
Randwick City Council

South Sydney Members Rugby League Football
Club Limited

South Sydney District Rugby League Football Club
Limited

Agreement for Lease & Licence

Part Heffron Park, Maroubra

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Date

Parties

Randwick City Council ABN 77 362 844 121 of 30 Frances Street, Randwick NSW 2031 (**Council**)

South Sydney Members Rugby League Football Club Limited ABN 40 118 320 684 of 261-265 Chalmers Street Redfern NSW 2016 (**Tenant**)

South Sydney District Rugby League Football Club Limited ABN 28 002 487 390 of 261-265 Chalmers Street Redfern NSW 2016 (**Guarantor**)

Background

- A The Land is owned by the State of New South Wales and is a recreation reserve within the meaning of the *Crown Land Management Act*.
- B Council is the duly appointed Crown Land Manager of the Land within the meaning of section 3.3(i) of the *Crown Land Management Act*.
- C Subject to receiving funding and meeting regulatory requirements, Council will construct a community and high performance training centre on part of the Land.
- D Following completion of that construction, Council has agreed to grant and the Tenant has agreed to take a lease of the Premises subject to the terms of this Agreement.
- E The Guarantor agrees to guarantee the obligations of the Tenant under this Agreement, the Licence and the Lease and to indemnify the Landlord for those obligations.

Agreed terms

1 Definitions

1.1 General definitions

In this Agreement these terms have the following meanings:

Aboriginal Land Claims	means Claim 28772 lodged 20/08/2010 by the La Perouse Local Aboriginal Land Council.
Agreement	means this agreement and the Schedules.
ALR Act	has the meaning given in clause 10.1 .

Alternate Representative	means a person appointed as an Alternate Representative in accordance with rule 3 of the PCG Rules.
Approval Date	means the date specified as such in schedule 1 .
Approvals	includes, where the context requires, all approvals from any Government Authority required under any Law to: <ul style="list-style-type: none">(a) enter into the Lease and Licence;(b) carry out the Council's Works;(c) carry out Council Variations (if any);(d) carry out the Tenant's Works;(e) carry out Tenant Variations (if any); and(f) carry out the Permitted Use (excluding liquor licencing approvals from the Office of Liquor Gaming and Racing) from the Premises.
Bank	An authorised deposit-taking institution as defined in the <i>Banking Act 1959</i> , the Reserve Bank of Australia or a state bank.
Bank Guarantee	A guarantee by a Bank acceptable to Council to pay the amount set out in the Reference Schedule to Council without reference to the Tenant that is: <ul style="list-style-type: none">(a) in respect of all the Tenant's obligations under this Agreement and any other agreements ancillary to this Agreement;(b) unconditional and irrevocable;(c) without an expiry date; and otherwise in a form and substance reasonably acceptable to Council.
Building Contract	means the contract between Council and Council's Builder for construction of the Council's Works.
Building Site Conditions	means those conditions relating to access and use of the Council's Works imposed by Council's Builder pursuant to the Building Contract.
Business Day	means any day in New South Wales which is not a Saturday, Sunday or public holiday.
Car Park	means the car park shown on the Site Plan.
Certificate of Practical Completion	means a certificate issued in accordance with this Agreement certifying as to Practical Completion of

	the Council's Works (or the relevant part of the Council's Works) as the case may be.
CHPC	means the Heffron Park Community and High Performance Centre to be constructed on the Land comprising: <ul style="list-style-type: none">(a) the Premises;(b) the Common Areas; and(c) part of the Car Park.
CHPC Development Program	means the program in schedule 3 for the design, approval and construction of the CHPC.
Claim	includes any claim, action, demand, allegation, assertion, proceeding or judgment however arising, whether at law or in equity including under statute or for breach of statute, nuisance, negligence or in restitution.
Commencing Date	means the date which is the next day after the expiry of the Fitout Period.
Common Areas	means those parts of the CHPC which are intended for common use for the Development and includes the toilets, entry foyer and reception and Car Park.
Construction Work	has the same meaning as in Part 6.1 of the WHS Regulation.
Council	means Randwick City Council.
Council Funding	means the amount deposited into the Project Account under clause 5.1(a)(i) .
Council's Architect	means the architect (or such other person to fulfil that role) Council appoints from time to time.
Council's Associates	means each of Council's employees, officers, agents, contractors or invitees and any other person over whom Council has control (legal or otherwise).
Council's Builder	means Council's builder and all sub-contractors, consultants or employees of Council's builder who may be engaged from time to time to carry out the Council's Works.
Council's Representative	has the meaning given to it in clause 19 .
Council Variations	means any variations to Council's Works as specified in clause 6.4 .

Council's Works	means the works required to complete the construction of the CHPC including the works set out in and allocated to Council in schedule 7 but excluding the Tenant's Works.
Crown Lands Act	means the <i>Crown Lands Act 1989</i> or when repealed, the <i>Crown Lands Management Act 2016</i> as amended from time to time.
Date for Practical Completion	means the date specified as such in schedule 1 as extended (if at all) under clause 6.3 .
Date of Practical Completion	means the date on which Practical Completion of the Council's Works (or the relevant part of the Council's Works as the case may be) occurs as stated in the Certificate of Practical Completion.
Defects Liability Period	means the period of time starting on the Handover Date and ending [52 weeks after the Date of Practical Completion] .
Department	Department of Industry Crown Land & Water.
Development	means Council's development of the Land which includes the CHPC and the Sporting Field and may also include a multi-purpose facility, indoor gymnastics facilities.
Development Works	means the works, other than the Council's Works, required to complete construction of the Development.
Development Application	means an application for Development Consent.
Development Consent	means a Development Consent or consent or complying development certificate required under any Law to carry out or allow: (a) construction of the Council's Works; (b) use of the CHPC for the Permitted Use; and (c) the fitout and use of the Premises.
Development Consent Condition Precedent	has the meaning given to it in clause 4.1 .
Estimated Handover Date	means the date specified as such in the Notice of Estimated Handover Date (being a date not less than 8 weeks after the date the Notice of Estimated Handover Date is given to the Tenant).

Estimated Lettable Area	means the area identified as such in schedule 1 .
Expert	means a person appointed under clause 15.3 .
Fitout Period	means the period in schedule 1 commencing on the Handover Date.
Funder	means the Crown in right of the State of New South Wales as represented by the Office of Sport.
Funding Agreement	means a funding agreement between the Tenant and the Funder pursuant to which the amounts under clause 5.1(a)(iii) and clause 5.1(a)(iv) are to be provided.
Funding Date	means the date identified as such in schedule 1 .
Good Faith	means to act: <ul style="list-style-type: none">(a) honestly;(b) reasonably, having regards to the terms of this Agreement and in the best interests of each parties' respective commercial positions;(c) not arbitrarily or capriciously;(d) without intention to cause harm; and(e) with respect for the intent of the parties' bargain as a matter of substance, and not only form, but any obligation to act in Good Faith under this Agreement does not create and is not intended to give rise to any fiduciary relationship between the parties.
Government Authority	means any government or governmental, semi government, administration, fiscal or financial body, department, commission, authority, tribunal, agency or entity or such other person, including the Minister, having jurisdiction in respect of the Development.
Government Funding	means the amounts in clause 5.1(a)(iii) and clause 5.1(a)(iv) which are received by the Tenant in accordance with the Funding Agreement.
Guarantee and Indemnity	means the guarantee and indemnity in clause 25 .
Guaranteed Money	All amounts payable by the Tenant under this Agreement, the Licence and the Lease.
Handover Date	means the day which is 2 Business Days after the day on which Council's Representative issues the

	Certificate of Practical Completion for the Council's Works under clause 9.4(a) .
Insolvency Event	means the Tenant becomes insolvent, under administration, in liquidation or receivership, deregistered or otherwise without full capacity.
Land	means the land identified in schedule 1 on which the CHPC will be situated.
Law	includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise and includes the common law and equity.
Lease	means a lease substantively in the form contained in schedule 9 or an updated form as required by the relevant Government Authority from time to time.
Lettable Area of the Premises	means the area determined in accordance with clause 6.7(a) .
Licence	means a licence substantively in the form contained in schedule 10 or an updated form as required by the relevant Government Authority from time to time.
Licence Site Plan	means the plan of the Licensed Areas which is to be attached to the Licence.
Minister	Minister responsible for Department of Industry Crown Lands & Water.
Method of Measurement	means the Property Council of Australia's Method of Measurement for Lettable Area published March 1997.
Notice of Estimated Handover Date	means the notice given by Council or Council's Representative to the Tenant stating when the Council's Works are anticipated to reach Practical Completion and specifying the Estimated Handover Date.
Occupation Certificate	means an occupation certificate under Part 6 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) issued by a certifying authority.
PCG	has the meaning given in schedule 5 .
PCG Rules	means the rules set out at schedule 8 .
PEG	has the meaning given in schedule 5 .
Permits	has the meaning given in clause 9.5(d) .
Permitted Use	Club headquarters for carrying out the Tenant's training, South Cares education, merchandise and

- training programs, café and administrative functions to support the Tenant's activities at the CHPC.
- Plans and Specifications** means the plans and specifications for the CHPC from time to time and which, at the date of this Agreement, are:
- (a) the plans attached at **schedule 2**; and
 - (b) the Site Plan.
- Practical Completion** means:
- (a) that the Council's Works (or the relevant part of them) have been substantially completed in accordance with the Plans and Specifications except for minor omissions or minor defects or other minor works which:
 - (i) in Council's opinion do not materially and adversely affect the Tenant's ability to carry out the Tenant's Works;
 - (ii) do not prevent the CHPC from being used for its intended purpose;
 - (iii) the existence and rectification of which will not prejudice the use of the Premises;
 - (iv) do not cause any legal restriction on the use or the occupation of the CHPC,
 - (b) that Council has provided the Tenant with a copy of an Occupation Certificate for the Premises;
 - (c) all services and utilities for the Premises are available to the Tenant and the Premises and common areas are clean and tidy; and
 - (d) all access ways to and from the Premises and the Car Park are open and available to the Tenant.
- Premises** means that part of the CHPC delineated and identified as the Premises on the Site Plan having an area of approximately 5,000 square metres.
- Project Account** means the special purpose interest bearing bank account established under **clause 5.6** for the Development.
- Project Certifier** means the project certifier Council may appoint from time to time and so notifies the Tenant.

Project Governance Framework	means the project governance framework set out in schedule 5 .
PWG	has the meaning given in schedule 5 .
Rental Rate	means the rental rate specified in schedule 1 .
Representatives	means the representatives set out in the table in schedule 5 .
Safe Work Method Statement	means a statement that meets the requirements of clause 299 of the WHS Regulation.
Schedule	means a schedule to this Agreement and includes all the information contained in it.
Site Plan	means the plans in schedule 4 .
Sporting Field	means the area so identified on the Site Plan.
Sunset Date	means the date specified as such in schedule 1 , extended (if at all) under clause 6.3 .
Tenant Funding	has the meaning given in clause 21.2 .
Tenant Variations	means any variations to the Council's Works as specified in clause 6.5 .
Tenant's Associates	means each of the Tenant's employees, officers, agents, contractors and invitees and any other person over whom the Tenant has control (legal or otherwise) and, where the context requires, also includes the Tenant's Contractors.
Tenant's Contractors	means the Tenant's agents, contractors, consultants or workmen and any others involved in carrying out the Tenant's Works.
Tenant's Representative	means the representative the Tenant appoints from time to time and so notifies Council.
Tenant's Works	means all works necessary to fit out the Premises with loose furniture and specialised equipment.
Term	means the term of the Lease specified in schedule 1 .
Transaction Documents	means: (a) this Agreement; (b) the Lease; and (c) the Licence.

1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) This Agreement is governed by New South Wales law.
- (b) Headings are for convenience only and do not affect interpretation.
- (c) The singular includes the plural and the plural includes the singular.
- (d) A gender includes all genders.
- (e) A person includes an individual and a corporation.
- (f) A reference to any party to this Agreement includes its successors and assigns.
- (g) A reference to a right or obligation of any party comprising two or more people confers that right, or imposes that obligation, on each of them individually and both (or all) of them together.
- (h) A reference to legislation includes an amendment of or substitution for it and a regulation or statutory instrument issued under it.
- (i) Unless stated otherwise, one word or provision does not limit the effect of another.
- (j) Reference to the whole includes part.
- (k) All obligations are taken to be required to be performed properly and punctually.
- (l) Anything to be done on a Saturday, Sunday or a public holiday in New South Wales may be done on the next business day.
- (m) Every obligation by a party is taken to include an obligation by that party to ensure that each of its employees and others under its control comply with that obligation.
- (n) A word which is used in this Agreement which is not defined in this Agreement but which is defined in the Lease has the meaning given in the Lease.
- (o) "Include" (in any form) when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind.
- (p) Reference to "Item" means an item in the Reference Schedule at **schedule 1**.

1.3 GST definitions

- (a) In this Agreement:

GST Amount means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a taxable supply) by the appropriate rate of GST (being 10% at the date of this Agreement).

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* or any Act amending or replacing that Act and any public ruling relating to that Act.

Payment means:

- (i) the amount of any monetary consideration (other than a GST Amount payable under **clause 2**);
 - (ii) the GST exclusive market value of any non-monetary consideration paid or provided by a party to another for any supply made under or in connection with this Agreement and includes any amount payable by way of indemnity, reimbursement, compensation or damages.
- (b) In this Agreement the following terms have the same meanings as those terms in the GST Law:
- (i) adjustment event;
 - (ii) adjustment note;
 - (iii) increasing adjustment;
 - (iv) decreasing adjustment;
 - (v) GST;
 - (vi) GST group;
 - (vii) input tax credit;
 - (viii) representative member;
 - (ix) supply;
 - (x) taxable supply; and
 - (xi) tax invoice.

2 GST

2.1 Payments do not include GST

All Payments under this Agreement have been set or determined exclusive of the impact of GST.

2.2 Liability to pay GST

Subject to **clause 2.3**, if the whole or any part of a Payment by a party to this Agreement is the consideration for a taxable supply (**Payer**), the Payer must pay the GST Amount in respect of the Payment to the Payee as an additional amount, at the same time and in the same manner as the Payment is otherwise payable or as otherwise agreed in writing.

2.3 Reimbursements

- (a) If this Agreement requires a party to this Agreement to pay for, reimburse or contribute to any expense or liability (**Reimbursable Expense**) incurred by another party (**Payee**) to a third party, the amount to be paid, reimbursed or contributed will be the amount of the Reimbursable Expense net of any input tax credit to which the payee is entitled in

respect of the reimbursable expense (**Net Expense**). The Payee will be presumed to be entitled to a full input tax credit unless it demonstrates otherwise.

- (b) If a payment of a Net Expense is consideration for a taxable supply, the provisions of **clause 2.2** will apply to the Payment.
- (c) In this **clause 2.3**, **Payee** includes the representative member of a GST group in which the payee is a member.

2.4 Tax invoice

A party's right to payment under **clause 2.2** is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

2.5 Adjustments

If there is an adjustment event in relation to a supply made by the Payee to the Payer which results in the amount of GST being different from the amount of GST previously recovered by the payee from the Payer (**Previous GST Amount**), then the Payee or the Payee's representative member must issue the necessary adjustment note, and, as appropriate:

- (a) in the case of an increasing adjustment, the Payer must pay to the Payee the amount by which the amount of GST on the supply exceeds the previous GST Amount; and
- (b) in the case of a decreasing adjustment, the Payee must refund to the Payer the amount by which the previous GST Amount exceeds the amount of GST on the supply.

2.6 Penalties and interest

If the Payee of a Payment has become subject to any penalties or interest because of the late payment by the Payee of any GST Amount and that late payment is a result of the failure of the payer to comply with the terms of this **clause 2**, then the Payer must pay to the Payee an additional amount on demand equal to the amount of those penalties and interest. The Payee must use the Payee's best endeavours to mitigate such penalties and interest.

2.7 Indemnity

The Payer must indemnify the Payee on demand in respect of any claim arising from a breach by the Payer of the Payer's obligations under this **clause 2**. For the avoidance of doubt, such indemnity does not include the Payee's normal obligations under GST Law.

3 Conditions precedent

3.1 Conditions precedent

The parties' rights and obligations under this Agreement, other than **clauses 13 - 20** (inclusive), **clause 4** and this **clause 3**, are subject to and conditional upon:

- (a) satisfaction of the Development Consent Condition Precedent;
- (b) the Tenant entering into the Funding Agreement with the Funder in a form acceptable to Council; and
- (c) subject to **clause 3.2**, Council obtaining the consent of the Minister to this Agreement and to the grant of the Lease and Licence to the Tenant.

3.2 Ministerial consent

- (a) Council must:
 - (i) use reasonable endeavours to satisfy the conditions precedent in **clause 3.1(a)** and **clause 3.1(c)** by the Approval Date; and
 - (ii) give notice to the Tenant promptly after satisfying the condition precedent in **clause 3.1(c)**.
- (b) If Council has not given the Tenant a notice under **clause 3.2(a)(ii)** by the Approval Date, then:
 - (i) either the Tenant or Council (providing that Council has complied with **clause 3.2(a)(i)**) may rescind this Agreement by giving notice in writing to the other party within 15 business days after the Approval Date; or
 - (ii) at any time before a party gives a notice under **clause 3.2(b)(i)** the Tenant may give a notice to Council of a revised Approval Date and the provisions of this **clause 3.2** will then apply to the revised Approval Date as if it were the previous Approval Date under this Agreement (provided that the Tenant may only give one such notice).
- (c) If either party serves a notice under **clause 3.2(b)(i)** then this Agreement is rescinded on the date of the notice and, to the extent that it has been deposited into the Project Account, the Tenant Funding will be refunded to the Tenant and Council Funding will be refunded to Council.

3.3 Funding Agreement

- (a) The Tenant must:
 - (i) use reasonable endeavours to satisfy the conditions precedent in **clause 3.1(b)** by the Funding Date; and
 - (ii) give notice attaching a copy of the fully executed Funding Agreement to Council promptly after satisfying the condition precedent in **clause 3.1(b)**.
- (b) If Council has not given the Tenant a notice under **clause 3.3(a)(ii)** by the Funding Date, then:
 - (i) either the Tenant or Council (providing that the Tenant has complied with **clause 3.2(a)(i)**) may rescind this Agreement by giving notice in writing to the other party within 15 business days after the Funding Date; or

- (ii) at any time before a party gives a notice under **clause 3.3(b)(i)** the Tenant may give a notice to Council of a revised Funding Date and the provisions of this **clause 3.3** will then apply to the revised Funding Date as if it were the previous Funding Date under this Agreement (provided that the Tenant may only give one such notice).
- (c) If either party serves a notice under **clause 3.3(b)(i)** then this Agreement is rescinded on the date of the notice and, to the extent that it has been deposited into the Project Account, the Tenant Funding will be refunded to the Tenant and the Council Funding will be refunded to Council.

4 Development Approval

4.1 Condition precedent

This Agreement is subject to and conditional upon Council obtaining Development Consent by the Approval Date (**Development Consent Condition Precedent**).

4.2 Council to apply for Development Consent

- (a) Promptly after the date of this Agreement, the Tenant must provide to Council all plans, specifications, information, documents and other details reasonably required by Council to prepare the Development Application.
- (b) Council must provide a copy of the Development Application to the Tenant for comment before lodgement with the Council or the relevant consent Authority.
- (c) Council must, acting in Good Faith, consider the comments of the Tenant received within 15 Business Days after delivery of the application under **clause 4.2(b)** and make such changes (if any) to the Development Application as Council considers appropriate or necessary. The provisions of **clauses 4.2(a) – (c)** will apply to the amended Development Application except that:
 - (i) any comments from the Tenant must be received within 5 Business Days of the Tenant receiving the amended Development Application;
 - (ii) if the Tenant does not give comments within 5 Business Days, it is deemed to have consented to the amended Development Application; and
 - (iii) Council is not required to amend the Development Application more than twice, after which the Development Application is deemed to be approved by the Tenant.
- (d) Council must, at its own cost:

- (i) after obtaining the comments of the Tenant to the Development Application, apply to the Council or relevant consent authority within 20 Business Days after the date on which the Tenant approves (or is deemed to have approved) the application;
 - (ii) promptly after lodgement, deliver copies of the Development Application to the Tenant;
 - (iii) do everything reasonably necessary to obtain a Development Consent by the Approval Date, but Council need not commence any appeal or seek any review in respect of the Development Application or its refusal.
- (e) The Tenant must, at its own cost, do everything reasonably requested by Council to assist Council to obtain the Development Consent by the Approval Date, including providing all information within 3 days of a request by Council.

4.3 Information

Council must keep the Tenant reasonably informed of:

- (a) things done by Council under **clause 4.2**; and
- (b) the content of communications from the Council or any other Government Authority in relation to the application made pursuant to **clause 4.2**.

4.4 Failure to obtain Development Consent

- (a) If Council fails to obtain the Development Consent by the Approval Date, then:
 - (i) either party rescind this Agreement by giving notice in writing to the other party within 15 Business Days after the Approval Date; or
 - (ii) at any time before a party gives a notice under **clause 4.4(a)(i)**, the Tenant may give notice in writing to Council of a revised Approval Date and the provisions of this **clause 4** will then apply to the revised Approval Date as if it were the previous Approval Date under this Agreement (provided that the Tenant may only give one notice under this clause).
- (b) Any rescission under **clause 4.4(a)(i)** does not prejudice any Claim which either party to this Agreement may have arising from the non-compliance by the other party of any of its obligations under this Agreement.
- (c) If either party serves a notice under **clause 4.4(a)(i)** then this Agreement is rescinded on the date of the notice and **clause 5.6** applies.

4.5 Development Consent on materially adverse conditions

- (a) Within 5 Business Days of receiving a notice of determination of the Development Consent Council must provide a copy to the Tenant.

- (b) Within 20 Business Days of receiving a notice of determination of a Development Consent, Council must give notice to the Tenant either:
 - (i) that the Development Consent is on terms acceptable to Council; or
 - (ii) that Council objects to the Development Consent. Council may only give a notice under this **clause 4.5(b)(ii)** if Council determines, acting in Good Faith, that the conditions of the Development Consent materially adversely affect:
 - (A) compliance with the conditions of consent of any Government Authority to the Development; or
 - (B) the cost of the Development; or
 - (C) conduct of the following uses on the Land from the CHPC:
 - (1) retail; or
 - (2) commercial offices; or
 - (D) the value of the constructed Development; or
 - (E) compliance of the Development with the Heffron Park Plan of Management; or
 - (F) Council's proposed future works on the Land and potential expansion of the CHPC; or
 - (G) the ability of Council to undertake and complete the Development materially in accordance with the Development Application.
- (c) Within 15 Business Days of receiving a copy of the notice of determination of the Development Consent from Council, the Tenant must give notice to Council either:
 - (i) that the Development Consent is on terms acceptable to the Tenant; or
 - (ii) that the Tenant objects to the Development Consent. The Tenant may only give a notice under this clause if the Tenant, acting in Good Faith, determines that the conditions of the Development Consent will materially adversely affect the Tenant's ability to operate the Permitted Use from the Premises under the Lease.
- (d) If Council fails to give any notice under **clause 4.5(b)** on time, Council is deemed to have given a notice under **clause 4.5(b)(i)**.
- (e) If the Tenant fails to give any notice under **clause 4.5(c)** on time, the Tenant is deemed to have given a notice under **clause 4.5(c)(i)**.
- (f) If:
 - (i) Council gives a notice under **clause 4.5(b)(ii)**; or
 - (ii) the Tenant gives a notice under **clause 4.5(c)(ii)**,

then, in respect of the Development Consent objected to, Council is deemed not to have obtained a Development Consent for the purposes of this Agreement.

- (g) Within 20 Business Days of Council:
- (i) giving a notice under **clause 4.5(b)(ii)**; or
 - (ii) receiving the Tenant's notice under **clause 4.5(c)(ii)**,

Council may rescind this Agreement on notice to the Tenant in which case this Agreement is rescinded on the date of the notice and **clause 5.6** applies.

4.6 Consultation

During the Development Consent application process, the parties will consult with each other acting reasonably in relation to the likely conditions that may affect or restrict the Permitted Use.

5 Finance

5.1 Funding sources

- (a) Council will fund the Council's Works utilizing the following contributions:

Funding Source	Funding Amount
(i) Randwick City Council	\$3,000,000
(ii) South Sydney District Rugby League Football Club Limited	\$4,000,000
(iii) Commonwealth Government	\$10,000,000
(iv) State Government	\$8,696,000
Total Funding	\$25,696,000

- (b) Council must deposit the Council Funding into the Project Account on or before the Funding Date.
- (c) The Tenant must deposit the amount under **clause 5.1(a)(ii)** into the Project Account on or before the Funding Date.
- (d) The Tenant must deposit any Government Funding into the Project Account within 3 Business Days of receiving it.

5.2 Compliance with the Funding Agreement

- (a) The Tenant must use reasonable endeavours to comply with the Funding Agreement at all times.
- (b) If the Tenant requests, Council must use reasonable endeavours to assist the Tenant to comply with its obligations under the Funding Agreement.

- (c) The Tenant must notify Council immediately if the Tenant becomes aware of a breach of the Funding Agreement or a Dispute under the Funding Agreement is notified by any party.
- (d) The Tenant must not terminate the Funding Agreement unless it first gives Council notice and an opportunity to consult with the Tenant regarding the proposed termination.
- (e) Unless otherwise agreed with Council, the Tenant must exercise its rights under the Funding Agreement to retain any Unexpended Funding.

5.3 Termination of the Funding Agreement

If, at any time, the Funding Agreement is terminated:

- (a) the Tenant must promptly notify Council and, within 10 Business Days after the notice, the parties must meet to discuss, in Good Faith, the shortfall in anticipated funding with a view to agreeing an alternative source or sources of funding; and
- (b) if the parties do not reach agreement under **clause 5.3(a)** within 20 Business Days after the notice under **clause 5.3(a)**, Council may rescind this Agreement on notice to the Tenant in which case:
 - (i) subject to the terms of the Funding Agreement, the balance of the Tenant Funding deposited in the Project Account will be refunded to the Tenant or as the Tenant directs;
 - (ii) the balance of Council Funding deposited in the Project Account will be refunded to Council; and
 - (iii) Council will not be liable for, and the Tenant releases Council from any and all Claims, loss, liability and damages arising from or in connection with the rescission of this Agreement, except where any act or omission of Council was a material cause of the Funding Agreement being terminated.

5.4 Rescission of this Agreement

- (a) If, at any time, this Agreement is rescinded, to the extent held in the Project Account:
 - (i) the Tenant Funding must be refunded to the Tenant;
 - (ii) the Government Funding must, subject to the Funding Agreement, be refunded to the Tenant and the Tenant must pay the amount to the Funder; and
 - (iii) the Council Funding must be refunded to Council.
- (b) Each party must do all things necessary for the PCG to make payments from the Project Account in accordance with this **clause 5.4** as soon as reasonable practicable after the date this Agreement is rescinded.

5.5 Termination of this Agreement

- (a) If, at any time, this Agreement is terminated:

- (i) as a result of the default of the Tenant, **clause 5.5(c)** applies; or
 - (ii) for any other reason, **clause 5.5(d)** applies.
- (b) Despite anything else in this Agreement, if this Agreement is terminated for any reason:
 - (i) all Project Costs validly incurred prior to the date this Agreement is terminated (for any reason) must be paid before any party is entitled to a payment under this **clause 5.5**; and
 - (ii) the PCG cannot be required or directed to make a payment under this **clause 5.5** until the PCG is satisfied that it has received and paid all amounts incurred in respect of Council's Works prior to date this Agreement if terminated.
- (c) If **clause 5.5(a)(i)** applies,
 - (i) subject to **clause 5.5(b)**:
 - (A) [after the deduction of Council's costs in connection with the termination,] any portion of the Tenant Funding held in the Project Account must be refunded to the Tenant;
 - (B) any Government Funding held in the Project Account must be refunded to the Tenant and the Tenant must pay the amount to the Funder in accordance with the Funding Agreement; and
 - (C) any portion of Council Funding held in the Project Account must be refunded to Council; and
 - (ii) Council is not liable for, and the Tenant releases Council from any and all Claims, loss, liability and damages arising from or in connection with the termination of this Agreement.
- (d) If **clause 5.5(a)(ii)** applies,
 - (i) subject to **clause 5.5(b)**:
 - (A) any portion of the Tenant Funding held in the Project Account must be refunded to the Tenant;
 - (B) any Government Funding held in the Project Account must be refunded to the Tenant and the Tenant must pay the amount to the Funder in accordance with the Funding Agreement; and
 - (C) any portion of Council Funding held in the Project Account must be refunded to Council; and
 - (ii) each party releases the other party from any and all Claims, loss, liability and damages a party may have arising from or in connection with the termination of this Agreement.

Each party must do all things necessary for the PCG to make payments from the Project Account in accordance with this **clause 5.4**.

5.6 Establishment of Project Account

- (a) Council must establish the Project Account in the name of Council on or before the Funding Date and maintain at Council's cost the Project Account to be used for the receipt and disbursement of expenses related to the Development in accordance with the process outlined in **clause 5.7**.
- (b) All funding for the Development provided by the parties and the Funder must be held within and disbursed from the Project Account.

5.7 PCG to approve drawdown

- (a) The PCG must approve a budget to ensure that the total costs of design and construction do not exceed the total funding available for the Development.
- (b) The PCG must include a buffer of [20%] in the budget to cover any unexpected costs incurred in order to complete the Development.
- (c) The PCG must regularly review the budget and assess whether the cost of the Development accords with the approved budget.
- (d) If it becomes apparent to the PCG at any time that sufficient funding is not available for completion of the Development, the PCG must review the scope of the Development, including the Plans and Specifications, the Site Plan and the Development Program, until the estimated costs match the approved budget.
- (e) When an invoice for the costs incurred for the Development is received, the PCG must assess it against the approved budget and:
 - (i) if it is in line with the budget, Council may drawdown on the Project Account to pay the invoice;
 - (ii) If it is not in line with the budget, Council may draw down on the Project Account to pay the invoice if Council is satisfied that the cost of the Development can be appropriately reduced or additional funding is or will be available to enable the Development to be completed and fully funded from the Project Account.

6 Council's Works

6.1 Completion of Council's Works

- (a) Council must cause the Council's Works to be carried out:
 - (i) in accordance with the Plans and Specifications;
 - (ii) in accordance with all Laws and consents of, and complying with the requirements of, all Government Authorities;
 - (iii) in a proper and workmanlike manner;
 - (iv) under adequate and competent supervision;

- (v) in compliance with all requirements of the Funding Agreement; and
 - (vi) in accordance with the Development Program but subject to any extensions under **clause 6.3**.
- (b) At all times that Council's Works are carried out Council must maintain (or procure that its builder maintains):
- (i) public liability insurance for at least \$20 million per occurrence; and
 - (ii) workers' compensation insurance in accordance with applicable legislation.

6.2 Time for Completion

Council must use reasonable endeavours to complete the Council's Works so that the Council's Works will reach Practical Completion no later than the Date for Practical Completion (as extended (if at all) under **clause 6.3**).

6.3 Extensions

If the Council's Works are delayed by any of the following causes:

- (a) weather sufficiently inclement to prevent or delay the Council's Works from being carried out in whole or part;
- (b) loss or damage by fire, fusion, explosion, smoke, flood, earthquake, lighting, storm, tempest, impact by vehicles, sprinkler leakage, water damage, damage by aircraft or articles dropped from aircraft, civil commotion, terrorism or any like cause;
- (c) riots, malicious damage or disputes between employers and employees or strikes;
- (d) any prohibition or embargo imposed by any Law;
- (e) any delay by any Government Authority in giving any necessary approval or consent or in carrying out any inspection of the Council's Works provided that Council has taken or caused to be taken all reasonable steps to obtain such approval, consent or inspection;
- (f) any delay in the manufacture or delivery to Council of any building materials, infrastructure, plant or equipment required for the Council's Works to the extent that such delay arises from circumstances beyond the control of Council; or
- (g) any other matter, cause or thing beyond the control of Council provided that Council has used reasonable endeavours to overcome and keep any resulting delay to a minimum,

then the Date for Practical Completion will be extended by the same number of days by which the Council's Works are delayed as a result of any of the causes referred to in this clause as certified by Council's Representative. Where such causes operate simultaneously, the days must be counted concurrently and not cumulatively.

6.4 Changes to Council's Works

Council may without the prior written consent of the Tenant change the Council's Works (**Council Variations**) where the changes:

- (a) are reasonably required to comply with a Law or the requirements of a relevant Government Authority; or
- (b) do not materially adversely affect:
 - (i) the size and dimensions of the Premises;
 - (ii) access to the Premises or the Car Park;
 - (iii) the ability for the CHPC to be used for the Permitted Use; or
 - (iv) the design of the Tenant's Works.

6.5 Tenant May Request Changes

The Tenant may on reasonable notice request Council to change the Council's Works (**Tenant Variations**) and Council must make the requested changes if:

- (a) the change will not reduce the Lettable Area of the Premises below the Estimated Lettable Area;
- (b) Council's Representative, acting reasonably, approves the changes;
- (c) the consent of a Government Authority is required to the change, that consent is obtained by the Tenant at the Tenant's cost, and the consent does not impose any additional conditions which would result in an increase in the cost of the Council's Works ;
- (d) the change can reasonably be made promptly and without causing or being likely (in the reasonable opinion of Council's Representative) to cause any delay to:
 - (i) the Development Program;
 - (ii) Council's Builder in carrying out the Council's Works; and
 - (iii) completion of the CHPC; and
- (e) the Tenant pays for:
 - (i) the construction cost (including any delay costs if applicable) of the changes being carried out; and
 - (ii) the reasonable costs of the changes to cover design and project management fees relating to the changes; and
 - (iii) any statutory charges necessary to obtain any necessary Government Authority consent to the changes.

6.6 Tenant to pay

The Tenant must pay for the actual cost referred to in **clause 6.5(e)** within 10 Business Days of receipt by the Tenant of copies of the relevant invoices and written certification by Council's Representative that the work the subject

of the invoices has been completed or the relevant materials, infrastructure, plant or equipment has been ordered.

6.7 Survey

As soon as reasonably practicable (and preferably on or before the Handover Date) but in any case, as soon as the Premises are in a state to allow the survey to occur, Council must arrange for:

- (a) a survey to determine the Lettable Area of the Premises;
- (b) preparation of a plan of the Premises containing the information required by the Lease to be shown on a plan in registrable form; and
- (c) preparation of a plan containing the information required by the Licence to be shown on the Licence Site Plan, including identifying the Licensed Areas (which will be in the form of the Site Plan with any changes resulting from the carrying out of the Council's Works in accordance with this Agreement).

The survey must be carried out by a licensed surveyor in accordance with the Method of Measurement. Council must give the Tenant a copy of the survey within seven (7) days after receiving it from the surveyor. The surveyor's determination is final and binding on the parties.

6.8 Tenant's Representative

- (a) The Tenant's Representative may at all reasonable times with not less than 2 Business Days' prior written notice to Council, subject always to compliance with the conditions reasonably imposed by Council's Builder as to site access, safety, industrial relations and like matters, enter upon the Land to inspect and monitor progress in the Council's Works.
- (b) The Tenant must use reasonable endeavours to ensure that the Tenant's Representative meets with and communicates with Council, Council's Builder and Council's Representative in an efficient and timely manner at all times.

6.9 Inconsistencies

In the event of any inconsistency between various documents describing or specifying the Council's Works and the Tenant's Works, then the following order of precedence will apply:

- (a) the Development Consent;
- (b) the Plans and Specifications;
- (b) any plans or documents setting out any Council Variations and approved pursuant to **clause 6.4**; and
- (c) any plans or documents setting out Tenant Variations and approved pursuant to **clause 6.5**.

6.10 Certificates and Approvals

Council must:

- (a) procure the issue of a Certificate of Practical Completion of the Council's Works by the Project Certifier after consultation with the Tenant (who must act reasonably and without delay); and
- (b) obtain from the relevant Government Authority any permission required by law for the Tenant to occupy the Premises and use the CHPC for the Permitted Use.

6.11 Council's other works on the Land

The Tenant:

- (a) acknowledges that Council may be carrying out other works on the Land after the Handover Date and/or after the Commencing Date;
- (b) releases Council from all Claims for loss or damage suffered by the Tenant in connection with the works referred to in **clause 6.11(a)**, provided that Council must use reasonable endeavours to ensure those works do not materially adversely affect the Tenant's access to and use the CHPC as contemplated by this Agreement, the Lease and the Licence; and
- (c) agrees that the works in **clause 6.11(a)** do not constitute a breach of this Agreement, the Lease or the Licence.

6.12 Capital Equipment

Subject to the Funding Agreement the Tenant must at its own cost do all things required to ensure Council is the legal and beneficial owner of the Capital Equipment after expiry of the Funding Period.

7 Project Governance

7.1 Project Control Group

Council and the Tenant agree as follows:

- (a) promptly after the date of this Agreement, there will be established:
 - (i) a PCG;
 - (ii) a PWG; and
 - (iii) a PEG,each comprising the Representatives. The Representatives may each be accompanied by their respective consultants at PCG meetings, at their own cost;
- (b) the PCG must meet monthly (or more frequently at the request of Council, the Tenant or Council's Representative) to discuss and review all relevant matters relating to the Council's Works, the Tenant's Works and associated matters;
- (c) the parties must procure that the PCG must, in a timely and diligent manner:

- (i) develop a PCG Terms of Reference in accordance with the Funding Agreement;
- (ii) comply with the PCG Rules and the Project Governance Framework;
- (iii) consider and approve the Plans and Specifications;
- (iv) consider and approve the budget for the Development including any variations or revisions; and
- (v) consider and approve the progress reports and project plan required to be submitted to the Funder under the Funding Agreement.

For the avoidance of doubt, the Plans and Specifications must achieve a balance of the requirements of the CHPC as an elite training and sporting facility and community space with the objective of the facility and community space serving the general public; and

- (d) Council will notify the PCG before it appoints any consultant in relation to those parts of the Council's Works relevant to the Premises.

7.2 PCG Dispute Resolution

- (a) If a member of the PCG claims that a dispute has arisen under this Agreement (**'the Claimant'**), it must give written notice to the other party (**'the Respondent'**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (a **'Claim Notice'**).
- (b) Within 2 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.
- (c) The nominated representatives must:
 - (i) meet to discuss the matter in Good Faith within 5 Business Days after service by the Respondent of notice of its representative; and
 - (ii) use reasonable endeavours to settle or resolve the dispute within 10 Business Days after they have met.
- (d) If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice (**'PEG Notice'**) calling for the determination of the dispute by the PEG. The PEG Notice must adequately identify the nature of the dispute and the date on which the dispute is alleged to have arisen.
- (e) Council and the Tenant must continue to perform their respective obligations under this Agreement if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the party requiring that matter to be completed indemnifies the other party against reasonable Costs suffered in completing that matter if the Dispute is not resolved in favour of the indemnifying party.

7.3 Project Executive Group

Council and the Tenant agree as follows:

- (a) the PEG must at the request of Council, the Tenant or Council's Representative meet to discuss and review all relevant matters referred to the PEG in accordance with **clause 7.2(d)**;
- (b) Council will have the casting vote on all decision making of the PEG; and
- (c) the PEG is at all times entitled to such information as may be reasonably requested concerning a dispute referred to the PEG in accordance with **clause 7.2(d)** and Council must promptly produce to the PEG all documents relating to Council's Works as the PEG may reasonably require.

8 Defects Liability

8.1 Enforcement of Benefit of Council's Rights

Prior to the expiration of the Defects Liability Period, Council must, after notice from the Tenant, enforce for the benefit of the Tenant any defect rectification rights that Council has against third parties in relation to the Council's Works, including without limitation any rights or benefits of Council to any maintenance entitlements or warranties with respect to any plant or equipment located in or about or servicing the Premises.

8.2 Council to Make Good

Any deficiencies or defects in the construction and completion of the Council's Works notified in writing by the Tenant to Council from time to time during the Defects Liability Period must, subject to resolution in accordance with this Agreement of any dispute, be made good by Council to the reasonable satisfaction of the Tenant within a reasonable period.

8.3 Council's Failure to Comply

If:

- (a) Council fails to comply with any notification by the Tenant under **clause 8.2**; and
- (b) Council fails to so comply within a period of not less than 20 Business Days after the Tenant gives Council a further notice informing Council of the Tenant's intention to make good the deficiencies or defects and of the Tenant's estimate of the cost of doing so,

then subject to resolution in accordance with this Agreement of any dispute, the Tenant may make good those deficiencies or defects and the Tenant may claim those costs (but not more than the estimate given under **clause 8.3(b)**) from Council within a reasonable time after demand.

9 Tenant's Works

9.1 Notice of Estimated Handover Date

Council must give the Tenant the Notice of Estimated Handover Date.

9.2 Pre-Handover Inspection

Council and the Tenant must inspect the Premises on the day before the Handover Date. Unless the Tenant's Representative and Council's Representative determine in their reasonable discretion that there are material defects or material works remaining to be carried out in relation to the Council's Works which would unreasonably hinder the Tenant in carrying out the Tenant's Works, then Council must cause Council's Representative to issue a certificate that the Council's Works have reached Practical Completion.

9.3 Handover

Subject to **clause 9.4**, on the Handover Date, the Tenant may occupy the Premises for the purpose only of undertaking the Tenant's Works.

9.4 Conditions to be satisfied before access is given to the Tenant

- (a) Council is not obliged to give the Tenant access to the Premises or the CHPC until the Tenant has provided the:
 - (i) Bank Guarantee;
 - (ii) Lease in registrable form duly executed by the Tenant;
 - (iii) Licence duly executed by the Tenant;
 - (iv) certificates of currency of insurance required under **clause 9.5(c)**,
 - (v) certificates of currency of insurance required under the Lease and the Licence; and
 - (vi) any other documents reasonably required by Council.
- (b) Except as expressly authorised under this Agreement, the Tenant and the Tenant's Contractors must not enter upon the Premises or the Land prior to the Handover Date unless and until it has obtained the prior written consent of Council's Representative, which consent must not be unreasonably withheld.

9.5 Tenant's Works

In carrying out the Tenant's Works, the Tenant must:

- (a) use reasonable endeavours to ensure that the Tenant's Contractors complete the Tenant's Works by no later than the expiration of the Fitout Period;
- (b) use reasonable endeavours to ensure that the Tenant's Contractors comply with the reasonable directions of Council's Representative for the delivery, unloading and storage of materials and disposal of rubbish and in all other respects comply with the Building Site Conditions as notified to the Tenant;

- (c) ensure that the Tenant's Contractors effect and maintain public liability insurance for an amount of not less than \$20 million, contractors all risks insurance and workers' compensation insurance, noting the interest of Council as owner and developer of the Land;
- (d) be responsible for all work carried out on the Tenant's behalf including being responsible for obtaining promptly all permits, licences and other approvals (**Permits**) which may be required from any Government Authority and under any Law for the purpose of using the CHPC and the Premises for the Permitted Use and which are not Council's responsibility under this Agreement in sufficient time so that the absence of the Permits will not prevent the Tenant using the Premises for the Permitted Use from the Commencing Date;
- (e) use reasonable endeavours to ensure that the Tenant's Contractors lawfully, regularly, and on completion of the Tenant's Works, remove rubbish and debris from the Land. Any rubbish or debris not removed from the Land by the Tenant's Contractors may be removed by Council. The costs of removal must be paid by the Tenant;
- (f) pay for the repair of any damage to the CHPC or the Land caused as a result of the Tenant's Works;
- (g) ensure that the Tenant's Works are carried out in a good and workmanlike manner;
- (h) use materials of good quality and which are fit for their purpose;
- (i) comply with all Laws, and the requirements of all Government Authorities, relating to the carrying out of the Tenant's Works; and
- (j) comply and continue to comply with the other provisions of **clause 9**.

9.6 Tenant's occupation during the Fitout Period

- (a) During the Fitout Period, the Tenant:
 - (i) is not a lessee or tenant of Council;
 - (ii) must not carry on business or the Permitted Use from the Premises;
 - (iii) must not use the Premises for any purpose other than to carry out the Tenant's Works unless otherwise prior approved by Council in writing;
 - (iv) must, and must ensure that the Tenant's Contractors, comply with the Building Site Conditions insofar as they relate to or are applicable to areas outside the Premises; and
 - (v) must, provided it complies with reasonable directions of the Tenant or the Tenant's Contractor whilst on the Premises, allow Council's Builder reasonable access to the Premises for the purpose of connecting services, rectifying defects and otherwise completing the Council's Works, to the extent applicable.

- (b) During the Fitout Period, Council must use reasonable endeavours to ensure that the Tenant and the Tenant's Contractor have (at no additional cost to Tenant or the Tenant's Contractor) for the maximum hours permitted by the Approvals and the relevant Government Authority, access to the Premises and Licensed Areas reasonably required by the Tenant and Tenant's Contractor to carry out the Tenant's Works during the Fitout Period.

10 Aboriginal Land Claims

10.1 Aboriginal Land Claims

- (a) The Aboriginal Land Claims were lodged over the Land pursuant to the *Aboriginal Land Rights Act 1983 (ALR Act)* and remain undetermined at the date of this Agreement.
- (b) Council must notify the Tenant promptly after an Aboriginal Land Claim is determined including details of the outcome of the claim and the duration of any appeal period available to Council or the relevant Aboriginal Land Council (as applicable).

10.2 Council's obligations regarding undetermined Aboriginal Land Claims

If any Aboriginal Land Claim is, or is reasonably likely to be, undetermined on the Commencing Date, Council must in respect of that Aboriginal Land Claim use reasonable endeavours to obtain:

- (a) a final determination of the claim (as applicable) and lapse or waiver of any appeal period; or
- (b) the consent of the relevant Aboriginal Land Council to the Lease and its registration; or
- (c) amendment or withdrawal of the Aboriginal Land Claim such that the grant of the Lease is not affected by the relevant Aboriginal Land Claim; or
- (d) any other lawful means of removing the Aboriginal Land Claim in respect of the Land.

10.3 Council's obligations regarding appeals

If:

- (a) any appeal of the determination of an Aboriginal Land Claim is, or is reasonably likely to be, undetermined on the Commencing Date; or
- (b) there is, or is reasonably likely to be, an unexpired appeal period in respect of the determination of any Aboriginal Land Claim on the Commencing Date,

Council must use reasonable endeavours to obtain:

- (c) a final determination of the appeal; or

- (d) the consent of the relevant Aboriginal Land Council to the Lease and its registration; or
- (e) if the appeal period has not expired but no appeal has been commenced, written confirmation from the relevant Aboriginal Land Council that it will not lodge an appeal in respect of determination of the Aboriginal Land Claim; or
- (f) if an appeal has been commenced, amendment or withdrawal of the appeal such that the grant of the Lease is not affected by the appeal; or
- (g) any other lawful means of removing the Aboriginal Land Claim the subject of the appeal in respect of the Land.

10.4 Tenant's acknowledgement

If **clause 10.2** or **clause 10.3** apply, the Tenant acknowledges and agrees that unless Council has obtained the consent of the relevant Aboriginal Land Council to the Lease and its registration:

- (a) Council will be prohibited from registering the Lease, and despite anything else in this Agreement, Council will not be required to seek registration of the Lease, unless and until the Aboriginal Land Claim is determined;
- (b) Council is not liable, and the Tenant releases Council from any and all Claims, loss, liability or damage arising from or in respect of the grant of the Lease and any failure to register the Lease prior to determination of the relevant Aboriginal Land Claim; and
- (c) if the Land is found to be claimable within the meaning of the ALR Act, **clause 10.5** will apply.

10.5 Land determined to be claimable

- (a) If the Land is found to be claimable within the meaning of the ALR Act, the Tenant acknowledges and agrees that:
 - (i) Council is not required to grant the Lease; and
 - (ii) this Agreement will be terminated from the earlier of:
 - (A) the date 10 business days after either party gives notice to the other party that it terminates this Agreement; and
 - (B) the date of the Minister's grant of the ALR Act claim; and
 - (iii) Council is not liable for, and the Tenant releases Council from any and all Claims, loss, liability and damages arising from or in connection with termination of this Agreement.
- (b) If this Agreement is terminated under **clause 10.5(a)(ii)** then:
 - (i) the balance of the Tenant Funding will be refunded to the Tenant; and
 - (ii) the balance of the Council Funding will be refunded to Council,

after the deduction of all costs and expenses of the Development incurred at the time of termination.

11 The Lease

11.1 Grant of Lease

Council must grant the Lease to the Tenant (including the obligations at **clauses 11.2 - 11.4** below), and the Tenant must accept the Lease, for the Term commencing on the Commencing Date.

11.2 Execution of Lease

Once the Commencing Date has been finally determined, Council must submit to the Tenant three copies of the Lease suitable for registration at Land and Property Information NSW and completed in accordance with **clause 11.4**. The Tenant must within 28 days after receiving the documents execute and return the documents to Council or Council's solicitors (as applicable).

11.3 Parties bound from Commencing Date

From the Commencing Date Council and the Tenant are bound by the Lease notwithstanding that the Lease may not have been executed by either Council or the Tenant, or the Minister.

11.4 Completion of Lease

Council or Council's solicitors must complete the Lease by the insertion of:

- (a) prescribed Land Registry Services Lease form;
- (b) the Commencing Date and the Terminating Date on the front page of the Lease Form 07LR and in Items 1 and 3 of Schedule 1;
- (c) the Initial Rent in Item 5 of Schedule 1, being an amount calculated by multiplying the Rental Rate by the Lettable Area of the Premises shown on the survey prepared in accordance with **clause 6.7(a)**;
- (d) the Lettable Area of the Premises in Schedule 2;
- (e) the Lettable Area and denotation of the different components of the Premises in special condition 1;
- (f) a Premises plan in registrable form prepared in accordance with **clause 6.7(b)**; and
- (g) such other details as may be necessary to complete the Lease and allow the Lease to be registered.

11.5 Tenant's Copy of Lease

Council must:

- (a) use reasonable endeavours to execute the Lease within 90 days after it is returned to Council's solicitors (as applicable) executed by the Tenant;
- (b) submit the Lease to the Department of Industry, Crown Lands and Water for endorsement by the Minister;

- (c) inform the Tenant promptly after the Lease has been executed by Council and endorsed by the Minister;
- (d) lodge the Lease for registration and inform the Tenant of the details of lodgement; and
- (e) give the Tenant a copy of the relevant registration confirmation statement promptly after the Lease is registered.

Council's obligations in **clauses 11.5(a) to (e)** inclusive are subject to compliance by the Tenant with its obligations under **clause 11.2**.

12 The Licence

12.1 Grant of Licence

Council must grant the Licence to the Tenant (including the obligations at **clauses 12.2 - 12.4** below), and the Tenant must accept the Licence, for the Term commencing on the Commencing Date.

12.2 Execution of Licence

Once the Commencing Date has been finally determined, Council must submit to the Tenant three copies of the Licence and completed in accordance with **clause 12.4**. The Tenant must within 28 days after receiving the documents execute and return the documents to Council or Council's solicitors (as applicable).

12.3 Parties bound from Commencing Date

From the Commencing Date Council and the Tenant are bound by the Licence notwithstanding that the Licence may not have been executed by either Council or the Tenant, or the Minister.

12.4 Completion of Licence

Council or Council's solicitors must complete the Licence by the insertion of:

- (a) the Market Rent in Item 3 of Schedule 1;
- (b) the Initial Rent in Item 5 of Schedule 1;
- (c) the Market Rent Review Date in Item 8 of Schedule 1;
- (d) the Commencement Date and Expiry Date at Items 16 and 17 of Schedule 1;
- (e) a plan prepared in accordance with **clause 6.7(c)**;
- (f) completion of the Premises Appendix; and
- (g) such other details as may be necessary to complete the Licence.

12.5 Tenant's Copy of Licence

Council must:

- (a) use reasonable endeavours to execute the Licence within 90 days after it is returned to Council's solicitors (as applicable) executed by the Tenant;

- (b) submit the Licence to the Department of Industry, Crown Lands and Water for endorsement by the Minister;
- (c) inform the Tenant promptly after the Licence has been executed by Council and endorsed by the Minister; and
- (d) give the Tenant the fully executed Licence.

Council's obligations in **clauses 12.5(a) to 12.5(d)** inclusive are subject to compliance by the Tenant with its obligations under **clause 12.2**.

13 Miscellaneous

13.1 Sale of Land by Council

Council may transfer the Land to a new landlord without the consent of the Tenant.

13.2 Assignment by Tenant

The rights and obligations of the Tenant under this Agreement are not assignable without the written consent of Council.

13.3 Mortgagee's consent

If on the Commencing Date the Land is subject to any mortgage, Council must obtain the unconditional consent of each mortgagee to the Lease.

13.4 Notices

The provisions of the Lease dealing with notices apply to this Agreement.

13.5 Costs

- (a) The Tenant must pay all stamp duty (including any fines, interest or other penalties other than penalties imposed as a result of Council's default) payable on this Agreement.
- (b) Each party will pay its own costs in relation to the preparation and negotiation of this Agreement, the Lease and the Licence.

13.6 Non-Merger

Clauses in this Agreement capable of having effect after the Commencing Date will continue after the Commencing Date and will not merge on the grant of the Lease and the Licence.

13.7 Tenant's consent

- (a) If the Tenant is required to provide a response to a request for consent or approval from Council, the Tenant must provide such response within 10 Business Days after the receipt of the request.
- (b) If the Tenant does not provide Council with a response to the request within 10 Business Days after receipt of the request, then consent or approval will be deemed to have been given by the Tenant.

13.8 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

13.9 Effect of Execution

This Agreement is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this Agreement.

13.10 Non fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

13.11 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

13.12 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

13.13 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

13.14 Entire agreement

This Agreement, the Lease and the Licence contain everything to which the parties have agreed in relation to the matters they deal with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Agreement was executed, except as permitted by Law.

14 Confidentiality

14.1 Agreement is confidential

Each party must use that party's best endeavours to keep confidential the terms of this Agreement.

14.2 Permitted disclosures

Clause 14.1 does not apply:

- (a) if a party must disclose by Law including under the *Government Information (Public Access) Act 2009* (NSW);
- (b) to a party's confidential disclosure to that party's legal or financial advisors;
- (c) to disclose to a party's Executive Team, Board of Directors and the Minister (as applicable);
- (d) to the office of Sport;
- (e) if and to the extent that the information:
 - (i) is in the public domain; and
 - (ii) the party seeking to rely on this **clause 14** has not breached this clause.

14.3 Public Announcements

- (a) The parties acknowledge the right of the Office of Sport to make public announcements in respect of its funding of the Council's Works on the terms in **clause 16.2** of the Funding Agreement.
- (b) Except as required by Law, no party may make any public announcement or press release relating to the negotiations of the parties or the existence, subject matter or terms of this Agreement without first:
 - (i) Providing a copy to the Office of Sport and complying with all requirements of the Funding Agreement applicable to the proposed announcement; and
 - (ii) giving the other party not less than 5 Business Days' prior notice of the proposed announcement.

15 Dispute Resolution

15.1 Dispute Resolution

If there is a dispute between Council and the Tenant on any matter concerning this Agreement (except anything arising under **clause 7.2(a)**), including about how this Agreement is to be interpreted or what the parties' obligations are under this Agreement (**Dispute**), then either party may give a written notice (**Dispute Notice**) setting out the nature of the Dispute.

15.2 Prior consultation by executives of Council and Tenant

- (a) Once a Dispute Notice has been given, an executive of Council and the Tenant must use reasonable efforts to consult each other within 10 Business Days of receipt of the Dispute Notice to resolve the Dispute on behalf of Council and the Tenant.
- (b) If the executives of Council and the Tenant have not resolved the Dispute within the 10 Business Day period referred to in **clause 15.2(a)**, then the General Manager, chief executive officer, managing director or similar person (**Chief Executives**) of Council and the Tenant must

consult with each other within a further period of 10 Business Days and use reasonable efforts to resolve the Dispute.

- (c) Council and the Tenant agree that both parties will act reasonably in respect of the consultations referred to in subparagraphs (a) and (b) of this **clause 15.2**.
- (d) If the executives or Chief Executives (as applicable) agree on how the Dispute is to be resolved, this will be set out in writing and signed by each of the executives or Chief Executives (as applicable). Council and the Tenant agree to be bound by that agreement as if that agreement constituted a variation to this Agreement.

15.3 Appointment of Expert

- (a) If the Dispute is not resolved within 20 Business Days (whether under **clause 15.2** or otherwise), the Dispute must be referred for determination to an expert (**Expert**) agreed on by the parties and, if they cannot agree, the Expert must be appointed by the President for the time being of the New South Wales Law Society Inc., at the request of either party, within a further period of 10 Business Days after the expiration of the previous 20 Business Days period.
- (b) The Expert must:
 - (i) be given a copy of the Dispute Notice;
 - (ii) be instructed to give a written decision setting out reasons; and
 - (iii) have at least 10 years' experience in the resolution of similar disputes in the nature of the Dispute.

15.4 Submissions

A party which refers a difference or dispute for determination under this **clause 15** must immediately give notice to the other party of the referral. Each party may make submissions, either orally or in writing to the Expert. Submissions may only be made within 2 weeks after notice of the referral for determination is given in accordance with this clause. In making a determination the Expert must have regard to those submissions and provide the parties with a statement of reasons in writing for reaching the determination.

15.5 Appointment of Consultants

If the matter in dispute is outside the Expert's area of expertise (as the Expert decides), the Expert may engage another appropriate consultant to assist the Expert in making a determination.

15.6 Costs

Council and the Tenant must share equally the fees and expenses of the Expert and of any other consultant engaged by the Expert under **clause 15.5**, but must otherwise bear their own costs in relation to any Dispute.

15.7 Determination Binding

The Expert will act as an expert, not an arbitrator, and the Expert's decision will be final and binding on the parties unless the Expert's decision involves an amount exceeding \$500,000. In that event, the parties may institute proceedings in a court of competent jurisdiction by way of appeal from the Expert's decision. Any such proceedings must be commenced within 40 Business Days after the Expert's decision, failing which the Expert's decision is final and binding on the parties.

15.8 Conduct during dispute

The parties must continue to perform their obligations under this Agreement despite the Dispute.

15.9 Injunctive Relief

Nothing in this **clause 15** prevents a party from seeking injunctive or other urgent relief from a court of competent jurisdiction.

16 Warranties and Risks

16.1 Warranties

Each party warrants to the other party that:

- (a) it has the power to enter into and perform this Agreement;
- (b) it has obtained each necessary consent to enable it to enter into and perform this Agreement;
- (c) by entering into and performing this Agreement:
 - (i) it does not breach any obligation, including but not limited to any statutory, contractual or fiduciary obligation; and
 - (ii) it is not in default under an agreement which binds it;
- (d) no action has been taken towards the winding-up of it;
- (e) it has not proposed or reached a voluntary arrangement with a creditor;
- (f) it is able to pay its debts as and when they fall due; and
- (g) this Agreement is a valid, binding and enforceable obligation of it.

16.2 Indemnity for breach of warranty

Each party indemnifies and holds the other party, the other party's officers, directors and employees, harmless from any damage, loss or expense, directly or indirectly as a result of or arising out of the failure of a warranty made by the party in **clause 16.1** to be true and correct on the date of this Agreement.

16.3 Enforcement of indemnities

- (a) A party is not obliged to incur an expense or make a payment before enforcing a right of indemnity under this **clause 16**.

- (b) Damage, loss or expense includes but is not limited to interest, penalties and expenses.
- (c) Expenses include but are not limited to reasonable legal fees, suffered or incurred by it or them.

16.4 Tenant's site warranties and risks

The Tenant represents and warrants that:

- (a) it accepts full responsibility for the Tenant's Works, including the conduct and safety of the Tenant's Contractors and any subcontractors and suppliers of the Tenant or the Tenant's Contractors;
- (b) it accepts all risks relating to the planning, design, construction, delivery and costing of the Tenant's Works; and
- (c) it acknowledges that, subject to Council's obligations expressed in this Agreement, it is satisfied as to the suitability of the Land and the proposed Development for the operation of the business of the Tenant and has made its own assessment of the risks, contingencies and other circumstances which might affect the proposed business of the Tenant,

except to the extent of any matter caused or contributed to by the negligent act or negligent omission or default of Council.

17 Release and indemnities

17.1 Risk

The Tenant has access to the Premises, the CHPC and the Land under this Agreement at the Tenant's risk.

17.2 Release

The Tenant releases Council and the Minister from any Claim which the Tenant may have against Council or the Minister in connection with the Tenant's occupation and use of the Premises, the CHPC and the Land except if and to the extent that that Claim arises because of Council's default or negligence.

17.3 Indemnities

The Tenant indemnifies and must keep Council and the Minister indemnified against all Claims against Council or the Minister as a consequence of the Tenant's:

- (a) use of the Premises, the CHPC and the Land;
- (b) fraud, misconduct, dishonesty or breach of any Law; or
- (c) default or negligence;

except if and to the extent that that Claim arises because of Council's or the Minister's (as applicable) default or negligence.

17.4 Interruption of services

The Tenant cannot make a Claim in relation to:

- (a) any malfunction, disconnection, failure to function or interruption of or to the services to the Premises or the CHPC or the Land not caused by Council;
- (b) disruption of access to the Premises not caused by Council or the Minister; or
- (c) the blockage of any sewers, wastes, drains, gutters, downpipes or storm water drains not caused by Council.

18 Default

18.1 Events of default

- (a) The following events are events of default:
 - (i) **breach of agreement** – either party commits or permits to occur any breach or default in the due and punctual performance of any of the provisions of this Agreement and fails to remedy the breach within a reasonable time after receiving notice from Council of the breach and requiring it to be remedied;
 - (ii) **Insolvent** – a party is Insolvent; and
 - (iii) **mortgage powers** – any of the business affairs or undertaking of a party is taken over by a receiver under any mortgage, charge or debenture.

Other events may constitute an event of default.

- (b) If an event of default occurs:
 - (i) the non-defaulting party may terminate this Agreement by notice in writing to the other party;
 - (ii) the termination will be effective from the date of the notice;
 - (iii) any termination will not affect any action or other right or remedy of the non-defaulting party.

18.2 Notice of default

Before exercising any right under **clause 18.1**, the non-defaulting party must give written notice to the defaulting party setting out details of the event of default which has occurred.

18.3 Content of notices

A notice given under **clause 18.2** must require the defaulting party to:

- (a) rectify the event of default within a reasonable time if the event of default is capable of rectification; or
- (b) pay compensation to the reasonable satisfaction of the non-defaulting party (as specified in the notice) in lieu of rectification if the event of default is not capable of rectification but the payment of compensation

will result in the non-defaulting party being restored to the position in which it would have been had the event of default not occurred,

within the period reasonably specified by the non-defaulting party in the notice (that period to be at least 15 Business Days).

18.4 Compliance with notice

If:

- (a) the notice given under **clause 18.2** requires the defaulting party to comply with either **clause 18.3(a)** or **clause 18.3(b)**; and
- (b) the defaulting party complies fully with the notice,

the non-defaulting party must not exercise any right under **clause 18.1** or any other provision of this Agreement as a result of any event of default which has occurred.

18.5 Damages

If a party terminates this Agreement under **clause 18.1** then that party will be entitled to recover damages from the defaulting party.

19 Council's Representative

The Tenant acknowledges that for the purposes of this Agreement certain functions to be carried out by or on behalf of Council will be carried out by Council's Architect or the Project Certifier (**Council's Representative**) as applicable. If required by the Tenant, Council will give written notices to the Tenant advising of the relevant person who will carry out any or all of those functions from time to time. The Tenant will accept Council's nomination of Council's Representative for the purposes of the relevant provision of this Agreement.

20 Bank Guarantee

20.1 Giving of Bank Guarantee

The Tenant must give the Bank Guarantee to Council on or before the Handover Date.

20.2 Use of Bank Guarantee

Council may recover from the Bank Guarantee without notice to the Tenant any Cost incurred or loss suffered by Council if the Tenant breaches this Agreement and fails to remedy the breach within a reasonable time after receiving notice from Council of the breach and requiring it to be remedied.

20.3 Replacement

The Tenant must either replace the Bank Guarantee or the proportion of the Bank Guarantee recovered by Council in accordance with **clause 20.2** within seven days of receiving notice from Council to do so.

20.4 Change of Council

If Council deals with Council's interest in the Land so that another person becomes the Crown Land Manager:

- (a) Council may assign the benefit of the Bank Guarantee to that other person;
- (b) Council has no personal liability to the Tenant for returning the Bank Guarantee;
- (c) the Tenant must either, at Council's costs:
 - (i) enter into any document that Council reasonably requires to effect or to perfect an assignment of the Bank Guarantee to that other person; or
 - (ii) provide a replacement Bank Guarantee in favour of that other person.

20.5 Return of Bank Guarantee

Council must return the Bank Guarantee to the Tenant within 6 months of the termination of this Agreement or within 20 Business Days after expiry or rescission of this Agreement.

21 Payments

21.1 Application

The parties agree that the provisions of **clause 21.2** shall apply notwithstanding anything to the contrary in any of the Transaction Documents, provided that if the Lease is terminated for any reason, **clause 21.3** will apply.

21.2 Tenant's set-off rights

- (a) The Tenant shall be entitled to set-off the aggregate of the following amounts:

- (i) the amount deposited into the Project Account under **clause 5.1(a)(ii)**;
- (ii) the amount deposited into the Project Account under **clause 5.1(a)(iii)**; and
- (iii) the amount deposited into the Project Account under **clause 5.1(a)(iv)**,
(Tenant Funding),

against the Rent payable by the Tenant under the Lease until the whole amount of the Tenant Funding has been set off against the Rent payable under the Lease.

- (b) Once a set-off in accordance with **clause 21.2(a)** operates in respect of any Rent payable under the Lease, Council agrees that it is not entitled and must not seek to recover the whole or that part (as applicable) of the

Rent which has been set-off from the Tenant under the Lease and that, as between the Tenant on the one hand and Council on the other hand, the obligation to pay the Rent will be satisfied to the extent of the set-off.

21.3 Termination of Lease

At the expiry date or earlier termination of the Lease, the right to set off under **clause 21.2** ceases and Council owes no liability to the Tenant for any balance of the Tenant Funding remaining.

21.4 Survival

This **clause 21** survives commencement of the Lease.

22 Naming rights

- (a) Council has the right to name the CHPC at its discretion from time to time further to community consultation and in line with the objectives of the Crown Lands Act 1989.
- (b) The Tenant has the right to name the Premises with the prior consent of Council.

23 No Caveat

Despite anything else in this Agreement, the Tenant must not lodge a caveat on the title to the Land in respect of its interest under this Agreement or the Lease.

24 Intellectual Property and Project Materials

- (a) Subject to **clause 24(b)**, Council must do all things reasonably necessary to procure that the owner(s) of Intellectual Property in the Project Materials grants to the Funder, in accordance with the Funding Agreement, a non-exclusive, irrevocable, royalty free and transferable licence to use, reproduce, communicate to the public and adapt for its own purposes the Intellectual Property in the Project Materials.
- (b) The Tenant must pay any costs reasonably incurred by Council in complying with **clause 24(a)**.
- (c) The Tenant indemnifies Council from and against liability or loss (including reasonable legal costs and expenses) which may be suffered or incurred by Council by reason of or in connection with any infringement or alleged infringement of any Intellectual Property (including Moral Rights) by the Tenant or the Funder, except to the extent such liability or loss arises as a result of Council's breach of **clause 24(a)**.

25 Guarantee and indemnity

25.1 Acknowledgment

The Guarantor acknowledges that Council enters into this Agreement at the request of the Guarantor relying on (amongst other things) the Guarantor executing this Agreement to assure the performance by the Tenant of its obligations under this Agreement.

25.2 Guarantee

In consideration of Council entering into this Agreement at the request of the Guarantor, the Guarantor irrevocably and unconditionally guarantees to Council the punctual payment by the Tenant of the Guaranteed Money and the performance by the Tenant of the obligations of the Tenant under this Agreement.

25.3 Payment on demand under guarantee

If the Tenant defaults in the punctual payment of any of the Guaranteed Money, the Guarantor must pay that Guaranteed Money on demand by Council. Council may demand payment from the Guarantor from time to time and whether or not Council has made demand on the Tenant or any other person.

25.4 Compliance

The Guarantor agrees with Council that the Guarantor will use its best endeavours to ensure the Tenant's compliance with the terms of this Agreement.

25.5 Indemnity

As a separate covenant, the Guarantor unconditionally and irrevocably indemnifies Council against all Loss paid, suffered or incurred by Council (including all Loss incurred by Council in the enforcement or attempted enforcement of the obligations of the Tenant or the Guarantor under this Agreement) relating directly or indirectly to:

- (a) any failure by the Tenant to pay the Guaranteed Money or to comply with any of its obligations under this Agreement; or
- (b) this Agreement or a related security, transaction or document being or becoming unenforceable in accordance with its terms or the priority or effectiveness of any of them being adversely affected.

The Guarantor must pay any amounts payable to Council under this **clause 25.5** on demand by Council.

25.6 Guarantee and indemnity not affected

The liability of the Guarantor under this **clause 25** is a principal, unconditional and absolute obligation and is not adversely affected by:

- (a) the granting of time, forbearance or other concession to the Guarantor or to the Tenant;

- (b) the making of any arrangement, composition or compromise with or the discharge or release of the Tenant;
- (c) the actual or alleged invalidity or unenforceability of any term of this Agreement;
- (d) any delay, laches, acquiescence, mistake, negligence or other act or omission of Council;
- (e) any transfer or any renewal, extension, release, surrender, termination, variation or novation of this Agreement;
- (f) the Guarantor not executing or not properly executing this Agreement; or
- (g) anything else which, but for this **clause 25.6**, could operate to adversely affect this Guarantee and Indemnity.

If a payment made by the Tenant is set aside or avoided by any Law or otherwise, that payment is taken not to have been made and does not reduce the liability of the Guarantor under this Agreement.

25.7 Continuing guarantee and indemnity

This Guarantee and Indemnity:

- (a) is a continuing guarantee and indemnity;
- (b) is irrevocable; and
- (c) remains in full force despite termination or expiry of this Agreement, the grant of the Lease or the grant of the Licence, until all obligations of the Tenant under this Agreement have been performed in full to Council's satisfaction.

25.8 No competition

Until the Tenant has fully performed all its obligations under this Agreement to Council's satisfaction, the Guarantor must not:

- (a) reduce its liability under this Guarantee and Indemnity by:
 - (i) raising a set-off or counter-claim available to itself, the Tenant or a co-surety or co-indemnifier against Council; or
 - (ii) claiming a set-off or making a counter-claim against Council; or
- (b) prove in competition with Council against the Tenant, without the prior consent of Council.

25.9 Guarantee and indemnity in addition to other rights of Council

This Guarantee and Indemnity:

- (a) is in addition to any other security or right which Council may now have or may subsequently take or hold against the Tenant or the Guarantor; and

- (b) may be enforced without first recourse to that other security or right and without taking steps or proceedings against the Tenant, despite any rule of law or equity or any Law to the contrary.

25.10 Warranties by the Guarantor

The Guarantor warrants to Council that:

- (a) if a Guarantor is a corporation, it has the corporate power to enter into and perform and has taken all necessary corporate and other action to authorise the execution and performance of this Agreement;
- (b) if a Guarantor is a natural person, it has the capacity to enter into and perform this Agreement;
- (c) this Guarantee and Indemnity constitutes a legal and binding obligation of the Guarantor;
- (d) the execution and performance of this Agreement does not violate:
 - (i) existing Law;
 - (ii) the constitution of the Guarantor if a Guarantor is a corporation; or
 - (iii) any mortgage, contract or other undertaking to which the Guarantor is a party or which is binding on the Guarantor or its assets; and
- (e) the Guarantor is not aware of any matter material to the decision of Council to enter into this Agreement which has not been adequately disclosed to Council in writing.

25.11 Assignment

Council may assign the benefit of this Guarantee and Indemnity in its absolute discretion.

Schedule 1

Reference Schedule

Land:	The land described as Part of Crown Reserve No. 81741, Part Lot 7026 in Deposited Plan 1026884 of which the Premises form part.
Term:	21 years
Date for Practical Completion:	The date which is 18 months after commencement of the Council's Works
Estimated Lettable Area:	5,000 sqm being the area designated as the Premises Area on the Site Plan.
Rental Rate:	[\$insert] per square metre per annum
Sunset Date:	The date [24 months] after the Date for Practical Completion (as extended under clause 6.3).
Fitout Period:	14 days
Approval Date:	[insert]
Funding Date	[insert]
Bank Guarantee:	An amount equivalent to six times the monthly instalment of the Rent plus Outgoings and GST. At the Commencing Date the amount is \$[insert].

Schedule 2

Plans and Specifications

- Strength, conditioning and rehabilitation area (including general purpose area, indoor training centre including gymnasium, gym, cardio and altitude room);
- Aquatics area (including exercise and recovery pools, spa, sauna and steam room, shower and drying area);
- Strategy room;
- Player's lounge/recreation area;
- Medical and physiotherapy treatment area;
- Property area and player change room (including hydration area and wellbeing zone);
- NRL football offices;
- Football operation offices;
- Executive and support offices;
- Commercial offices (including sponsorship, corporate, events, marketing department);
- Finance and operations offices;
- Souths Cares offices;
- Media and communications offices;
- Communications studio;
- Meeting rooms;
- Staff administration ancillary areas such as kitchens, toilets, change rooms, reception;
- Community centre, including classrooms, learning centre and theatrette; and
- Public facilities.

Schedule 3

Development Program

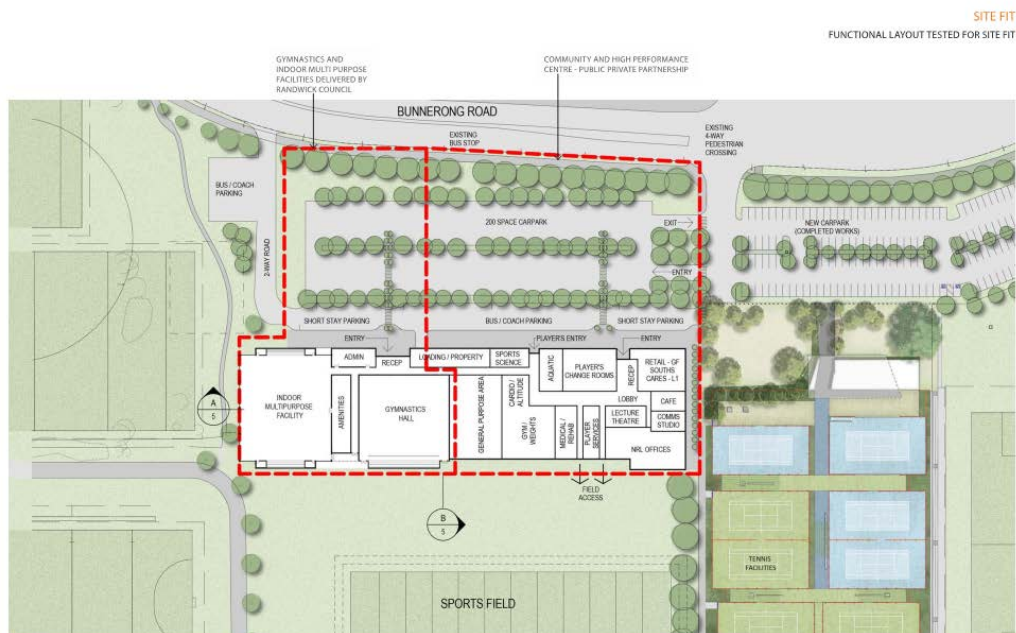
draft

Schedule 4

Site Plan

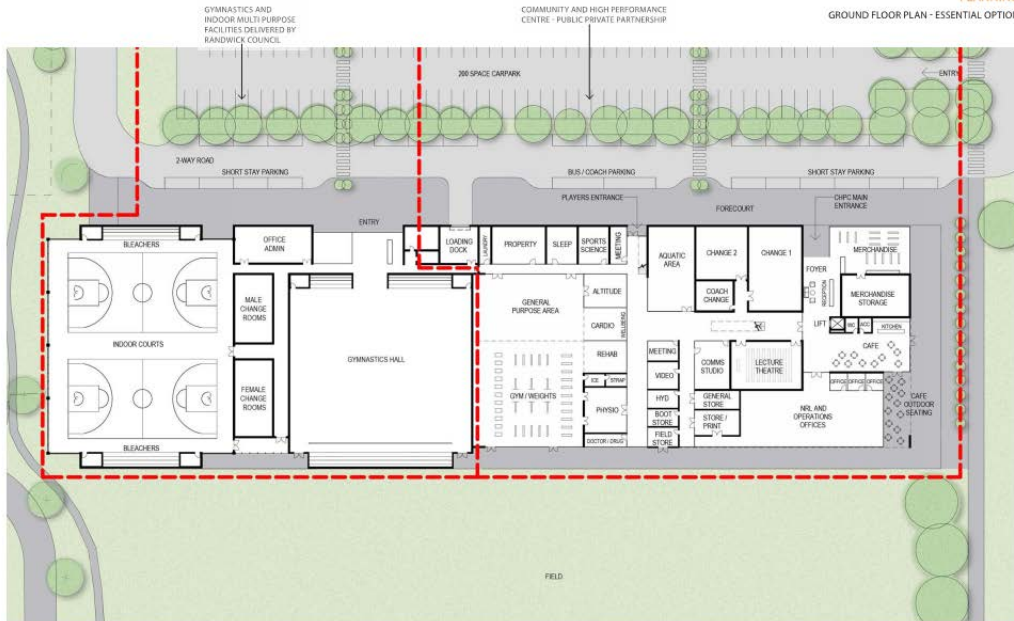
[Must show:

- CHPC;
- Premises;
- Sporting field;
- Car parking (total);
- Car spaces to be licensed to the Tenant;
- Meeting Rooms;
- Lecture theatre
- Club merchandise store;
- Café and kitchen]



SITE FIT

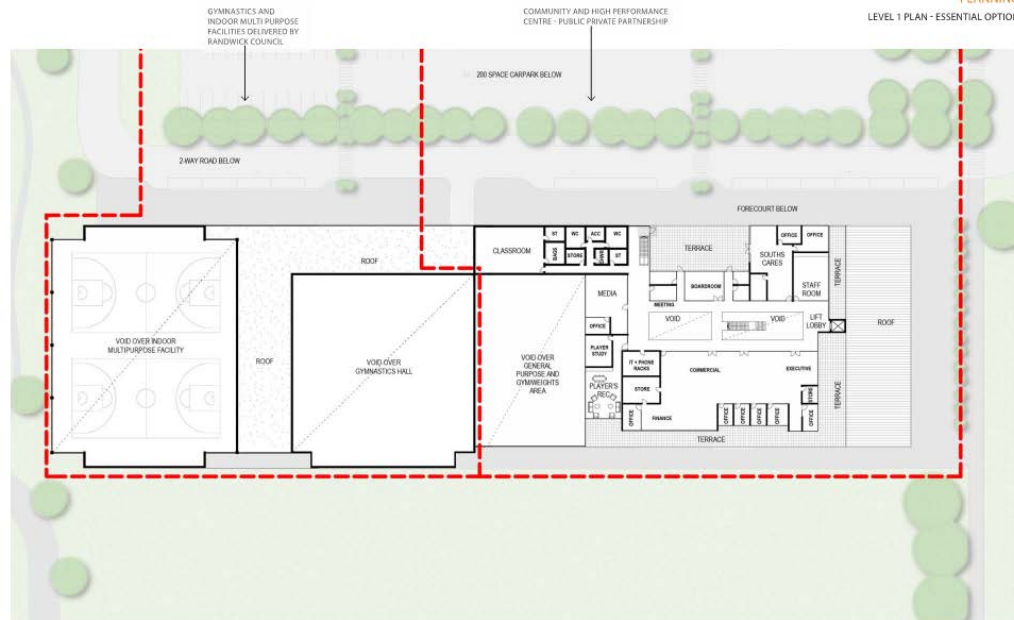
FUNCTIONAL LAYOUT TESTED FOR SITE FIT



NOTE: THESE FLOOR PLANS HAVE BEEN DEVELOPED IN A FEASIBILITY CONTEXT.



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09 NOVEMBER 2017 - REVISED 1 | HEPFRON PARK 6



NOTE: THESE FLOOR PLANS HAVE BEEN DEVELOPED IN A FEASIBILITY CONTEXT.



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09 NOVEMBER 2017 - REVISED 1 | HEPFRON PARK 7

Schedule 5

Project Governance Framework

Committee	Representatives	Objectives	Meeting Frequency
Project Executive Group (PEG)	<ul style="list-style-type: none"> • Council - General Manager (subject to delegated authority) • South Sydney Rugby League Football Club - CEO 	The role of the PEG is to monitor and support the work of the PCG, and resolve any disputes referred to it by the PCG.	As required
Project Control Group (PCG)	Council: 1. Director 2. Coordinator BFOC Tenant: 1. Chief Executive Officer 2. Chief Financial Officer NSW Government: Director – Office of Sport	The key functions of the PCG are to report to the PEG and establish and monitor: <ul style="list-style-type: none"> • Development objectives and outcomes; • Project Account budget, expenditure; • Development Program; • procurement processes including all key project management, consultant and contractor appointments; • quality and risk parameters; • [Signing off on a project plan to be attached to the Funding Agreement.] 	Monthly and on key project milestones

Committee	Representatives	Objectives	Meeting Frequency
		<ul style="list-style-type: none"> [Signing off on progress reports required to be submitted to the Funder under the Funding Agreement.] 	
Project Management Team (PMT)	<ul style="list-style-type: none"> Project Manager Project Architect Consultants as appointed by Council 	<ul style="list-style-type: none"> The Project Management Team reports to the PCG and supports project implementation where the PCG or PEG requires specific information or advice. Day to day management of the planning, design, documentation and implementation of the agreed project and budget. [Preparation of a project plan as required by the PCG.] [Preparation of progress reports as required by the PCG.] 	<p>Daily activities managed by the Project Manager</p>
Project Working Group (PWG)	<p>Council:</p> <ol style="list-style-type: none"> <p>Tenant:</p> <ol style="list-style-type: none"> <p>Gymnastics NSW (if required)</p>	<p>The PWG reports to the PMT and is responsible for the provision of requirements related to the Development and to receive progress feedback.</p>	<p>As required</p>

Committee	Representatives	Objectives	Meeting Frequency
	[TBC].	In addition, the PWG implements the Development in line with the approved parameters established by the PCG.	
Project Reference Group	Stakeholders and authorities as required as appointed by the PCG or PWG	<p>Project Reference Groups, reporting to the PWG, may be required to support project implementation where the PCG and PWG require specific information or advice to guide decision making.</p> <p>Project Reference Groups may include:</p> <ul style="list-style-type: none"> • Local residents • Other user groups • Authorities 	As required
Project Manager	As appointed by Council	The Project Manager reports to Council and will have responsibility for the technical management of the Development on behalf of the PCG and to coordinate and provide supervision of a number of consultants through the design phases and construction contract.	As required
Consultant Team	As appointed by the Council	The Project Consultant Team reports to the Council and will include all the design	As required

Committee	Representatives	Objectives	Meeting Frequency
		consultants, quantity surveyor and any other consultants required to complete the design documents ready for tender and provide advice in the construction phase.	

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Schedule 6

Not used

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Schedule 7

Council's Works

	Works	Repairs & maintenance
Base building	Council	Council
Essential services	Council	Council
All engineering systems	Council	Council
External walls	Council	Council
Fitout for ceilings	Council	Council
All internal walls and floor finishes	Council	Tenant
Premises Fitout for standard fixed furniture and fitments	Council	Tenant
Premises Fitout with loose furniture and specialist equipment eg exercise equipment (excluding lecture theatre and meeting rooms)	Tenant	Tenant
Premises Fitout (lecture theatre and meeting rooms) with loose furniture and specialist equipment	Council	Tenant

Schedule 8

PCG Rules

- 1 Meetings
 - (a) Unless otherwise agreed between the Parties:
 - (i) PCG meetings will be held monthly; and
 - (ii) a Party may convene a meeting of the PCG at any other time by giving not less than 4 Business Days' notice of it to the other Party.
 - (b) The Council and the Club may invite any of its employees or contractors who are not Representatives to attend a PCG meeting (provided they must give at least 2 Business Days' notice of the proposed invitees to the other Party and provided that they have no voting rights). Invitees are not entitled to participate in any decision making vote.
 - (c) A proposed agenda for all meetings of the PCG must be communicated by:
 - (i) the PCG Secretary in the case of a meeting held under rule 1(a); or
 - (ii) the Party convening a meeting under rule 1(b), at least 2 Business Days prior to the meeting.
 - (d) If a Representative has received a proposed agenda for a meeting of the PCG then the Representative may make a written request to the PCG Secretary that an item be included in the agenda and the PCG Secretary must:
 - (i) Amend the agenda accordingly; and
 - (ii) Distribute a copy of the amended agenda to each Representative.
 - (e) Unless all of the Representatives agree upon an alternative time and place, all meetings of the PCG must take place during Business Hours on a Business Day.
 - (f) The quorum for any meeting of the PCG will be four Representatives, comprising at least two Representatives of each of Council and the Tenant.
 - (g) Attendance by a Representative may be by telephone and the Parties must count that Representative in the quorum.
 - (h) If a quorum is not present within 30 minutes of the appointed time for the meeting, the PCG Chair must:

- (i) Adjourn the meeting to a time and date not less than 2 Business Days and not greater than 5 Business Days thereafter; and
 - (ii) The PCG Chair will notify the Representatives of the adjourned meeting in accordance with this rule 1.
- (i) Each Party must cause its Representatives and the PCG Chair to comply with the confidentiality provisions of this Agreement in respect of all meetings of the PCG and all documents and matters pertaining to the PCG.

2 Decision Making

- (a) The PCG will make decisions by unanimous vote and where a unanimous decision cannot be reached, the matter must be referred to the Tenant's General Manager and Council's CEOs who must endeavour to resolve the matter.
- (b) Council and the Tenant will each have one vote on the PCG which can be exercised by any Representative of each respective Party.
- (c) The Project Manager is not entitled to vote at PCG meetings.
- (d) A Representative may exercise their vote:
 - (i) In person;
 - (ii) By proxy (who need not be a Representative) appointed in writing by that Party; or
 - (iii) By Alternative Representative appointed in writing by the Party appointing the Representative.
- (e) The PCG Secretary must keep a written record of decisions made at each meeting of the PCG and distribute a copy of it to each Representative as soon as practicable but in any event, not more than 5 Business Days, after the meeting.
- (f) Unless a Representative objects to the written record kept by the PCG Secretary in accordance with rule 2(e) within 3 Business Days of receiving it, that written record will be prima facie evidence of the decisions and proceedings of the meeting to which it relates.

3 Removal and replacement of Representatives

- (a) Council or the Tenant may, by written notice to the other:
 - (i) remove or replace a Representative appointed by it; and
 - (ii) appoint and maintain an alternate for any Representative appointed by it,
(Alternate Representative).
- (b) An Alternate Representative may exercise all the powers of the Representative whose alternate he or she is to the extent that the Representative has not exercised them.

4 PCG Objectives

The Representatives must act in good faith and use their best endeavours to achieve the PCG Objectives in a timely manner.

5 Powers of the PCG

The PCG does not have any power to:

- (a) vary the terms of this Agreement;
- (b) make binding decisions on behalf of either Party; or
- (c) commit either Party to the Project.

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Schedule 9

Lease

draft

Schedule 10

Sporting Field Licence

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Execution

Executed as an agreement.

[insert execution block for the Tenant – South Sydney Members Rugby League Football Club Limited]

[insert execution block for the Guarantor – South Sydney District League Football Club Limited]

THE COMMON SEAL of **RANDWICK CITY COUNCIL** (ABN 77 362 844 121) was hereunto affixed pursuant to a resolution authorising the Seal to be so affixed

First Signatory

Print Name

GENERAL MANAGER

Office Held

Second Signatory

Print Name

MAYOR

Office Held