



Agenda

Council Meeting

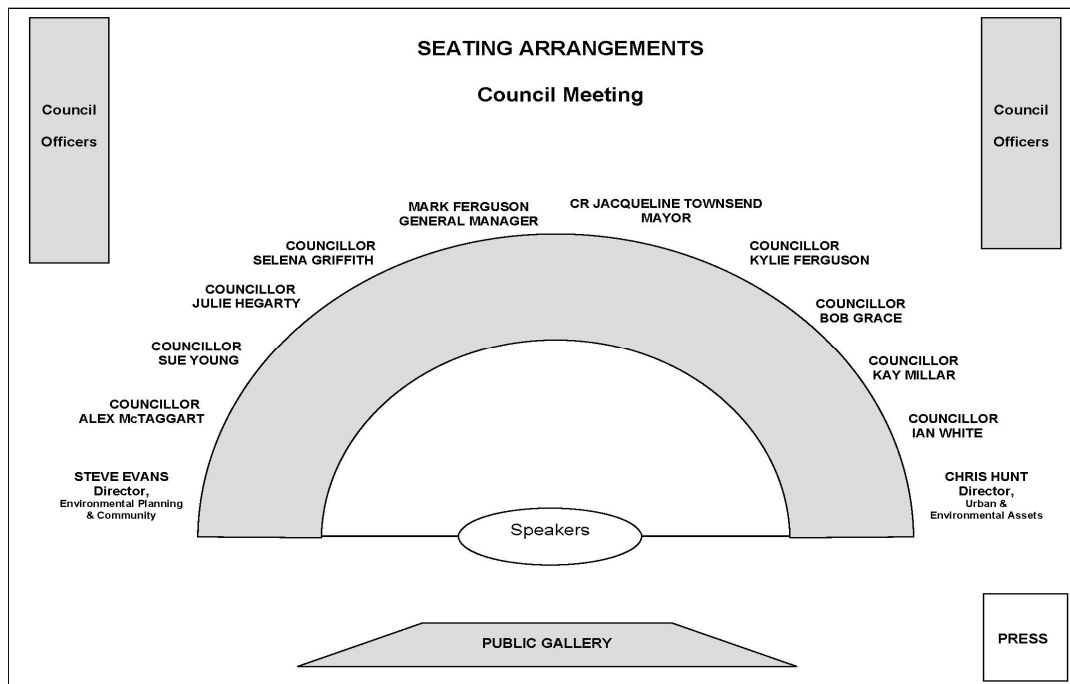
Notice is hereby given that a Council Meeting of Pittwater Council will be held at Mona Vale Memorial Hall on

3 November 2014

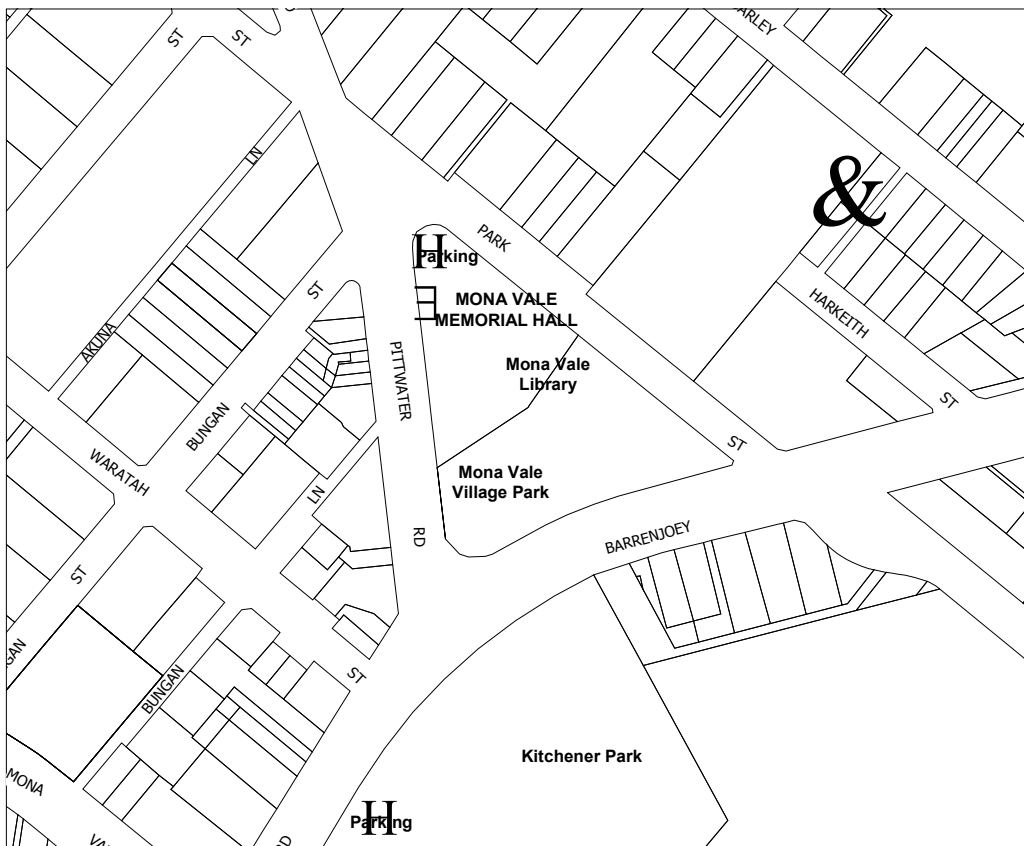
Commencing at 6.30pm for the purpose of considering the items included on the Agenda.

Mark Ferguson
GENERAL MANAGER

Seating Arrangements



Meeting Location



All Pittwater Council's Agenda and Minutes are available on the Pittwater website at www.pittwater.nsw.gov.au

Acknowledgement of Country

**Pittwater Council honours and respects the spirits of the
Guringai people.**

**Council acknowledges their traditional custodianship of
the Pittwater area.**

Statement of Respect

**Pittwater Council promotes and strives to achieve a climate of respect
for all and endeavours to inspire in our community shared civic pride by
valuing and protecting our unique environment, both natural and built,
for current and future generations.**

**We, the elected members and staff of Pittwater Council, undertake to
act with honesty and integrity, to conduct ourselves in a way that
engenders trust and confidence in the decisions we make on behalf
of the Pittwater Community.**

IMPORTANT NOTE FOR COUNCILLORS

The Council has received Confidential Advice in relation to the matters listed below which is attached as **Appendix 1 to Councillor's Agenda on yellow paper**. It is important that Councillors read these documents prior to determining the matters. Should the Council wish to consider the Confidential Advice during the course of the meeting, the following procedure should be followed:

1. Any persons wishing to address the Council are invited to address the Council in Open Session, so that the general (non-confidential) issues relating to the matter are debated in Open Session.
2. Should the Council wish to consider the Confidential Advice at any time during the debate, the Council should resolve into Committee of the Whole in Closed Session in accordance with Section 10A(2)(d) of the Local Government Act 1993, and debate the Confidential Advice and any related issues in a Closed Forum, with the Press and Public excluded. The Council does not have to make any resolution whilst in Committee of the Whole in Closed Session.
3. Following conclusion of the Confidential discussion concerning the Confidential Advice the Council should resolve back into Open Session to continue the debate as required, excluding any reference to the Confidential Advice. Once again it is noted that the debate in Open Session should centre around the general (non-confidential) issues associated with the matter.
4. The Council should then determine the matter in Open Session.

The Reports on the items below are listed in Open Session in the Agenda:

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Mark Ferguson
GENERAL MANAGER

Council Meeting

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CONFIDENTIAL CLAUSE

This report is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, which permits the Council to close the meeting to the public for business relating to the following: -

- (d) Commercial information of a confidential nature that would, if disclosed:-
 - prejudice the commercial position of the person who supplied it; or
 - confer a commercial advantage on a competitor of the Council; or
 - reveal a trade secret.

Commercial in Confidence - Expression of Interest (EOI) - Restaurant, Café and Functions at Avalon Beach Surf Life Saving Club (ASLC)

**The Senior Management Team
has approved the inclusion of
all reports in this agenda.**

Council Meeting

Presentation of Subsidies to Pittwater Surf Clubs

The Mayor will present a cheque to a representative of each of the Surf Life Saving Clubs, being the annual subsidy by Pittwater Council of Surf Clubs in the Pittwater area.

1.0 Apologies

Apologies must be received and accepted from absent Members and leave of absence from the Council Meeting must be granted.

2.0 Declarations of Pecuniary and Conflict of Interest including any Political Donations and Gifts

Councillors are advised of the following definitions of a "pecuniary" or "conflict" of interest for their assistance:

* Section 442 of the Local Government Act, 1993 states that a "pecuniary" interest is as follows:

- "(1) [Pecuniary interest] A Pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.*
- (2) [Remoteness] A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter."*

Councillors should reference the Local Government Act, 1993 for detailed provisions relating to pecuniary interests.

* Council's Code of Conduct states that a "conflict of interest" exists when you could be influenced, or a reasonable person would perceive that you could be influenced by a personal interest when carrying out your public duty.

Councillors are also reminded of their responsibility to declare any Political donation or Gift in relation to the Local Government & Planning Legislation Amendment (Political Donations) Act 2008.

* A reportable political donation is a donation of:

- \$1,000 or more made to or for the benefit of the party, elected member, group or candidate; or
- \$1,000 or more made by a major political donor to or for the benefit of a party, elected member, group or candidate, or made to the major political donor; or
- Less than \$1,000 if the aggregated total of the donations made by the entity or person to the same party, elected member, group, candidate or person within the same financial year (ending 30 June) is \$1,000 or more.

3.0 Confirmation of Minutes

“Councillors are advised that when the confirmation of minutes is being considered, the only question that can arise is whether they faithfully record the proceedings at the meeting referred to. A member of a council who votes for the confirmation of the minutes does not thereby make himself a party to the resolutions recorded: **Re Lands Allotment Co (1894) 1 Ch 616, 63 LJ Ch 291.**”

Minutes of the Council Meeting held on 13 October 2014.

4.0 Public Addresses

The following guidelines apply to any person addressing a Council / Committee meeting in relation to an item on the Council / Committee meeting agenda:

1. *A member of the public may be granted leave to address a meeting of Council or a Committee, where such a request is received by the General Manager no later than 3.00pm on the day of the meeting. This is subject to:*
 - (a) *A maximum of up to six speakers may address on any one item, with a maximum of three speakers in support of the recommendation in the report, and three speakers in opposition.*
 - (b) *A limitation of three minutes is allowed for any one speaker, with no extensions.*
 - (c) *An objector/s to a development application is to speak first with the applicant always being given the right to reply.*

Exceptions to these requirements may apply where:

- (a) *The Meeting specifically requests that a person be interviewed at a meeting.*
 - (b) *The Meeting resolves that a person be heard at the meeting without having given prior notice to the General Manager*
2. *Once a public/resident speaker has completed their submission and responded to any Councillor questions, they are to return to their seat in the public gallery prior to the formal debate commencing.*
3. *No defamatory or slanderous comments will be permitted. Should a resident make such a comment, their address will be immediately terminated by the Chair of the meeting.*
4. *Council's general meeting procedures apply to Public Addresses, in particular, no insults or inferences of improper behaviour in relation to any other person is permitted.*
5. *Residents are not permitted to use Council's audio visual or computer equipment as part of their address. However, photographs, documents etc may be circulated to Councillors as part of their address.*

| | |
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| 5.0 | Councillor Questions with Notice |
|------------|---|

Nil.

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| 6.0 | Mayoral Minutes |
|------------|------------------------|

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| C6.1 | Mayoral Minute - Road Safety Pittwater Road & McCarrs Creek Road |
|-------------|---|

Meeting: Council

Date: 3 November 2014

MAYORAL MINUTE

BACKGROUND

Over the past years a disturbing pattern of speeding motor cycles has developed around Bayview and Church Point. Residents and a number of resident associations have brought it to Council's attention.

On behalf of the residents, Council has advocated through our local member Rob Stokes and our Local Area Commander Dave Darcy for assistance in trying to stop this thoroughfare being used in this way.

A working group comprising Bayview Church Point Residents Association (BCPRA), Roads and Maritime Services (RMS), Council and Police have met a number of times. The group has examined Police enforcement speed limits, traffic calming and line marking to address the issues. One of the group's initiatives is the installation of traffic counters south of the McCarrs Creek Reserve entrance. These statistics will be analysed by the group. An example of issues it reveals is a significant spike in motorcycle riders on Thursday evenings between 9-10pm using the road.

Last week I was advised by a concerned resident that the motorcycle racing is continuing to a point where residents now feel they need to take matters into their own hands.

I know that the NSW Police, our local member, RMS and the Pittwater Traffic Committee have all been informed of this problem, action has been taken, but nothing done to date has eliminated this thoroughfare being used as a racetrack.

I am concerned that insufficient action has been taken to stop this. I am most concerned that residents are forced to become vigilantes due to alleged inaction by government agencies that have power to act to stop this illegal activity, but haven't.

I call for a meeting with our local state member, Council representatives, residents, and NSW Police to collaborate on a solution to eliminate this unsafe use of this road.

Motion

1. That Council notes the complaints of our residents concerning the speed and noise from motorcycles travelling along Pittwater Road and McCarrs Creek Road Bayview and Church Point.
2. That Council invite the NSW Police, the Hon. Rob Stokes MP, RMS representatives and relevant Council staff to attend a meeting.
3. That a report be brought back to Council on the outcomes from the meeting.

Cr Jacqueline Townsend
MAYOR

7.0 Business by Exception

Items that are dealt with by exception are items where the recommendations contained in the reports in the Agenda are adopted without discussion.

8.0 Council Meeting Business

C8.1 2013-2014 Annual Report

Meeting: Council

Date: 3 November 2014

STRATEGY: **Corporate Management**

ACTION: Produce Council's quarterly and annual report and management plan

PURPOSE OF REPORT

To present the 2013-2014 Annual Report which reports on the progress and achievements of the 2012-2016 Delivery Program.

1.0 BACKGROUND

- 1.1 Council is required to prepare and publish an annual report within five months of the end of financial year. The 2013/2014 Annual Report outlines the Council's achievements and progress in implementing the 2014-2018 Delivery Program. As such, the Annual Report is one of the key accountability mechanisms between Council and the community.
- 1.2 The requirements for preparing the Annual Report and the matters which must be reported on are prescribed by the Local Government Act 1993 and Local Government (General) Regulation 2005.
- 1.3 Copies of the Annual Report must be sent to the Minister, provided on Council's website and at libraries and customer services centres at Mona Vale and Avalon. Copies are also available for purchase.

2.0 ISSUES

- The production of an Annual Report is a legislative requirement and provides Councillors and members of the public with useful information about the Council's achievements throughout the previous year.
- The contents of the Annual Report are structured as follows:
 - Section 1 – Overview of the community, Pittwater Council and the Community Strategic Plan
 - Section 2 – Achievements from the 2014 - 2018 Delivery Plan. This includes budget, highlights, community satisfaction results and key performance results.
 - Section 3 – This is information that is not directly relevant to the Delivery Program but is required by the Act and Local Government (General) Regulation 2005 because the Government believes it is important for the community to know about it
 - Section 4 – Financial statements from the Council's year-end audited accounts. A full copy of our audited accounts were distributed to Council in September 2014 and can be found at http://www.pittwater.nsw.gov.au/council/publications/financial_reports
 - Appendix 1 – Delivery Program action updates. Overall we achieved 95% completion of all of our actions (341).

- Under the new planning and reporting framework for Councils introduced by the Local Government Amendment (Planning and Reporting) Act 2009, there are now fewer statutory matters (Section 4 of the report) which Councils must report on. As such, the State of Environment report, previously prepared in conjunction with other SHOROC Councils, is now required to be prepared by Councils once every four years (in the year in which an ordinary election occurs). Council will next produce a State of Environment report in 2016. However, to maintain continuity the majority of the State of the Environment indicators are now reported under the Key Performance Results of each of the Key Directions.
- The progress of each Key Direction is in evidence through Key Performance Results. We achieved 50 out of the 60 targets (85%).

3.0 SUSTAINABILITY ASSESSMENT

The Annual Report reports back on the progress of the Delivery Program & Budget and hence the progress towards delivering on the Key Directions and Strategies in the Community Strategic Plan - Pittwater 2025. As such, the Annual Report outlines the major achievements of each Key Direction which shows how we are addressing these within our sustainability framework.

3.1 Supporting & Connecting our Community (Social)

Highlights under this Key Direction for 2013/14 include:

- We were awarded top honours from Parks & Leisure Australia in the NSW/ ACT Open Space Development Category for our synthetic turf field at Narrabeen Sports High School.
- We were the winner in the Local Government Arts & Culture Awards for our Arts Paper which sheds light on our arts scene, its existing and emerging needs, and the resources required to meet those needs.
- We spent \$544,000 on upgrading and renewing our parks and playgrounds, which included \$81,000 on playground improvement targeting South Avalon Beach and Bilgola Plateau.
- We spent \$4.01m for roads and footpaths including \$3.07m on improving our roads and \$1.07m on our footpath network which included \$920,000 on reconstructing Boondah Road.
- We spent \$123,000 organising a number of community events including Australia Day and Citizenship. We also won a National award for our markets including Food & Wine Fair at Winererremy Bay, Palm Beach Markets and the Beaches Markets at Pittwater Rugby Park.

3.2 Valuing & Caring for our Natural Environment (Environmental)

Highlights under this Key Direction for 2013/14 include:

- \$1m grant from the NSW Government to introduce new 240ltr garden waste bins for every household to divert 3,500 tonnes of recyclable waste from landfill.
- \$205,000 was spent on sand dune restoration occurring at both North Avalon & Mona Vale beaches. Reshaping, planting and new fencing was undertaken in order to restore the beaches natural profile and protect the beach and surrounds.
- We achieved a saving of 135,199 kWh and 7.6% (144t) reduction in GHG emissions through our Revolving Energy Fund over 16 sites. Works included solar PV installations, public lighting upgrades and a solar hot water heater installation program.

- We spent \$569,000 improving and restoring creek ecosystems and riparian and bushland vegetation, including a project to restore 25ha at Deep Creek Reserve, Bilarong Reserve and Elanora Bushland.
- The Coastal Environment Centre (CEC) conducted 74 education activities focusing on protecting our coastal environment. We had over 10,000 participants in the CEC school education program.
- We recieved an award for management of stormwater pollution traps. We improved the efficiency of the 52 traps by up to 90%. This means our waterways and wetlands are better protected.

3.3 **Enhancing our Working & Learning (Economic)**

Highlights under this Key Direction for 2013/14 include:

- We created a new website for Pittwater Business Online, which acts as a one-stop-shop for local businesses. It helps small to medium businesses by bringing them together, sharing knowledge and networking.
- We supported businesses through the Enliven Program to enhance vibrancy within Pittwater. Business support included: merchandising and marketing seminars, partnering with Chambers of Commerce and businesses to enhance our villages.
- The free Enliven Pittwater app has info on events, specials, businesses, transport and parking in Pittwater. It's a one-stop-shop for businesses and residents to connect.
- We were awarded for our Coastal Ambassadors 'train the trainer' program which promotes the ecologically sustainable use of the coastal environment and the importance of looking after it.
- The CEC has installed a new exciting and interactive Marine Discovery space, including touch tables and a "Micro Eye" digital microscope. This will help educate the community on marine life.
- Library usage has increased by 17% due to technological advances and its role as a community hub. It now caters for a diverse range of groups; pre-schoolers, seniors, HSC students and book lovers.

3.4 **Integrating our Built Environment (Infrastructure)**

Highlights under this Key Direction for 2013/14 include:

- We spent \$2.5m and undertook a major upgrade of Avalon Surf Club. The project was a joint development with the Surf Life Saving Club to ensure the building was fit for purpose. A restaurant and cafe are included in the design.
- We updated our LEP in consultation with the community. Pittwater LEP 2014 is the primary planning document guiding land use and development through zoning and planning standards.
- We focused on improving our DA service which decreased the mean gross determination time by 31 days. We also introduced new e-planning software to allow all stakeholders to view applications.
- We spent \$5.3m and commenced work on a multi-storey car park (218 spaces) at Bungan Lane, Mona Vale.
- We spent \$270,000 on renewal and remediation works undertaken at Newport & Bonnie Doon wharves. These works have improved safety and access for users. Intial designs for Palm Beach wharf were also completed.
- We spent \$179,000 on making our villages vibrant through the removal of 2,831 square metres of graffiti as well as art installations, village programming, banners, Christmas activities and pop-up activities.

3.5 Leading an Effective & Collaborative Council (Governance)

Highlights under this Key Direction for 2013/14 include:

- We introduced a secure online process for formal access to information applications. This increased efficiencies, decreased paper use and provided instant access to information for the community.
- We engaged the community on a range of issues (including major projects) through various means such as Reference Groups, community meetings, surveys, workshops and online submissions.
- We had a 9% reduction in our Green House Gas emissions from our fleet. This is due to improved vehicle selection, fuel efficiency and an increase in 4.5 - 5 star and hybrid cars being used in the fleet.
- To engage the community on the future of Ingleside, we developed an innovative interactive website and formed a Community Reference Group. This provides opportunities to be informed and get involved in the discussion.
- We were one of only a handful of finalists for the AR Bluett Memorial Award which recognises councils that have made the most progress in operations and services. We were commended on our cross-council collaboration.
- We trialled a paperless Council meeting and are moving towards the use of ipads to manage Council agendas. We will continue to encourage Councillors and Council staff to continue implement this on a permanent basis.

4.0 EXECUTIVE SUMMARY

- 4.1 The Annual Report has been prepared in accordance with the requirements of Section 428 of the Local Government Act 1993 and Section 217 of the Local Government (General) Regulation 2005.
- 4.2 Council's Annual Report will be forwarded to the Minister and copies made available for the public as indicated above.

RECOMMENDATION

That the 2013 - 2014 Annual Report for the financial year ending 30 June 2014 (**as tabled**) be noted.

Report prepared by
Simonne Johnston - Corporate Planner

Jane Mulroney
MANAGER COMMUNITY ENGAGEMENT & CORPORATE STRATEGY

Connecting Communities Committee

9.0 Connecting Communities Committee Business

C9.1 Avalon Surf Life Saving Club - New Lease & License

Meeting: Connecting Communities Committee

Date: 3 November 2014

STRATEGY: Corporate Management

ACTION: Managing Council's Lease Portfolio

PURPOSE OF REPORT

For Council to endorse a new 21 year lease and license for the new Avalon Surf Life Saving Club (ASLSC).

1.0 BACKGROUND

1.1 At its meeting on 21 July 2014, the Council adopted the following recommendations:

1. *Council notes that no submissions were received for tenders that closed on 2 December 2013 and 20 May 2014 respectively.*
2. a) *Due to the lack of responses to both tenders and the specialist nature of this commercial space, Council authorises the General Manager (GM) to engage a specialist food and beverage consultant to identify and secure a commercial operator.*

b) *That subject to 2(a) above, the GM enter into direct negotiations with the preferred operator and negotiate a subsequent lease agreement.*
3. *That the General Manager commence negotiations with the Surf Club on a new lease and Deed of License that will contain the following elements:*

New Leased Area

- *Ground Level – canteen/store, gym, IRB/nipper store, patrol room, first aid room, club change rooms, boat storage and AV patrol gear room*
- *First Floor – club lounge, club lounge balcony, meeting room, caretaker room, office, kitchen.*

Deed of License

- *Common Areas: 1st floor toilets, corridor, hall of champions, stairwells (east and west), lift*
- *Club Room/Community Function Space*
- *Liquor Licences*
- *Garbage Removal*

4. *That a further report be presented to Council as soon as practicable on the leasing arrangements for the ASLS building and commercial tenancies.*

This report responds to recommendations 3 & 4. Recommendations 2a, 2b & 4 are dealt with in Agenda Item C9.2 of this meeting.

1.2 Avalon Beach Reserve Plan of Management

The lease and license proposed in this report are in accordance with and are authorised under the Avalon Beach Reserve Plan of Management that was adopted by Council in 2014.

1.3 Existing Avalon Surf Club Lease

ASLSC currently has a 21 year lease that was established over the old building footprint and was due to expire on 18 July 2020.

ASLSC historically has been an excellent tenant of Council's asset and has worked tirelessly with Council over the years to create the maximum use from the building as possible.

The club has done a great job over the past 6 years in raising money to secure the future of the surf club building. ASLSC has worked with Council to achieve an excellent outcome for the broader Pittwater community.

1.4 New Lease and License

As a result of the new building and the addition of a Restaurant and Café the overall lease area of the old building was no longer relevant and was inadequate to deal with new common areas in and around the new building.

The license agreement is in addition to the new lease. The shared use of the Club Room/Community Function Space by ASLSC and the commercial operator of the Restaurant and Café and the associated new uses of the building during these times will be managed through a License agreement.

Council staff and ASLSC have worked well together negotiating the outcomes of both the new lease and license. There has been an incredible amount of work by both parties in order to conclude these negotiations and complete the documents attached in this report (refer **Attachments 1 & 2**).

2.0 ISSUES

2.1 New Lease

The new ASLSC lease will deal with those areas within the building that are exclusively used and managed by ASLSC. The lease areas are highlighted in Annexure B1 and B2 of the new lease in **Attachment 1** of this report. In summary, the details of the new lease include;

- 21 year lease from the time of execution
- it accurately reflects the changed design and subsequent uses of the new building
- the lease does not deal with the restaurant and café and /or common areas within the building
- this new lease is consistent with other Surf Club leases across Pittwater and is based on a Community Benefit that recognises the valuable community involvement of the ASLSC.

2.2 License Agreement

The ASLSC license will deal with those areas within the building that are common and that are 'shared' by both ASLSC and the commercial operator of the Restaurant and Café. The license also deals with the ongoing management of these common areas. The licenced areas are highlighted in Schedule 2 of the license agreement in **Attachment 2** of this report.

In summary, the details of the license agreement include;

- The term of the license agreement is at the expiry or termination of the Lease.
- It accurately reflects that change in design and subsequent uses of the new building as follows:

- ASLSC has sole use of the Club Room/Community Function Space Monday to Thursday.
- The commercial operator has first rights of refusal of the Club Room/Community Function Space from Friday (6am) to Sunday (10pm) for the period of their commercial lease with Council (10+10 years). Any income generated from the hire of the Club Room/Community Function Space fees paid by the commercial operator will be equally shared between Council & ASLSC. This arrangement is subject to a sunset clause within the License Agreement. The sunset is as follows;

Sunset Date means the earlier of:

- (1) 31 March 2025; and
- (2) 31 December in the calendar year during which the Gross Revenue exceeds \$1,326,867.

- Prior to the Sunset Clause taking effect 50% all the income generated from the Club Room/Community Function Space (Friday to Sunday) as well as the rental income generated from the commercial rental agreement for the Restaurant and Café will go toward paying off the loan amount (including interest) and the ongoing maintenance of the Surf Club building during this period.
- Once the loan amount (including interest) is paid off the annual commercial rental income will be applied to ongoing works associated with the Avalon Beach Reserve and Precinct. These works include, reserve upgrades and maintenance, surf club building maintenance as well as Avalon Skate Park works. At this point too, all income generated from the Club Room/Community Function Space (Friday to Sunday) will revert back to ASLSC as per the Sunset Clause in the License Agreement.
- Within the license agreement that Council will have with ASLSC & the commercial operator, provision has been made for a Building Management Committee that will meet regularly to deal with operational issues associated with the running of the Surf Club, common areas and the restaurant and café. Council will provide oversight to this committee.

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

ASLSC is a community hub of volunteering. The new building also provides fantastic facilities that the broader Pittwater community are able to enjoy and use.

3.2 Valuing & Caring for our Natural Environment (Environmental)

The commercial rental income associated with the Restaurant and Café will help fund a variety of environmental and recreational works within the Avalon Beach Reserve.

3.3 Enhancing our Working & Learning (Economic)

The proposed Restaurant and Café will provide a commercial return to Council. The new Restaurant and Café will provide additional alternative meeting points for members of the public.

3.4 **Leading an Effective & Collaborative Council (Governance)**

The new Lease and License provide a strong governance framework for the future management of Council's Avalon Surf Club Building and associated activities.

3.5 **Integrating our Built Environment (Infrastructure)**

Working closely with the ASLSC, Council has been able to upgrade a major community facility for the benefit of all residents across Pittwater. The commercial returns associated with the building will help with the ongoing maintenance and upgrade of the Avalon Beach Reserve into the future.

4.0 **EXECUTIVE SUMMARY**

- 4.1 ASLSC currently has a 21 year lease that was established over the old building footprint and that was set to expire on 18 July 2020.
- 4.2 As a result of the new building and the addition of a Restaurant and Café the overall lease area of the old lease no longer is relevant and is inadequate to deal with new common areas in and around the new building.
- 4.3 The shared use of the Club Room/Community Function Space by ASLSC and the commercial operator of the Restaurant and Café and the associated use of the building during these times will be managed through a License agreement.
- 4.4 The new lease and license will have a term of 21 years

RECOMMENDATION

- 1. That the new 21-year lease and license for the new Avalon Surf Life Saving Club be endorsed.
- 2. That public notice of the proposed lease and license is given in accordance with Section 47 of the *Local Government Act*.
- 3. That the General Manager be authorised to execute the necessary documents should there be no objections received following the 28 days notification period.
- 4. That a further report be presented to Council should there be any objections received within the 28 day notice period.

Report prepared by

Paul Reid
MANAGER, CORPORATE STRATEGY AND COMMERCIAL

Lindsay Godfrey
MANAGER, COMMUNITY & LIBRARY SERVICES

Form: 07L
 Licence: 01-05-028
 Licensee: LEAP Legal Software Pty Limited
 Firm name: Stuart Latham Solicitor

LEASE

New South Wales
 Real Property Act 1900

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

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

STAMP DUTY

Office of State Revenue use only

(A) **TORRENS TITLE**

Property leased
 Part Folio Identifier 202/1107408
 Being part premises known as Avalon Beach Surf Life Saving Club at 558A Barrenjoey Road, Avalon Beach as shown on the plans that are annexed hereto and marked "B"

(B) **LODGED BY**

| | | |
|-------------------------|--|----------------------|
| Document Collection Box | Name, Address or DX, Telephone, and Customer Account Number if any | CODE L |
| | Reference: SJL:140211 | |

(C) **LESSOR**

Pittwater Council ABN 61 340 837 871

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) **LESSEE**

Avalon Beach Surf Life Saving Club Inc ABN 81 096 313 417

TENANCY:

- (G)
- TERM:** 21 Years
 - COMMENCING DATE:** 1 January 2015
 - TERMINATING DATE:** 31 December 2035
 - With an **OPTION TO RENEW** for a period of set out in Item of
 - With an **OPTION TO PURCHASE** set out in clause of
 - Together with and reserving the **RIGHTS** set out in clause of
 - Incorporates the provisions or additional material set out in **ANNEXURE(S)** "A", "B1", "B2", and "C" hereto.
 - Incorporates the provisions set out in N/A No.
 - The **RENT** is set out in item No 1 of the Reference Schedule to Annexure "A".

DATE:

- (H) I certify that I am an eligible witness and that the lessor's attorney signed this dealing in my presence.
[See note** below].

Signature of witness:

Name of witness:

Address of witness:

Signature of attorney:

Attorney's name: Mark Ferguson
Signing on behalf of: Pittwater Council
Power of attorney-Book: 4548
-No.: 203

I certify that I am an eligible witness and that an authorised officer of the lessee signed this dealing in my presence
[See note * below].

Signature of witness:

Name of witness:

Address of witness:

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of authorised officer:

Authorised officer's name:
Authority of officer:
Signing on behalf of: Avalon Beach Surf Life Saving Club Inc

(I) **STATUTORY DECLARATION.***

I

solemnly and sincerely declare that—

1. The time for the exercise of option to renew in expired lease No. has ended;
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at in the State of New South Wales on
in the presence of

☐ Justice of the Peace ☐ Practising Solicitor ☐ Other qualified witness [specify]

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have not known the person for at least 12 months, but I have confirmed the person's identity using the identification document and the document I relied on was

Signature of witness:

Signature of :

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgement. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Annexure A

Lessor: **Pittwater Council** ABN 61 340 837 871 of Village Park, 1 Park Street Mona Vale NSW 2103

Lessee: **Avalon Surf Life Saving Club Inc** ABN 81 096 313 417 of 558a Barrenjoey Road, Avalon, NSW 2107

Property: Street address: Part 558A Barrenjoey Road, Avalon, NSW 2107

Nature of property: Surf Life Saving Club

Title: Part 202/1107408

Parking: Nil

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Annexure B1 Ground floor plan of the Premises
Annexure B2 First floor plan of the Premises
Annexure C Rules

Reference Schedule

- Item 1** Rent:
\$1.00 including GST, payable annually in arrears upon demand
- Item 2** Term:
21 years
- Item 3** Further term:
Not Applicable
- Item 4** Permitted Use:
Sporting, youth training and development facility; storage of sporting equipment; operation of canteen between 8:30am and 11:30am on Sundays only during the period September – April (both inclusive) each year and only for the sale of beverages (including coffee), confectionary and sausage sizzle; all uses incidental to and associated with a surf life saving club; Community Hire and Function Hire of the the Club Lounge; and uses incidental to the forgoing, including fundraising activities.
- Item 5** Public liability insurance:
\$20,000,000 for any one claim, or such other amount as the Lessor may require from time to time
- Item 6** Lessor's address for service:
PO Box 882, Mona Vale NSW 1660
Fax (02) 9970 7150

Lessee's address for service:
PO Box 110, Avalon Beach NSW 2107

1 Interpretation

- 1.1 The following words have these meanings unless the contrary intention appears. Item numbers referred to are those in the Reference Schedule. Other definitions are on page 1 hereof.

Approved Plans means the plans for the construction of the Building as approved by Pittwater Council pursuant to development applications 693/10/S96/1 and 110/13/S96/1.

Building means the Avalon Beach Surf Life Saving Club building situated on Avalon Beach Reserve construction of which was completed in accordance with the Approved Plans in August 2014.

Café means that part of the Building described as such on the Approved Plans.

Club Lounge means that part of the Building described as such on the Approved Plans, as more particularly described on the the first floor plan of the Premises that is set out in Annexure B2.

Club Room / Community Function Space means that part of the Building described as such on the Approved Plans, as more particularly described on the plan of the Licence Area that is set out in Annexure B3.

Commencing Date means the commencement date of this lease as referred to on page 1 hereof.

Community Hire means the hire of the Club Lounge by the Avalon Beach SLSC to third party users for uses such as pilates, wu ta dance, fitness classes, tai chi, yoga, meditation, relaxation, martial arts, community groups, meetings, fundraising events for non-profit organisations such as trivia nights, presentations, art classes / exhibitions, seniors activities, conferences, seminars etc.

Community Net Benefit means the community benefit to be provided by the Lessee in accordance with the provisions of Clause 3.2 and 8.5 hereof.

Essential Fires Safety Measures means those measures prescribed as such by the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulations 2000*.

First Floor Balcony means that part of the first floor balcony to the Building immediately adjacent to the Club Room / Community Function Space, as more particularly described on the plan of the Licence Area that is set out in Annexure B3.

Function means a seminar, conference, party, banquet, reception, or other social event to be held or proposed to be held in the Club Room / Community Function Space and First Floor Balcony excluding any 18th or 21st birthday celebration.

Function Hire means the hire of the Club Lounge to third party users for a Function.

Land means the whole of the land described on page 1 hereof on which the Premises are situated.

Lessee's Activities means the sporting, youth training and development activities, and other activities carried out by the Lessee on and from the Premises from time to time in accordance with the Permitted Use.

Lessee's Employees and Agents means each of the Lessee's members, employees, officers, agents, contractors, hirers and invitees.

Lessee's Property means all property on the Premises which is not Lessor's Property or property stored on the Premises by the Lessor's contracted lifeguards.

Lessor's Property means all plant, equipment, fixtures, fittings, furnishings, furniture and other property the Lessor has provided or provides on the Premises.

Licence Area means the Club Room / Community Function Space, First Floor Balcony, Hall of Champions, First Floor Corridor, First Floor Toilets, Ground Floor, Western Access Stairs, Eastern Access Stairs and Lift as more particularly described on the plan of the Licence Area that is set out in Annexures B1 and B2 hereto.

Maximum Number of Patrons means:

- Functions, including conference, seminars and Avalon Beach SLSC training in Club Lounge: 120 patrons
- Community Hire, excluding conferences, seminars and Avalon Beach SLSC training in Club Lounge: 40 patrons

Minister means the Minister for the time being responsible for local government in New South Wales.

Outgoings means:-

- (a) all costs reasonably required to regularly clear and service the grease trap servicing the Premises;
- (b) all electricity and gas consumption in relation to the Premises and the Licence Area, including electricity consumed for external security lighting and flood lighting;
- (d) all telephone and ancillary charges in relation to the Premises and the Licence Area;
- (e) all costs associated with cleaning the Premises;
- (f) all costs reasonably required to repair and maintain the interior of the Premises and the Licence Area, including all plumbing fixtures and fittings, electrical fixtures and fittings, hard wired electrical appliances and security systems.

Permitted Use means the use set out in Item 4 of the Reference Schedule.

Plan of Management means the Pittwater Ocean Beaches Plan of Management – Chapter 14 Avalon Beach (adopted 18 February 2013).

Premises means that part of the Building that is hereby leased as more particularly described and shown in Annexures B1 and B2 hereto including all of the Lessor's Property necessary for the provision of the Community Net Benefit.

Rent means the yearly amount in Item 1 of the Reference Schedule.

Restaurant means that part of the Building described as such on the Approved Plans.

Rules means the rules as set out in Annexure C as amended or updated by the Lessor in its absolute discretion (following consultation with the Lessee) from time to time.

Services means the services to the Premises provided by any statutory authority or the Lessor.

Surf Life Saving Season means the New South Wales volunteer surf lifesaving patrol season which is generally from the commencement of the Spring public school holidays to the conclusion of the Easter public holidays or as varied by Surf Life Saving Sydney Northern Beaches Inc.

Term means the period from and including the Commencing Date to and including the Terminating Date.

Terminating Date means the terminating date of this lease as referred to on page 1 hereof.

1.2 Unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) "person" includes a firm, a body corporate, an unincorporated association, an association or an authority;
- (c) an agreement, representation or warranty:-
 - (i) in favour of two or more persons is for the benefit of them jointly and severally;
 - (ii) on the part of two or more persons is for the benefit of them jointly and severally;
- (d) a reference to:-
 - (i) a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
 - (ii) a document includes any variation or replacement of it;
 - (iii) a law includes regulations and other instruments under it and amendments or replacements of any of them;
 - (iv) a thing includes the whole and each part of it;
 - (v) a group of persons includes all of them collectively, any two or more of them collectively and each of them individual;
 - (vi) the president of a body or authority includes any person acting in that capacity; and
 - (vii) "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;
 - (viii) grammatical forms of defined words or phrases have corresponding meanings;
- (e) parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales; and

2 Term

- 2.1 The term of this lease is as stated in Item 2 of the Reference Schedule hereto commencing and terminating on the days shown on the front page hereof.

3 Rent

- 3.1 The Lessee must pay the Rent annually in arrears, upon demand.
- 3.2 The Lessor and Lessee acknowledge that the Lessor has granted this Lease for a nominal rent in consideration for the Lessee's contribution to the Community Net Benefit comprising:-
- (a) On-going operation, maintenance and management of the Premises;
 - (b) The expenses incurred and the benefit of person hours expended by members in improving and maintaining the Premises and surrounds in accordance with clause 8.5;
 - (c) The benefit of making the Premises or part thereof available for reasonable use by local community groups, other sporting groups and the Lessor's contracted lifeguards in accordance with clause 8.5;
 - (d) The benefit of providing reasonable access and storage space in the Premises for the benefit and use of the Lessor's contracted lifeguards in accordance with clause 8.5;
 - (e) The benefit of providing youth training and development programs to the youth of the area in accordance with clause 8.5; and
 - (f) The benefit of person hours expended by members in providing training and development of youth in the area.

4 Outgoings

- 4.1 The Lessee shall pay all Outgoings as and when they fall due.

5 Insurance

- 5.1 The Lessee will indemnify and keep indemnified the Lessor and the Minister against all actions, suits, claims, debts, obligations and other liabilities arising out of the Lessee's use and occupation of the Premises during the continuance of this Lease and further the Lessee must:-
- (a) in connection with the Premises maintain with insurers on terms (including a cross liability clause) approved by the Lessor (who may not unreasonably withhold its approval) naming the Lessor and Lessee as interested parties:
 - (i) public liability insurance for at least the amount in Item 5 of the Reference Schedule as varied by notice from the Lessor;
 - (ii) workers compensation insurance; and

- (iii) other insurances which are required by law or which in the Lessor's reasonable opinion a prudent Lessee would take out including those in connection with Lessee's use of the Premises;
 - (b) give the Lessor evidence that it has complied with clause 5.1 (a) when asked to do so; and
 - (c) notify the Lessor immediately if an insurance policy required by this clause 5.1 is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy in connection with the Premises, the Building or the Land.
- 5.2 The Lessee may not enforce, conduct, settle or compromise claims under any insurance policy required by this Lease even if that policy also covers other property, if the Lessor gives the Lessee a notice that the Lessor wishes to do these things.
- 5.3 The Lessee may not do anything which may affect rights under any insurance which may increase an insurance premium payable in connection with the Premises, the building or property in them.
- 5.4 Insurance proceeds which the insurer does not require to be used for replacement or reinstatement must be paid into a separate joint account in the names of the Lessor, the Lessee and, if required, by the Lessor, any other person. The money must be used to settle claims in connection with the event insured against or to replace or reinstate the insured item and then any surplus shared between the account holders having regard to their respective interests in that item.
- 5.5 The Lessor will take out and maintain building insurance in respect of the Building and public liability insurance in respect of the Land.

6 Indemnities and releases

- 6.1 The Lessee is liable for and indemnifies the Lessor against liability or loss arising from, and cost incurred in connection with:
- (a) damage, loss, injury or death caused or contributed to by the act, negligence or default of the Lessee or of the Lessee's Employees and Agents; and
 - (b) the Lessor doing anything which the Lessee must do under this Lease but has not done or which the Lessor considers the Lessee has not done properly.
- 6.2 The Lessee releases the Lessor from, and agrees that the Lessor is not liable for liability or loss arising from, and cost incurred in connection with:-
- (a) damage, loss, injury or death unless it is caused by the Lessor's act, negligence or default;
 - (b) anything the Lessor is permitted or required to do under this Lease; and
 - (c) if the Lessor has complied with clause 12.2:-
 - (i) a Service not being available, being interrupted or not working properly; and
 - (ii) the Lessor's plant and equipment not working properly.

- 6.3 Each indemnity is independent from the Lessee's other obligations and continues under this Lease and after it expires or is terminated. The Lessor may enforce an indemnity before incurring expense.

7 Use

- 7.1 Use of the Premises shall at all times be governed by this Lease (including the Rules which are incorporated into and form part of the terms of this Lease, and the Lessor's Plan of Management for Pittwater Ocean Beaches Plan of Management – Chapter 14 Avalon Beach, as amended from time to time (a copy of which has been provided to the Lessee receipt of which the Lessee hereby acknowledges)).
- 7.2 The Lessee must not use the Premises for anything other than the Permitted Use or make any alterations, additions or modifications to the improvements on the Premises without the Lessor's prior written consent (which shall not be unreasonably withheld).
- 7.3 If the Lessee proposes to amend the Permitted Use or to make any alterations, additions or modifications to the improvements on the Premises the Lessee must give the Lessor not less than 28 days prior notice in writing giving particulars of such proposal. The Lessor must not unreasonably refuse any such request to make minor alterations, additions or modifications.
- 7.4 Unless the Lessor refuses its consent to the proposal, the Lessor shall within 28 days of receipt of the Lessee's written notification provide the Lessee with all necessary information as to the statutory approvals relevant to the Lessee's proposal. The Lessor may within 28 days of receipt of the Lessee's proposal give notice that the Lessor intends to amend the Community Net Benefit requirements set out in clause 8.5 of this Lease as a result of the Lessee's proposal. If the Lessor gives such notice the Lessee will be at liberty within 28 days thereafter to withdraw the Lessee's notice of the Lessee's proposal in which case the Lessor's intended amendments to the Community Net Benefit requirements will not apply.
- 7.5 The Lessee must ensure there is no unreasonable nuisance or noise emanating from the Premises after:
- (a) 10:00pm on Sunday - Thursday;
 - (b) 12:00 midnight on Friday and Saturday;
 - (c) 01:00am on New Years Day.
- 7.6 The Lessee acknowledges that the Canteen on the Ground Floor of the Premises may only be used and operate:
- (a) during the September – April period (both inclusive) each year (excluding NSW public school holidays); and
 - (b) between the hours of 8.30a.m. and 11.30a.m. on Sundays only.
- 7.7 The Lessee further acknowledges that the range of merchandise which may be sold from the Canteen is to be restricted to:-
- (a) Confectionery and fruit;
 - (b) hot and cold beverages (including coffee); and

(c) sausage sizzle.

- 7.8 The Lessee must not permit the Club Lounge to be used at any time for any purpose exceeding the Maximum Number of Patrons.

8 Lessee's obligations

- 8.1 The Lessee must annually provide the Lessor as soon as possible after Council's financial year with a copy of the Lessee's Annual Report including audited or signed financial statements showing income and expenditure and gross turnover.
- 8.2 The Lessee must not:-
- (a) alter the Lessor's Property or remove it from the Premises;
 - (b) store or use flammable, volatile or explosive substances on the Premises unless these substances are essential for the Permitted Use of the Premises and are stored in accordance with current safety standards;
 - (c) do anything in or around the Premises which in the Lessor's reasonable opinion may be annoying, dangerous or offensive; and/or
 - (d) do anything to overload the Services nor use them for anything other than their intended purpose.
- 8.3 If the Lessee is prohibited from doing something in connection with this Lease, then it must not do anything which may result in the prohibited thing happening.
- 8.4 The Lessee must:-
- (a) install, maintain and manage at its own expense all key, alarm and proximity card systems for the Premises and the Licence Area;
 - (b) at the request and at the expense of the Lessor (which expense shall not be unreasonable), supply to the Lessor such keys, alarm codes and proximity cards as it may reasonably require from time to time for access to all areas of the Premises and the Licence Area;
 - (c) comply with all laws, regulations and requirements of authorities in connection with the Premises, the Lessee's Activities, the Lessee's Property and the use or occupation of the Premises by the Lessee and the Lessee's Employees and Agents (including obtaining all required permits and approvals, and all required food safety notifications, permits and approvals);
 - (d) inform the Lessor of damage to the Premises or of faulty services immediately after it becomes aware of it;
 - (e) ensure compliance with all Essential Fire Safety Measures;
 - (f) participate in and give access for the purpose of all fire safety inspections and exercises provided that it is given not less than three (3) days' prior notice;
 - (g) strictly comply with all Rules;
 - (h) ensure that appropriately informed and authorised representatives of the Lessee meet with an officer of the Lessor within seven days of each anniversary of the Commencing Date (or at such other times as requested by the Lessor acting

reasonably) to prove to the reasonable satisfaction of the Lessor that the obligations contained in this Clause 8 have been met and demonstrate the financial capacity of the Lessee to meet future obligations;

- (i) ensure that the Lessee's Employees and Agents comply, as necessary and appropriate, with all of the Lessee's obligations under this Lease.

8.5 The Lessee acknowledges that the continued payment of the nominal rental under this lease is subject to the continuing provision by the Lessee of Community Net Benefits as follows:-

- (a) that the Lessee maintains the condition of the interior of the Premises to the reasonable satisfaction of the Lessor;
- (b) that the Lessee provides an appropriate level of surf life saving patrol service on weekends and on public holidays in each Surf Life Saving Season during the Term; such service shall be in accordance with the standard adopted by Surf Life Saving Association of Australia as amended from time to time and in accordance with the Code of Beach Practice of and the patrol hours and strengths laid down by Surf Life Saving Sydney Northern Beaches Inc as amended from time to time; such service shall be provided on all weekends and public holidays in the Surf Life Saving Season; in the event that these patrol hours differ from those operated by the Lessor's contracted surf lifesavers for Avalon Beach, the Lessee shall prominently display both sets of patrol hours in the vicinity of the Premises for the information and safety of the public;
- (c) that the Lessee makes the Premises available for use by other local sporting or bona fide community groups, as appropriate, and within reason, consistent with providing training and development of skills for people in the area of endeavour for which the Premises are being used; and
- (d) that the Lessee comply on time with all laws, regulations and requirements of authorities in connection with the Premises, the Lessee's Activities, the Lessee's Property and the use or occupation of the Premises by the Lessee and the Lessee's Employees and Agents (including obtaining all permits);
- (e) that the Lessee inform the Lessor of damage to the Premises or of a faulty service immediately it becomes aware of it;
- (f) make the Premises or part thereof and the Lessee's Property available for the reasonable use of the Lessor's contracted lifeguard service as may be necessary in the fulfillment of the duties of the said lifeguard service or in the case of an emergency;
- (g) make the Premises or part thereof available for the use of the Lessor's contracted lifeguard service as may reasonably be required for the storage of the equipment of the contracted lifeguard service; and
- (h) provide youth training and development programs to the youth of the area.

8.6 The Lessee and the Lessor shall review the Community Net Benefit requirements set out in clause 8.5 at intervals at the Lessor's discretion to assess whether there is a need for a variation to meet changing community expectations and having regard to the Lessee's financial standing and ability to provide such benefits.

8.7 The Lessee may maintain its on-premises liquor licence for the Premises, provided that:-

- (a) the Lessee may only serve alcohol from the Club Lounge at the following times:-
 - (i) each Sunday, Monday, Tuesday, Wednesday, Thursday and public holidays: from 12:00 midday to 10:00pm;
 - (ii) each Friday and Saturday: from 12:00 midday to 12:00 midnight;
 - (iii) on New Years Eve: from 12:00 midday to 01:00am.
 - (b) the Lessee's liquor licence:-
 - (i) may include the following business type: "Club activity and support and catering service"; and
 - (ii) the licensed premises must not include the Club Room / Community Function Space or the First Floor Balcony;
 - (c) subject to the conditions of the Lessee's liquor licence, the Lessee may serve alcohol in the Club Room / Community Function Space and the First Floor Balcony during any of the Lessee's annual events as a catering service.
- 8.8 The Lessee may only amend the conditions of its liquor licence with the Lessor's prior written consent. In assessing any request from the Lessee to amend its liquor licence:-
- (a) the Lessor will apply normal planning, legislation, regulations and standards;
 - (b) if the Lessor's consent is given in writing to the Lessee amending its liquor licence, the Lessee will ensure that it complies with all requirements and conditions imposed by the Lessor and all liquor licence legislation;
- 8.9 Any liquor licence held by the Lessee must be transferred to the Lessor, at the Lessee's cost, on termination of this Lease.
- 8.10 The Lessee must comply with the conditions of its liquor licence at all times.
- 8.11 The Lessee may hire the use of the Club Lounge to third parties for Community Hire at any time provided that:
- (a) the Community Hire fees and charges from time to time shall not at any time be ten per cent (10%) more or less than the profit rate set by Pittwater Council in its annual fees and charge schedule at the relevant time to hire the Avalon Annexe or other similar community facility; and
 - (b) the use does not exceed to the Maximum Number of Patrons.
- 8.12 The Lessee may hire the use of the Club Lounge for Function Hire at any time.
- 8.13 The provisions of this Clause 8 are essential terms of this Lease.

9 Cleaning and maintenance

- 9.1 The Lessee must keep the Premises tidy, weed free and free of vermin and comply with the Lessor's directions and Rules about refuse removal and recycling.
- 9.2 The Lessee must keep clean or provide a cleaning service for the Premises and remove or arrange for refuse to be removed from the Premises regularly.

- 9.3 The Lessee must keep the Premises and the Lessee's Property in good repair and promptly replace worn or damaged items with items of similar quality.
- 9.4 The Lessor has an obligation to maintain the roof, the ceiling, the external walls, and the ground floor and first floor concrete slab of the Avalon SLSC Building in a state of good condition and serviceable repair and must fix structural defects and maintain essential services.
- 9.5 The Lessee must otherwise maintain the property in its condition at the Commencing Date and promptly make any repairs needed to keep it in that condition.

10 Lessee's works

- 10.1 The Lessee may not carry out works to or construction on the Premises without the prior approval of the Lessor. Such approval shall not be unreasonably withheld. If the Lessor gives approval it may impose conditions. These conditions may include:-
- (a) which part of the Premises may not be reinstated on expiry or termination and which parts must be reinstated on expiry or termination; and
 - (b) which items of Lessee's Property installed as part of the works may not be removed on expiry or termination.
- 10.2 The Lessor will advise the Lessee if the proposed works or construction require development/building approval and will provide appropriate information and advice.
- 10.3 The Lessee must ensure that any works it does are in accordance with any plans, specifications and schedule of finishes required and approved by the Lessor.

11 Transfer and other dealings

- 11.1 The Lessee may not transfer this Lease or sub-let or part with possession, without the prior approval of the Lessor.
- 11.2 The Lessee shall not carry on or permit any person, organisation or corporation to carry out any commercial activity concerning the sale of food or beverages on any part of the Premises or the Land without the prior written approval of the Lessor. Such approval shall not be unreasonably withheld.

12 Lessor's additional rights and obligations

- 12.1 Subject to the Lessor's rights, while the Lessee complies with the obligations under this Lease, it may occupy the Premises during the Term without interference by the Lessor.
- 12.2 The Lessor may:
- (a) carry out any works on the Land, the Building or the Premises (including alterations and re-development), limit access if the Lessor takes reasonable steps (except in emergencies) to minimise interference with the Lessee's use of the Premises;
 - (b) exclude or remove any person from the Building or the Land;
 - (c) install and use a public address system and other activities on the Land;

- (d) change the direction or flow of pedestrian access into, out of or through the Building or the Land;
 - (e) change or vary car parking arrangements including implementation of pay and display on or adjacent to the Land; and
 - (f) change or vary car parking arrangements and car parking fees.
- 12.3 The Lessor may enter the Premises at reasonable times on reasonable notice to see if the Lessee is complying with its obligations under this Lease or to do anything the Lessor must or may do under this Lease. If the Lessor decides there is an emergency, the Lessor may enter at any time without notice. If the Lessor decides there is an emergency, the Lessor may stop the Lessee from entering the Land and/or the Premises at any time.
- 12.4 The Lessor may sub-divide the Land or grant easements or other rights over it or the Building or the Premises unless this would have a substantial or adverse effect on the Lessee's use of the Premises.
- 12.5 After giving the Lessee reasonable notice, the Lessor may do anything which the Lessee should have done or which the Lessor considers has not been done properly.
- 12.6 The Lessor may appoint agents or others to exercise any of its rights or perform any of its duties under this Lease.
- 12.7 The Lessor (acting reasonably) in consultation with the Building Management Committee may vary the Rules or make new Rules which are consistent with this Lease in connection with the operation, use and occupation of the Land, the Building and the Premises.

13 Expiry or termination

- 13.1 Two (2) years prior to the Terminating Date the Lessor and Lessee:-
- (a) will inspect the Premises and the Lessor will inform the Lessee in writing of any remedial work to bring the Premises to a reasonable condition having regard to the Lessee's repair and maintenance obligations herein;
 - (b) the Lessee shall complete such works as may reasonably be required by the Lessor no later than twenty-eight (28) days prior to the Terminating Date; and
 - (b) discuss the opportunity for a new lease and the Lessor will give an indication of its intentions and any likely change in conditions.
- 13.2 The Lessee must vacate the Premises on the earlier of the Terminating Date and the date this Lease is terminated and leave them in a condition satisfactory to the Lessor acting reasonably.
- 13.3 The Lessee may not remove the Lessee's Property which:-
- (a) the Lessor has stated (as a condition to giving approval to works) may not be removed; or
 - (b) is part of structural work done by the Lessee to the Premises unless the Lessor gives the Lessee notice requiring the Lessee to remove the Lessee's Property.

- 13.4 Subject to clauses 13.3 and 13.5 the Lessee must remove the Lessee's Property from the Premises during the period seven (7) days immediately before the day the Premises must be vacated.
- 13.5 If the Lessor terminates this Lease by re-entry, the Lessee may give the Lessor a notice within seven (7) days after termination that it wants to remove the Lessee's Property which it may or must remove from the Premises.
- 13.6 Within seven (7) business days after the Lessee gives notice in accordance with clause 13.5, the Lessor must give the Lessee a notice stating when and how the Lessee's Property is to be removed from the Premises and by whom.
- 13.7 The Lessor may treat the Lessee's Property as abandoned and deal with it in any way it sees fit at the Lessee's expense if the Lessee does not:-
- (a) give notice required by clause 13.5 within the required time; or
 - (b) remove the Lessee's Property in accordance with this clause 13 or a notice given under it.
- 13.8 The Lessee's Property is at the Lessee's risk at all times.
- 13.9 The Lessee must promptly make good any damage caused by the Lessee's Property being removed from the Premises.
- 13.10 On the day the Lessee must vacate the Premises, the Lessee must give the Lessor all keys, access and/or alarm codes and proximity cards to the Premises held by the Lessee and details of any other person or entity to which they have given any such keys, access and/or alarm codes and proximity cards to the Premises.

14 Holding over

- 14.1 If the Lessee continues to occupy the Premises after the Terminating Date with the Lessor's approval, it does so under a monthly tenancy:-
- (a) which either party may terminate on one (1) month's notice ending on any day; and
 - (b) at the Rent, subject to the continued provision of the Community Net Benefits by the Lessee.
- 14.2 Subject to clause 14.1, the monthly tenancy is on the same terms as this Lease except for those changes which:-
- (a) are necessary to make this Lease appropriate for a monthly tenancy; or
 - (b) the Lessor requires as a condition of giving its approval to the holding over.
- 14.3 Any holding over period shall not exceed twelve (12) months.

15 Damage to Premises

- 15.1 Avalon Beach SLSC shall at its own expense make good any damage to the Premises that is caused through the act, neglect, default or misconduct of Avalon Beach SLSC or its servants, agents, employees, members, hirers or invitees.

16 Default

- 16.1 Each obligation of the Lessee to pay money and its obligations under clauses 3, 4, 5, 7, 8, and 9 are essential terms of this lease. Other obligations under this Lease may also be essential terms of this lease if stated in the body of the clause involved.
- 16.2 The Lessor may terminate this Lease by giving the Lessee notice or by re-entry if the Lessee:-
- (a) repudiates its obligations under this Lease;
 - (b) does not comply with an essential term of this Lease;
 - (c) does not comply with an obligation under this Lease (which is not an essential term) and, in the Lessor's reasonable opinion:-
 - (i) the non-compliance can be remedied, but the Lessee does not remedy it within a reasonable time after the Lessor gives the Lessee notice to remedy it, or
 - (ii) the non-compliance cannot be remedied or compensated for, or
 - (iii) the non-compliance cannot be remedied but the Lessor can be compensated and the Lessee does not pay the Lessor compensation for the breach within a reasonable time after the Lessor gives the Lessee notice to pay it.
- 16.3 If this Lease is terminated under this clause 16:-
- (a) the Lessee indemnifies the Lessor against any liability or loss arising and any cost incurred (whether before or after termination of this Lease) in connection with the Lessee's breach of this Lease and the termination of this Lease including the Lessor's loss of the benefit of the Lessee performing its obligations under this Lease from the date of that termination until the Expiry Date; and
 - (b) the Lessor must take reasonable steps to mitigate its loss.

17 Costs and expenses

- 17.1 In connection with this Lease, the Lessee must pay:-
- (a) all registration costs and expenses; and
 - (b) its own legal costs.

18 Notices

- 18.1 A notice or approval must be:-
- (a) in writing; and
 - (b) left at or posted by certified post to the address or sent to the facsimile number of the party in Item 6 of the Reference Schedule, as varied by the parties from time to time.
- 18.2 A notice or approval is taken to be given:-

- (a) if posted, on the third day after posting; and
- (b) if sent by facsimile, on the next business day after it is sent unless the sender is aware that transmission is impaired.

19 Miscellaneous

- 19.1 A provision of or a right under this Lease may not be waived or added except in writing signed by whoever is to be bound.
- 19.2 In this Lease words used in any of the forms of words in the first column of Part 2 of Schedule 4 to the Conveyancing Act 1919 do not imply a covenant under section 86 of that Act.
- 19.3 Expiry or termination of this Lease does not affect any rights in connection with a breach of this Lease before the date thereof.
- 19.4 The Lessee warrants that it:-
 - (a) has relied only on its own enquiries in connection with this Lease and not on any representation or warranty by the Lessor or any person acting or seeming to act on the Lessor's behalf; and
 - (b) was made aware of the Rules then current when signing this Lease.
- 19.5 The Lessee must comply on time with undertakings given by or on behalf of the Lessee in connection with this Lease.

20 Disputes

- 20.1 If a dispute arises between the parties, then before any formal mediation can be required or any court proceeding may begin, the party raising the dispute must give 14 days' notice to the other party setting out the dispute and seeking discussion and compromise with a view to resolving the dispute.
- 20.2 If the dispute is not resolved within 14 days the parties must convene a meeting including the Pittwater Council General Manager and the Avalon Surf Life Saving Club President to discuss the issue and seek resolution within a further 14 day period.
- 20.3 If after the further 14 days the dispute is still not resolved then it must be referred to mediation before commencing court proceedings. The costs of mediation must be borne by the parties in equal shares.

21 Mediation

- 21.1 The parties agree to endeavour to settle any dispute arising in relation to any matter under this agreement that cannot be resolved in accordance with the provisions of clause 20 by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.
- 21.2 The mediation must be conducted in accordance with the ACDC guidelines for commercial mediation operating at the time the dispute is referred to ACDC.

21.3 The guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the guidelines are deemed incorporated into this agreement.

21.4 This clause survives termination of this agreement.

Certified correct for the purposes of the Real Property Act 1900 by:-

EXECUTED by Mark Ferguson as attorney for)
Pittwater Council under registered power of)
attorney book 4548 no. 203 in the presence
of:

Signature of attorney, who by executing this
deed acknowledges that he has received no
notice of revocation of the power of attorney

Signature of witness

Print name of witness

EXECUTED by Avalon Beach Surf Life)
Saving Club Inc's duly authorised officer in)
the presence of:

Signature of authorised officer

Authorised officer's name:
Authority of officer:

Signature of witness

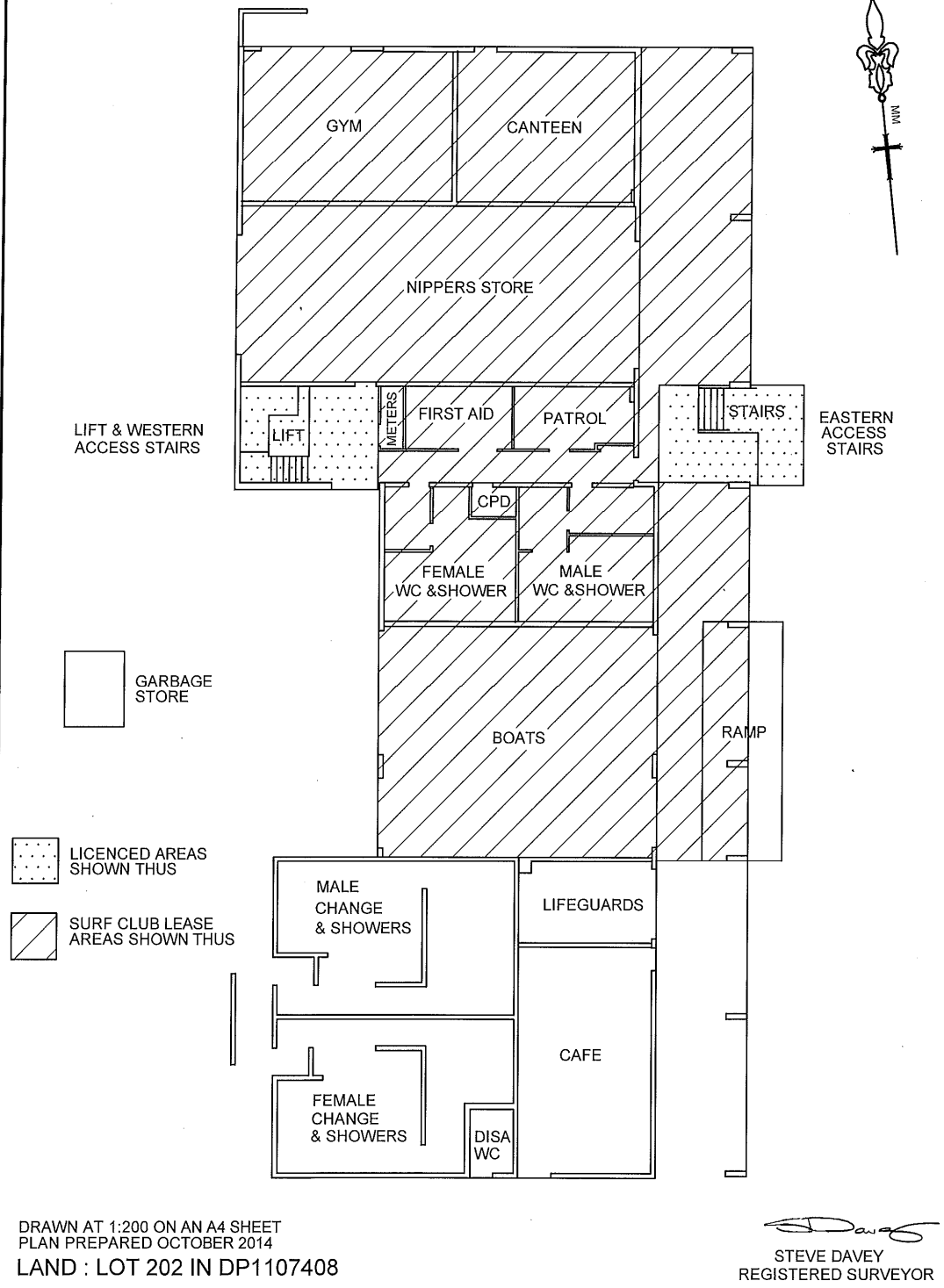
Print name of witness

DRAFT FOR PUBLIC EXHIBITION

PLAN OF AVALON SURF CLUB

SHEET 1/2

GROUND LEVEL

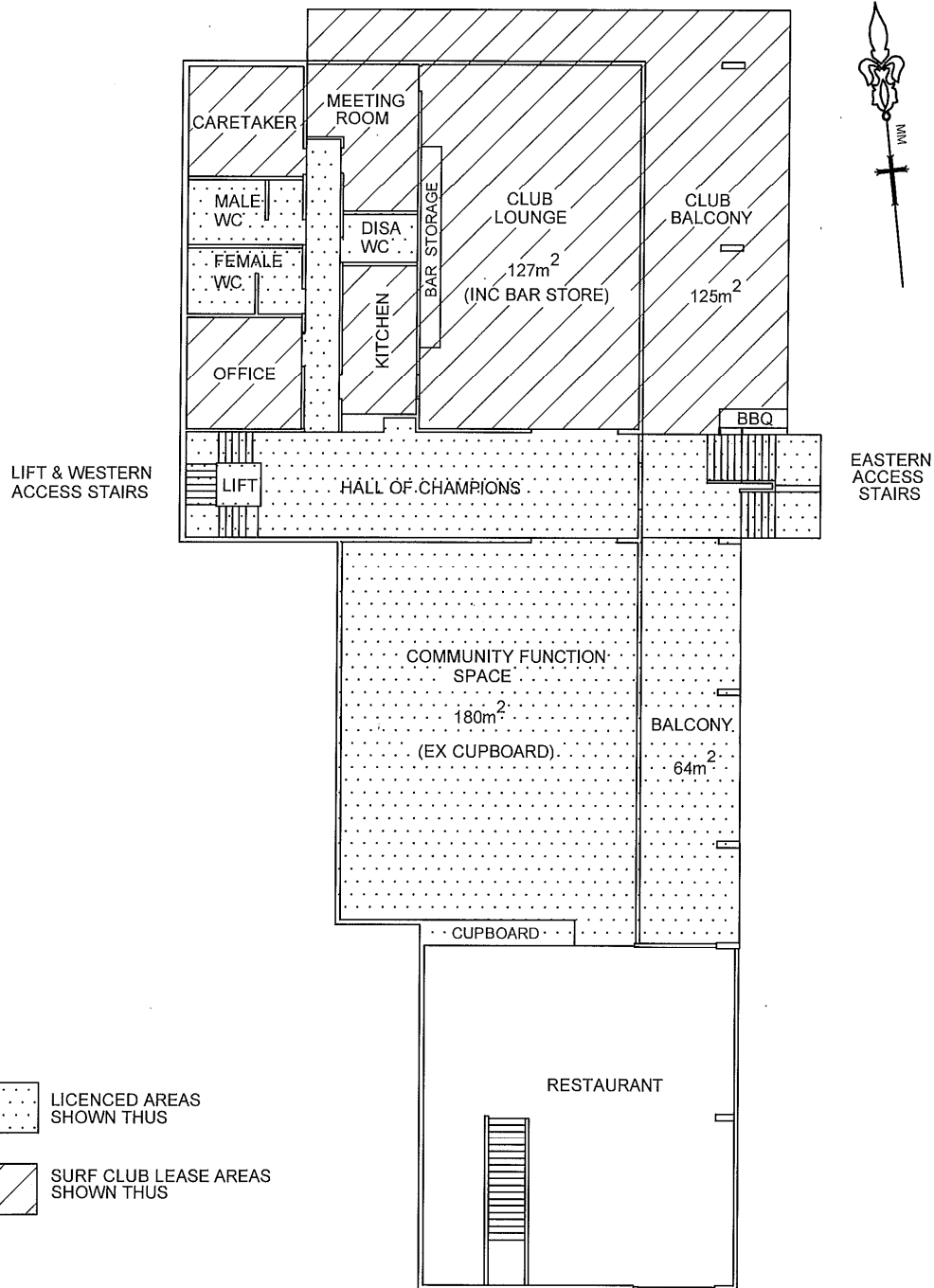




DRAFT FOR PUBLIC EXHIBITION

PLAN OF AVALON SURF CLUB


SHEET 2/2

LEVEL ONE



-  LICENCED AREAS SHOWN THUS
-  SURF CLUB LEASE AREAS SHOWN THUS

DRAWN AT 1:200 ON AN A4 SHEET
 PLAN PREPARED OCTOBER 2014
 LAND : LOT 202 IN DP1107408 LGA PITTWATER


 STEVE DAVEY
 REGISTERED SURVEYOR

DRAFT FOR PUBLIC EXHIBITION

Avalon Beach Surf Life Saving Club | Building Rules

1. Noise

An occupier must not create any noise on the occupier's premises or on any common area likely to interfere with the peaceful enjoyment of the occupier of another lot or of any person lawfully using a common area.

2. Vehicles

An occupier must not park or stand any motor or other vehicle on any common area or permit any invitees of the occupier to park or stand any motor or other vehicle on any common area.

3. Obstruction of common areas

- (1) An occupier must not obstruct lawful use of any common area by any person except on a temporary and non-recurring basis.
- (2) An occupier must not obstruct lawful use of, or access to or from:
 - (a) windows in the occupier's premises except by internal blinds or curtains;
 - (b) any air vents, air conditioning ducts or skylights in the occupier's premises;
 - (c) emergency exits;
 - (d) any other occupier's premises;
 - (e) any area designated by Pittwater Council for occupier's to keep garbage and recycling receptacles;
 - (f) car parking areas; or
 - (g) services/utilities to the building.

4. Damage to lawns and plants on common area

An occupier must not, except with the prior written approval of Pittwater Council damage any lawn, garden, tree, shrub, plant or flower being part of or situated on any common area.

5. Damage to common area

- (1) An occupier must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface any structure that does not form part of the occupier's premises except with the prior written approval of Pittwater Council.
- (2) Rule 5(1) does not prevent an occupier from installing any sign to advertise the activities of the occupier in accordance with Rule 19 hereof.

6. Behaviour

An occupier must take all reasonable steps to ensure that all members, staff, patrons and invitees of the occupier do not behave in a manner likely to interfere with the peaceful enjoyment of another occupier or any person lawfully using the building or a common area.

7. Depositing rubbish and other material on a common area

An occupier of a lot must not deposit or throw on a common area any rubbish, dirt, dust or other material or discarded item except with the prior written approval of Pittwater Council.

8. Cleaning windows and doors

Occupiers are responsible for cleaning all interior and exterior surfaces of glass in windows and doors within and on the boundary of the occupier's premises.

9. Storage of inflammable liquids and other substances and materials

- (1) An occupier must not, except with the prior written approval of Pittwater Council use or store on the occupier's premises or on any common area any inflammable chemical, liquid or gas or other inflammable material.
- (2) Rule 9(1) does not apply to chemicals, liquids, gases or other material used or intended to be used for ordinary use in a commercial kitchen or for domestic purposes, or any chemical, liquid, gas or other material used or intended to be used in the fuel tank of a motor boat.

10. Garbage disposal

- (1) An occupier:
 - (a) must maintain receptacles for garbage and recycling within the occupier's premises, or in such other area or part thereof as may be designated for the purpose by Pittwater Council from time to time;
 - (b) must maintain receptacles for garbage and recycling in a clean and dry condition and (except in the case of receptacles for recyclable material) keep them adequately covered;
 - (c) must maintain receptacles for garbage and recycling to be kept in any common area designated by Pittwater Council in accordance with Rule 10(1)(a) of such size and style as may be designated by Pittwater Council from time to time;
 - (d) must ensure that before garbage, recyclable material or waste is placed in the receptacles it is, in the case of garbage, securely wrapped or, in the case of tins or other containers, completely drained or, in the case of recyclable material or waste, separated and prepared in accordance with the applicable recycling guidelines;
 - (e) for the purpose of having the garbage, recyclable material or waste collected, must place the receptacles within an area designated for that purpose by Pittwater Council and at a time not more than 12 hours before the time at which garbage, recyclable material or waste is normally collected;
 - (f) when the garbage, recyclable material or waste has been collected, must promptly return the receptacles to the occupier's premises or other area referred to in paragraph 10(a);
 - (g) not place anything in the receptacles of the another occupier except with the permission of that occupier;

Avalon Beach Surf Life Saving Club | Building Rules

- (h) must promptly remove anything which the occupier or garbage or recycling collector may have spilled from the receptacles and must take such action as may be necessary to clean the area within which that thing was spilled; and
 - (i) must comply with Pittwater Council's requirements for the storage, handling and collection of garbage, waste and recyclable material.
- (2) Pittwater Council may post signs on any common area with instructions on the handling of garbage, waste and recyclable material that are consistent with its requirements.
- (3) These Rules do not require an occupier to dispose of any chemical, biological, toxic or other hazardous waste in a manner that would contravene any relevant law applying to the disposal of such waste.

11. Keeping of animals

- (1) Subject to Rule 11(2) an occupier must not keep or allow any animal on the occupier's premises or any common area.
- (2) Rule 11(1) shall not restrict an occupier from permitting any assistance dog from entering upon the occupier's premises or any common area.

12. Appearance of premises

An occupier must not, except with the prior written approval of Pittwater Council, maintain within the occupier's premises anything visible from outside the premises that, viewed from outside the occupier's premises, is not in keeping with the rest of the building.

13. Preservation of fire safety

- (1) An occupier of a lot must not do anything or permit any invitees of the occupier to do anything on the occupier's premises or on any common area that is likely to affect the operation of fire safety devices in the building or to reduce the level of fire safety in the building.
- (2) An occupier must participate in any fire safety drill or procedure upon receipt of three (3) business days' notice from Pittwater Council.
- (3) An occupier must evacuate the occupier's premises immediately and in accordance with the directions of Pittwater Council when informed of any actual or suspected emergency.
- (4) An occupier will be liable for any costs associated with any false alarm which arise as a consequence of the occupier's use of the occupier's premises or of any common area.

14. Prevention of hazards

An occupier must not do anything or permit any invitees of the occupier to do anything on the occupier's premises or on any common area that is likely to create a hazard or danger to the occupier of another premises or any person lawfully using the building.

15. Obstruction of Avalon Beach Reserve

- (1) An occupier must not:
 - (a) park or stand any motor vehicle, boat, caravan or the like on any part of the Avalon Beach Reserve so as to obstruct access to any car space, or any part of the Avalon Beach SLSC Building;
 - (b) use any dedicated car space for the purpose of storing any surf life saving or other equipment; and
 - (c) keep any waste or recycling receptacle on any part of the Avalon Beach Reserve other than in the dedicated waste and recycling area.

16. Compliance with planning and other requirements

- (1) An occupier must ensure that the occupier's premises are not used for any purpose that is prohibited by law.
- (2) An occupier must ensure that the occupier's premises are used in accordance with all conditions of the development consent for the use of the premises.
- (3) An occupier must ensure that the occupier's premises are used in accordance with all conditions of any liquor licence applicable to the use of the premises.

17. No smoking

- (1) An occupier must ensure that there is no smoking within the occupier's premises or on any common area by the occupier's members, staff, patrons and invitees.
- (2) An occupier must erect and maintain signs prohibiting smoking on the occupier's premises.

18. No Sales

- (1) An occupier must not hold an auction, garage, boot, bankrupt or fire sale in the occupier's premises without the prior approval of Pittwater Council.
- (2) An occupier must not permit or invite any coffee, food, or ice cream cart, van, trailer or the like to operate and sell products from the occupier's premises or from any common area.

19. Signs

- (1) An occupier must not install any sign on any common area or on the occupier's premises that is visible from outside the occupier's premises except in such locations and of such style as may be specified by Pittwater Council from time to time. Any signs installed in breach of this rule will be removed by Pittwater Council at the occupier's expense.
- (2) Any sign installed in accordance with Rule 19(1) must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with the appearance of the rest of the building.

20. Security

An occupier must keep the occupier's premises secure when unattended and comply with any directions about building security given by Pittwater Council from time to time.

Note: In these Rules any reference to a "common area" shall be taken to mean any part of the Avalon Beach Surf Life Saving Club Building and Avalon Beach Reserve that does not form part of any occupier's leased premises.

DRAFT

**AVALON BEACH SURF LIFE SAVING CLUB
FACILITY LICENCE & MANAGEMENT AGREEMENT**

PARTIES

Pittwater Council
ABN 61 340 837 871

AND

Avalon Beach Surf Life Saving Club Inc
ABN 81 096 313 417

THIS AGREEMENT dated day of 2014

BETWEEN **Pittwater Council** ABN 61 340 837 871 of Village Park, 1 Park Street
Mona Vale NSW 2103 ('**Pittwater Council**')

AND **Avalon Beach Surf Life Saving Club Inc** ABN 81 096 313 417 of
558A Barrenjoey Road Avalon Beach NSW 2107 ('**Avalon Beach
SLSC**')

RECITALS

- A. Pittwater Council is the registered proprietor of the Avalon Beach Reserve.
- B. Situated on the Avalon Beach Reserve is Avalon Beach SLSC Building.
- C. The ordinary future activities of Avalon Beach SLSC will be conducted from Avalon Beach SLSC Building.
- D. The parties intend that Avalon Beach SLSC shall have the exclusive use of the Leasehold Area within Avalon Beach SLSC Building.
- E. The parties intend that Avalon Beach SLSC shall also have the non-exclusive use of the Licence Area within Avalon Beach SLSC Building.
- F. In consideration of the Licence Fee to be paid by Avalon Beach SLSC to Pittwater Council annually and the obligations of Avalon Beach SLSC set out herein, Pittwater Council has agreed to grant to Avalon Beach SLSC a non-exclusive right and licence to use and a right to manage the Licence Area at the times and subject to the terms and conditions set out herein.
- G. In consideration of the terms of this agreement and the additional capital contributions provided by Pittwater Council to complete the construction of the Avalon Beach SLSC Building, the parties have agreed to share the future revenue to be generated from the use of the Licence Area by third party users until the Sunset Date subject to the terms and conditions set out herein.

OPERATIVE PART

1. Interpretation

This agreement is governed by the laws of New South Wales, and the parties, submit to the non-exclusive jurisdiction of the courts of that State.

In the interpretation of this agreement:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;
- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales;
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (f) References to a party are intended to bind their executors, administrators and permitted transferees;
- (g) Rights hereby granted to Avalon Beach SLSC to the non-exclusive use of parts of Avalon Beach SLSC Building shall be taken to include a right of its servants, agents, members, hirers or invitees to make use thereof for the approved purpose;
- (h) Obligations under this agreement affecting more than one party bind them jointly and each of them severally.

2. Definitions

Annual Event means an event within the meaning of clause 12.

Approved Plans means the plans for the construction of the Avalon Beach SLSC Building as approved by Pittwater Council pursuant to development applications 693/10/S96/1 and 110/13/S96/1.

Avalon Beach Reserve means the whole of the public reserve comprised in title reference 202/1107408 being and known as Avalon Beach.

Avalon Beach SLSC means Avalon Beach Surf Life Saving Club Inc ABN 81 096 313 417 of 558A Barrenjoey Road Avalon Beach NSW 2107.

Avalon Beach SLSC Building means the Avalon Beach Surf Life Saving Club building situated on Avalon Beach Reserve construction of which was completed in accordance with the Approved Plans in August 2014.

Boardwalk means that part of the Avalon Beach SLSC Building described as such on the Approved Plans.

Building Management Committee means the committee to be formed in accordance with the provisions of clause 19 hereof.

Building Rules means the rules and regulations which may be created by Pittwater Council (acting reasonably) from time to time in accordance with the provisions of clause 19 hereof.

Café means that part of the Avalon Beach SLSC Building described as such on the Approved Plans.

Caretaker's Room means that part of the Avalon Beach SLSC Building described as "Caretaker" on the Approved Plans.

Club Lounge means that part of the Avalon Beach SLSC Building described as such on the Approved Plans.

Club Room / Community Function Space means that part of the Avalon Beach SLSC Building described as such on the Approved Plans, as more particularly described on the plan of the Licence Area that is set out in Schedule 1 hereto.

Commercial Operator means the lessee for the time being of the Restaurant and/or Café provided always that if there is no lessee of the Restaurant and/or Café at any time then in such case the term shall where required by the context mean Pittwater Council.

Community Hire means the hire of the Club Room / Community Function Space to third party users by Avalon Beach SLSC for a Permitted Use in accordance with the provisions of clause 10 hereof.

Eastern Access Stairs means that part of the Avalon Beach SLSC Building described as such on the Approved Plans including the access doors and foyer, as more particularly described on the plan of the Licence Area that is set out in Schedule 1 hereto.

Essential Fires Safety Measures means those measures prescribed as such by the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulations 2000.

First Floor Balcony means that part of the first floor balcony to the Avalon Beach SLSC Building immediately adjacent to the Club Room / Community Function Space, as more particularly described on the plan of the Licence Area that is set out in Schedule 1 hereto.

First Floor Corridor means that part of the Avalon Beach SLSC Building described as such on the Approved Plans, as more particularly described on the plan of the Licence Area that is set out in Schedule 1 hereto.

First Floor Toilets means the male toilets, female toilets and accessible toilet marked "DISA WC" as shown on the first floor of the Approved Plans, as more particularly described on the plan of the Licence Area that is set out in Schedule 1 hereto.

Garbage Enclosure means the garbage enclosure as shown on the Approved Plans, as more particularly described on the plan of the Licence Area that is set out in Schedule 1 hereto.

Function means a seminar, conference, party, banquet, reception, or other social event to be held or proposed to be held in the Club Room / Community Function Space and First Floor Balcony excluding any 18th or 21st birthday celebration.

Function Hire means the hire of the Club Room / Community Function Space and First Floor Balcony to third party users for a Function in accordance with the provisions of clause 11 hereof.

Hall of Champions means that part of the Avalon Beach SLSC Building described as such on the Approved Plans as more particularly described on the plan of the Licence Area that is set out in Schedule 1 hereto.

Halloween means the first Saturday following 31 October in any year.

Lease means the lease agreement between Pittwater Council and Avalon Beach SLSC concerning Avalon Beach SLSC's exclusive right to the use of the Leasehold Area.

Leasehold Area means that part of the Avalon Beach SLSC Building over which Avalon Beach SLSC shall have exclusive use as more particularly described in the Lease.

Licence Agreement means this agreement.

Licence Area means the Club Room / Community Function Space, First Floor Balcony, Hall of Champions, First Floor Corridor, First Floor Toilets, Western Access Stairs, Eastern Access Stairs and Lift as more particularly described on the plan that is set out in Schedule 1 hereto.

Licence Fee means \$1.00 payable annually in arrears.

Lift means that part of the Avalon Beach SLSC Building described as such on the Approved Plans.

Pittwater Council means Pittwater Council ABN 61 340 837 871 of Village Park, 1 Park Street, Mona Vale, NSW 2103.

Maximum Number of Patrons means:

- Function Hire, as well as conferences, seminars and Avalon Beach SLSC training: 180 patrons
- Community Hire, excluding conferences, seminars and Avalon Beach SLSC training: 60 patrons

Minister means the minister for the time being responsible for Local Government in New South Wales.

New Years Eve means 31 December in any year.

Permitted Use means pilates, wu ta dance, fitness classes with no loud music or amplified instructions, tai chi, yoga, meditation, relaxation, martial arts, community groups, meetings, fundraising events for non-profit organisations such as trivia nights, presentations, art classes / exhibitions, seniors activities, conferences, seminars, Avalon Beach SLSC training, or such other use as may

be specified or approved by Pittwater Council acting reasonably from time to time.

Prohibited Use means drama classes, functions, dance classes, zumba, belly dance, jazzercise, square dance, gymbaroo, bands, music groups, little kickers: soccer, choir, singing groups, play groups, fitness classes with loud music or amplified instructions, tap dancing, bang bang salsa, flamenco dance, hop skip jump: kids and parents, kindermusic, 18th birthday parties, 21st birthday parties, any use which exceeds the Maximum Number of Patrons, or such other use as may be specified by Pittwater Council acting reasonably from time to time.

Restaurant means that part of the Avalon Beach SLSC Building described as such on the Approved Plans.

Sunset Date means the date, or alternatively a method for calculating such date, as specified in Schedule 4;

Western Access Stairs and Lift means that part of the Avalon Beach SLSC Building described as such on the Approved Plans including the access doors and foyer, as more particularly described on the plan of the Licence Area that is set out in Schedule 1 hereto.

3. Term

This Licence Agreement shall commence on the date hereof and shall continue until the earlier of:

- (a) the date that both parties agree in writing to end this Licence Agreement;
- (b) the expiry or termination of the Lease;
- (c) the termination of this Licence Agreement in accordance with the provisions of clause 21 hereof.

4. Licence Fee

Avalon Beach SLSC agrees to pay to Pittwater Council the Licence Fee annually in arrears on demand.

5. Building Access & Security

- (a) Avalon Beach SLSC shall be responsible to manage and maintain at its own expense all key, alarm and proximity card systems for the Licence Area.

- (b) Avalon Beach SLSC shall in future, at the request and at the expense of Pittwater Council (which expense shall not be unreasonable), supply to Pittwater Council such keys, alarm codes and proximity cards as it may reasonably require from time to time for access to all areas of the Avalon Beach SLSC Building.
- (c) Avalon Beach SLSC shall in future, at the request and at the expense of the Commercial Operator (which expense shall not be unreasonable), supply to the Commercial Operator such keys, alarm codes and proximity cards as it may reasonably require from time to time to access the Eastern Access Stairs, Western Access Stairs and Lift, Hall of Champions, First Floor Corridor and First Floor Toilets.

6. First Floor Corridor, First Floor Toilets, Eastern Access Stairs, Western Access Stairs, Lift and Garbage Enclosure

- (a) Pittwater Council hereby grants to Avalon Beach SLSC the non-exclusive right to access and make use of the First Floor Corridor, First Floor Toilets, Eastern Access Stairs, Western Access Stairs and Lift at all times.
- (b) Avalon Beach SLSC acknowledges that the staff and patrons of the Restaurant and Functions will also be entitled to access and make use of the First Floor Corridor, First Floor Toilets, Eastern Access Stairs, Western Access Stairs and Lift at all times for pedestrian access to and from the Restaurant and First Floor Toilets and to make use of the First Floor Toilets and for no other purpose.
- (c) Pittwater Council hereby grants to Avalon Beach SLSC the non-exclusive right to keep garbage and recycling receptacles within the Garbage Enclosure and to make use of the Garbage Enclosure in accordance with the Building Rules during the term of this agreement.
- (d) Avalon Beach SLSC acknowledges that the Commercial Operator will also be entitled to access and make use of the Garbage Enclosure in accordance with the Building Rules during the term of this agreement.

7. Hall of Champions

- (a) Pittwater Council hereby grants to Avalon Beach SLSC a non-exclusive right to use the Hall of Champions at all times for the purpose of:
 - (i) pedestrian access to the Leasehold Area; and
 - (ii) to keep and display Avalon Beach SLSC's memorabilia.
- (b) Subject always to the obligations imposed by clause 7(c) below, Pittwater Council hereby grants Avalon Beach SLSC the exclusive right at all times to decorate the Hall of Champions.
- (c) Avalon Beach SLSC agrees that in decorating the Hall of Champions:
 - (i) it will ensure that a clear passage of not less than 1,500mm as more particularly described on the plan of the Licence Area that is set out in Schedule 1 hereto will be maintained for pedestrian traffic and for wheelchair access at all times;
 - (ii) it will not make any structural changes.
- (d) Avalon Beach SLSC acknowledges that the staff and patrons of the Restaurant will also have access to and use of the Hall of Champions at all times for the purpose of pedestrian traffic and access to the First Floor Corridor, First Floor Toilets, Eastern Access Stairs, Western Access Stairs and Lift.

8. First Floor Balcony

- (a) Avalon Beach SLSC acknowledges and agrees that the staff and patrons of the Restaurant will have access to and a non-exclusive licence to use the First Floor Balcony at all times for the purpose of pedestrian traffic for access to the Hall of Champions, First Floor Corridor, First Floor Toilets, Eastern Access Stairs, Western Access Stairs and Lift and for no other purpose.
- (b) Avalon Beach SLSC acknowledges and agrees that during the term of this agreement it is not permitted to keep any furniture or other items on the First Floor Balcony other than during an Annual Event.
- (c) Avalon Beach SLSC acknowledges and agrees that a clear passage of not less than 1,500mm as more particularly described on the plan of the Licence Area that is set out in Schedule 1 hereto will be maintained for pedestrian

traffic and for wheelchair access through the First Floor Balcony for Restaurant patrons and staff at all times.

9. Club Room / Community Function Space

- (a) Pittwater Council hereby grants Avalon Beach SLSC an exclusive licence to use the Club Room / Community Function Space and First Floor Balcony on any day for its own use or for any Permitted Use until and including 31 March 2015 free of charge.
- (b) After 31 March 2015, in consideration of the Licence Fee and subject always to obligations set out in clause 9(c), Pittwater Council hereby grants to Avalon Beach SLSC a continuing licence to use the Club Room / Community Function Space (excluding the First Floor Balcony) free of charge on any Monday, Tuesday, Wednesday or Thursday during the term of this Licence Agreement for its own use.
- (c) Avalon Beach SLSC warrants that its use of the Club Room / Community Function Space at the times prescribed by clause 9(b) or 9(d) will not:
 - (i) disturb the quiet enjoyment of the Restaurant;
 - (ii) be incompatible with the reasonable use of the Restaurant for its designed purpose;
 - (iii) be for any purpose other than a Permissible Use; and
 - (iv) be for any Prohibited Use.
- (d) After 31 March 2015, Pittwater Council grants to Avalon Beach SLSC a continuing licence to use the Club Room / Community Function Space (excluding the First Floor Balcony) on any Friday, Saturday or Sunday during the term of this Licence Agreement for its own use on short notice but only if:
 - (i) the Commercial Operator has not, prior to the notice required pursuant to clause 9(d)(ii), already booked the use of the Club Room / Community Function Space;
 - (ii) Avalon Beach SLSC gives not more than 14 days notice of its intended use to the Commercial Operator; and
 - (iii) Avalon Beach SLSC must:

- i. leave the Club Room / Community Function Space in a neat and tidy condition;
- ii. remove all garbage and refuse from the Club Room / Community Function Space;
- iii. pack away Avalon Beach SLSC's furniture and equipment; and
- iv. arrange and pay for the Club Room / Community Function Space to be professionally cleaned.

10. Community Hire

- (a) In consideration of the Licence Fee and subject always to clauses 10(b), 10(c), 10(d) and 10(e) Pittwater Council hereby agrees that Avalon Beach SLSC may make the Club Room / Community Function Space (excluding the First Floor Balcony) available for Community Hire on any Monday, Tuesday, Wednesday or Thursday during the term of this Licence Agreement.
- (b) Avalon Beach SLSC must during the term of this Licence Agreement keep the Club Room / Community Function Space (excluding the First Floor Balcony) available for Community Hire for a minimum of:
 - (i) 35 hours per week during each Monday to Thursday period (excluding school holidays); and
 - (ii) 20 hours per week during each Monday to Thursday period during school holidays.
- (c) Avalon Beach SLSC may set the value of the Community Hire fees and charges from time to time provided always that such fees and charges shall not at any time be ten per cent (10%) more or less than the profit rate set by Pittwater Council in its annual fees and charge schedule at the relevant time to hire the Newport Community Centre Main Hall or other similar community facility.
- (d) Avalon Beach SLSC must ensure that the terms of any Community Hire agreement concerning the use of the Club Room / Community Function Space for Community Hire purposes are as set out in Schedule 2 hereto and on such other terms as Pittwater Council may reasonably require from time to time or as the parties may otherwise in future agree in writing.

- (e) Avalon Beach SLSC must not hire the use of the Club Room / Community Function Space at any time for any Community Hire purpose that may:
 - (i) disturb the quiet enjoyment of the Restaurant;
 - (ii) be incompatible with the reasonable use of the Restaurant for its designed purpose;
 - (iii) be for any purpose other than a Permissible Use;
 - (iv) be for any Prohibited Use.
- (f) Pittwater Council agrees that Avalon Beach SLSC may collect and retain for its own exclusive use and benefit all revenue generated from all Community Hire bookings.
- (g) Pittwater Council and Avalon Beach SLSC may invite and receive enquiries in relation to all prospective Community Hire bookings provided that all enquiries will be referred to Avalon Beach SLSC to finalise and manage.
- (h) Avalon Beach SLSC is responsible to arrange, manage and keep proper records of all Community Hire bookings.
- (i) Avalon Beach SLSC agrees to use Pittwater Council's nominated booking system to manage and record all Community Hire bookings, and shall provide Pittwater Council with unrestricted viewing access to the nominated booking system.
- (j) Avalon Beach SLSC must supply to Pittwater Council upon request such details of Community Hire bookings as Pittwater Council may reasonably require.
- (k) Avalon Beach SLSC agrees that Community Hire events may only be held between the hours of 6:00am and 10:00pm and warrants that Community Hire events will not be permitted outside of these times.
- (l) Community Hire must not exceed the Maximum Number of Patrons at any time.
- (m) Subject always to clauses 10(b), 10(c), 10(d) and 10(e), Pittwater Council hereby grants to Avalon Beach SLSC a continuing right to use the Club Room / Community Function Space (excluding the First Floor Balcony) on any Friday, Saturday or Sunday during the term of this Licence Agreement for Community Hire on short notice but only if:

- (i) the Commercial Operator has not, prior to the notice required pursuant to clause 10(m)(ii) already booked the use of the Club Room / Community Function Space;
- (ii) Avalon Beach SLSC gives not more than 14 days notice of its intended use to the Commercial Operator; and
- (iii) Avalon Beach SLSC must:
 - v. leave the Club Room / Community Function Space in a neat and tidy condition;
 - vi. remove all garbage and refuse from the Club Room / Community Function Space;
 - vii. pack away Avalon Beach SLSC's furniture and equipment; and
 - viii. arrange and pay for the Club Room / Community Function Space to be professionally cleaned.

11. Function Hire

- (a) Pittwater Council hereby grants to Avalon Beach SLSC an exclusive licence to use the Club Room / Community Function Space and First Floor Balcony on any day for its own use for any Function at any time until and including 31 March 2015 free of charge.
- (b) After 31 March 2015 and continuing for the term of this Licence Agreement Pittwater Council grants to Avalon Beach SLSC a licence to make use of the Club Room / Community Function Space and First Floor Balcony for the purpose of hiring the said Club Room / Community Function Space and First Floor Balcony to the Commercial Operator for use for a Function.
- (c) The parties acknowledge and agree that:
 - (i) After 31 March 2015 and continuing for the term of this Licence Agreement the Commercial Operator shall have an exclusive, continuing option to hire the use of the Club Room / Community Function Space and First Floor Balcony from Avalon Beach SLSC on any Friday, Saturday or Sunday (but excluding the date of any Annual Event) for use for a Function; and
 - (ii) After 31 March 2015 and continuing for the term of this Licence Agreement the Club Room / Community Function Space and First

Floor Balcony will only be available for Function Hire to the Commercial Operator on any Friday, Saturday or Sunday (excluding the date of any Annual Event) and will not be available for Function Hire to any third party at any time.

- (d) Pittwater Council warrants that it will be a term of the Commercial Operator's Hiring & Licence Agreement that the Commercial Operator must exercise its option to hire the use of the Club Room / Community Function Space and First Floor Balcony from Avalon Beach SLSC as set out in clause 11(c)(i) for a minimum of twenty (20), one hundred (100) plus person functions annually, or pay the equivalent annual hiring fee in lieu.
- (e) Avalon Beach SLSC must ensure that the terms of any Function Hire agreement concerning the use of the Club Room / Community Function Space for Function Hire purposes are as set out in Schedule 3 hereto and on such other terms as Pittwater Council may reasonably require from time to time.
- (f) Avalon Beach SLSC acknowledges and agrees that no 18th or 21st birthday functions may be held in the Club Room / Community Function Space at any time.
- (g) The parties agree that the Function Hire fees will be set as follows for 2015 for any Friday, Saturday or Sunday Function and increase annually thereafter in accordance with the provisions of clause 11(h):

| No. of patrons | 2015 Hiring Fee |
|-----------------------|--------------------------|
| Under 50: | \$750 plus GST, if any |
| 50-100: | \$1,250 plus GST, if any |
| Over 100: | \$1,500 plus GST, if any |

- (h) The parties agree that the Function Hire fees shall increase annually on 1 January in each year by the same percentage as the percentage increase in the Sydney All Groups Consumer Price Index for the year preceding the date of review, provided that should at any time the consumer price index cease to be published then the parties agree to replace the consumer price index with such other index as shall be published to replace the consumer price index and in the absence of such agreement being reached that other index shall be the index which most appropriately reflects fluctuations in the

costs of living in Sydney, and provided further that any such increase in the hiring fees shall be rounded up to the nearest \$10.

- (i) Pittwater Council, Avalon Beach SLSC and the Commercial Operator may invite and receive enquiries in relation to all prospective Function Hire bookings provided that all enquiries will be referred to the Commercial Operator to finalise, and the Commercial Operator will be responsible to exercise its option to hire the use of the Club Room / Community Function Space and First Floor Balcony in accordance with the provisions of clause 11(c)(i) and hire the use of the said Club Room / Community Function Space and First Floor Balcony from Avalon Beach SLSC.
- (j) Pittwater Council agrees that Avalon Beach SLSC may collect all revenue generated from Function Hire bookings provided that:
 - (i) Avalon Beach SLSC is responsible to manage and keep proper records of all Function Hire bookings.
 - (ii) Avalon Beach SLSC agrees to use Pittwater Council's nominated booking system to manage and record all Function Hire bookings, and:
 - i. Avalon Beach SLSC shall provide Pittwater Council with unrestricted viewing access to the nominated booking system; and
 - ii. Avalon Beach SLSC shall provide the Commercial Operator with access to the nominated booking system such that it can make direct bookings.
 - (iii) Avalon Beach SLSC must supply to Pittwater Council upon request such details of Function Hire bookings as Pittwater Council may reasonably require.
 - (iv) Until the Sunset Date, Avalon Beach SLSC must pay to Pittwater Council on a quarterly basis 50% of the gross revenue generated from all Functions held on and from 1 April 2015, with such payments to be made within 14 days of the end of each quarter. For the avoidance of doubt, each quarter shall be 1 January – 31 March; 1 April – 30 June; 1 July – 30 September; and 1 October – 31