or her decision.

16. Entry and Inspection

The Group must permit the City to enter the Licensed Area at any reasonable time during the Agreed Hours to inspect and view the area, to carry out any maintenance work or to rectify any breach of the conditions of this Licence.

17. Acknowledgements

The Group acknowledges and agrees that:

- (a) it only has use of the Licensed Area during the Agreed Hours and that other users of the Facility may be permitted to use the Licensed Area at other times;
- (b) the Group must book its use of the Facility through the City's booking system;
- (c) the Agreed Hours may be modified from time to time provided any proposed modification is agreed in advance with the City and recorded in the City's booking system;
- (d) if the Land is Crown land managed by the City, this Licence will automatically terminate if the management order that the City holds the Land under is revoked;
- (e) if the Licence is terminated in accordance with **paragraph (3)** above, the Group will not be entitled to any form of compensation or damages as a result of the termination; and
- (f) the Group must not obstruct any person or other organisation from using the Licensed Area outside the Agreed Hours.

18. Alcohol

Consumption of alcohol

The Group COVENANTS AND AGREES -

- (a) not to use or allow the Licensed Area to be used for the consumption or sale of alcohol without first obtaining the written consent of the City, and the City shall determine any such application in its absolute discretion; and
- (b) that it shall not make an application for a licence or permit under the Liquor Control Act 1988 for the Licensed Area, or apply for an amendment to a licence or permit it has been granted, without first obtaining the written consent of the City.

Liquor licence

The Group COVENANTS AND AGREES that if a licence or permit is granted under the Liquor Control Act 1988 for the Licensed Area it must -

- (c) comply with any requirements attaching to the licence or permit at its cost;
- (d) comply with the requirements of the Harm Minimisation Policy (as amended from time to time) of the Department of Racing, Gaming & Liquor, which will require, without limitation the following -
 - (i) the development and implementation of a House Management Policy and Code of Conduct (as defined by the Harm Minimisation Policy) for the Licensed Area, and such policies must be displayed in a prominent position on the Licensed Area at all times; and
 - (ii) the development and implementation of a Management Plan (as defined by the Harm Minimisation Policy) for the Licensed Area.
- (e) provide a copy of the licence or permit (as well as a copy of any document referred to in the licence or permit, including without limitation a copy of the House Management

Policy, Code of Conduct and Management Plan (as defined by the Harm Minimisation Policy)) to the City as soon as practicable after the date of grant; and

- (f) indemnify and keep indemnified the City from and against any breach of the Liquor Control Act 1988, Health (Food Hygiene) Regulations 1993, Liquor Control Regulations 1989 or the licence or permit or any conditions imposed thereupon for which it may be liable as the owner or management body of the Facility.

19. Minimise nuisance to neighbours

- (1) The Group acknowledges that the Facility is located in close proximity to residential premises.
- (2) The Group must take all reasonable action to minimise and prevent disruption, nuisance and disturbance to surrounding residential premises, particularly during and following social events held at the Facility.
- (3) The Group must comply with all reasonable conditions and directions that may be imposed by the City from time to time in relation to the minimisation and prevention of disruption, nuisance and disturbance to surrounding residential premises.

20. Acknowledgement of other users of Licensed Area

- (1) The Group acknowledges that the Claremont Junior Football Club Inc will also be permitted to use the Facility and/or Licensed Area pursuant to a similar agreement, and the Group will have no right to access or use the Licensed Area during times which the Claremont Junior Football Club Inc has use of the Licensed Area.
- (2) The Group agrees with the City to use its best endeavours to work co-operatively with the Claremont Junior Football Club Inc and any other authorised users of the Licensed Area or Facility.

21. Acts by Agents

All acts and things which the City is required to do under this Licence may be done by the City, the CEO, an officer or the agent, solicitor, contractor or employee of the City.

22. Governing Law

This Licence is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

23. Severance

If any part of this Licence is or becomes void or unenforceable, that part is or will be severed from this Licence to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

24. Variation

This Licence may be varied only by deed executed by the parties subject to such consents as are required by this Licence or at law.

25. Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Licence do not, to the fullest extent permitted by law, apply to limit the terms of this Licence.

26. Further Assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Licence.

27. Interpretation

Interpretation

In this Licence, unless expressed to the contrary -

- (a) words importing -
 - (i) the singular includes the plural and vice versa; and
 - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to -
 - (i) a natural person includes a body corporate or local government;
 - (ii) a body corporate or local government includes a natural person;
 - (iii) a professional body includes a successor to or substitute for that body;
 - (iv) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
 - (v) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
 - (vi) a right includes a benefit, remedy, discretion, authority or power;
 - (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (viii) this Licence or provisions of this Licence or any other deed, agreement, instrument or contract includes a reference to -
 - (A) both express and implied provisions; and

- (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (x) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
- (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Licence;
- (d) the covenants and obligations on the part of the Group not to do or omit to do any act or thing include -
 - (i) covenants not to permit that act or thing to be done or omitted to be done by a person authorised by the Group; and
 - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- (e) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- (f) if a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.

Headings

Except in the Schedule, headings do not affect the interpretation of this Licence.

Schedule

Item 1 Facility

John Leckie Pavilion (located on Reserve No. 1670 known as College Park, and being Lot 103 on Deposited Plan 222793 being the whole of the land comprised within Crown Land Title Volume LR3012 Folio 206).

Item 2 Licensed Area

B10 - kitchen, B09 - clubroom, B07- Store 5 and B19 – Storeroom Number 3 of the Facility as shown labelled and hachured on the sketch annexed hereto as **Annexure 1**.

Item 3 Commencement Date

1 September 2013

Item 4 Last Day of Licence

3 years from the Commencement Date, being 31 August 2016.

Item 5 Other Amenities

- (i) B01 – Lobby;
- (ii) B08 Passage;
- (iii) B20 Passage; and
- (iv) B06 – Bin Store

as generally labelled on the sketch annexed hereto as **Annexure 1**.

Item 6 Licence Fee

The Licence Fee comprises the following:

- (i) An annual fee of \$732.60 (calculated on a nominal usage of 280 hours per year but payable even if the Group's use of the Licensed Area is less than 280 hours in any financial year during the Term). This annual fee will be varied in accordance with the City's Schedule of Fees and Charges from time to time and in accordance with **clause 0**.
- (ii) An additional fee payable if the Group's use of the Licensed Area exceeds 280 hours per financial year. The additional fee shall be calculated in accordance with the hourly casual hire charge stipulated in the City's Schedule of Fees and Charges from time to time. The current charge is \$18.00 peak hire rate (8:30am to 8:30pm) and off peak rate of \$14.00.

Item 7 Permitted purpose

Cricket Club and uses reasonably ancillary thereto.

Item 8 Keys and Security Devices

Five keys for the section of John Leckie pavilion to be utilised by the Group.

Any additional keys will only be provided at the Group's cost, calculated in accordance with the City's Schedule of Fees and Charges, and only in the event the keys originally supplied are lost or stolen.

Item 9 Licence Fee Review Dates

On the first anniversary of the Commencement Date and thereafter every third year of the term of this Licence.

DRAFT

Signing page

EXECUTED

2013

THE COMMON SEAL of the **City of Nedlands**
was affixed by authority of a resolution of the
Council in the presence of -

Mayor

Chief Executive Officer

Signed under **Authorisation** of an **Order of the Executive of the Western Suburbs Cricket Club (Inc)** pursuant to the constitution of the Western Suburbs Cricket Club Inc by each of the undersigned each of whom hereby declares by the execution of this document that he or she holds the office of the Executive in the Western Suburbs Cricket Club Inc as indicated under his or her name-

Office Holder Sign

Name:

Address:

Office Held:

Office Holder Sign

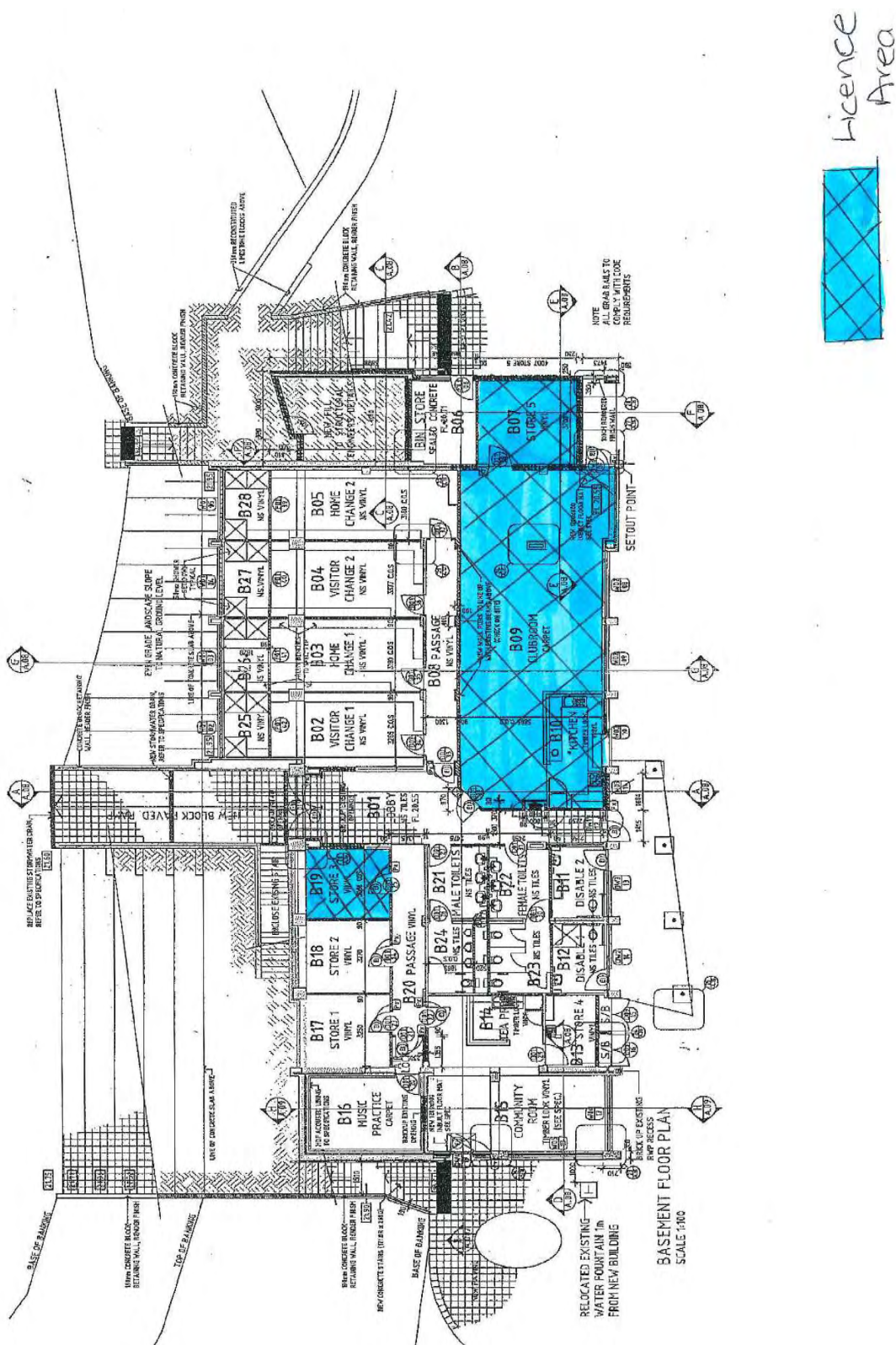
Name:

Address:

Office Held:

Minister for Lands Consent

Annexure 1 – Sketch of Licensed Area





City of Nedlands

The City of Nedlands accepts no responsibility for the accuracy of this image or the results of any actions taken when using this image

PD14.13 Attachment 2
Plan

Locality

Wednesday, 20 March
2013

1:2484

