

December, with payments due on 14 January, 14 April, 14 July and 14 October each year.

- (v) After the expiration of the Sunset Date, Avalon Beach SLSC may collect and retain for its own exclusive use and benefit all revenue generated from all Function Hire bookings and will have no ongoing obligation thereafter to account to Pittwater Council for any share of the revenue generated from any Function Hire bookings.
- (k) Notwithstanding any other clause herein, the Commercial Operator may also request and Avalon Beach SLSC may accept a Function Hire booking on any Monday, Tuesday, Wednesday or Thursday at any time. The parties agree that Avalon Beach SLSC may set the fee payable for a Function Hire booking on any such Monday, Tuesday, Wednesday or Thursday.
- (l) The parties agree that the Commercial Operator may also request and Avalon Beach SLSC may accept a Function Hire booking on any day which includes the use of the Club Lounge, and that Avalon Beach SLSC may set the fee payable for the use of the Club Lounge on any such day.
- (m) Avalon Beach SLSC warrants that:
 - (i) the food and beverage catering for all Functions (excluding any Annual Event) must be provided by the Commercial Operator; and
 - (ii) no Functions (excluding any Annual Events) shall be booked or permitted to be held unless the food and beverage catering is provided by the Commercial Operator.
- (n) All Functions must end:
 - (i) at 10:00pm on any Sunday, Monday, Tuesday, Wednesday or Thursday;
 - (ii) at 12:00 midnight on any Friday or Saturday night; and
 - (iii) at 1:00am following New Years Eve.
- (o) Functions must not exceed the Maximum Number of Patrons at any time.
- (p) Following all Functions, the Commercial Operator shall be responsible to:
 - (i) leave the Club Room / Community Function Space in a neat and tidy condition;
 - (ii) remove and dispose of all waste;
 - (iii) remove all of the Commercial Operator's furniture and equipment;

- (iv) pack away Avalon Beach SLSC's furniture and equipment; and
- (v) comply with any other obligations set out in the terms and conditions of the Function Hire booking.
- (q) Avalon Beach SLSC will make the Club Room / Community Function Space available to the Commercial Operator from 06:00am on the day of any booked function.
- (r) For the avoidance of doubt, the parties agree that the applicable hiring fee shall be payable per function. If separate functions are held on the same day for the benefit of different patrons then in such case the applicable hiring fee shall be due and payable in respect of each function.
- (s) When booking any function the Commercial Operator must nominate the anticipated number of patrons. If the Commercial Operator becomes aware at any stage, whether before, during or after a function, that the number of patrons exceeded the number anticipated at the time of booking so as to result in an increase in the hiring fee in accordance with the provisions of clause 11(g), then the Commercial Operator must immediately notify Avalon Beach SLSC of the change in numbers and pay the applicable increase in hiring fee.

12. Surf Club Annual Events

- (a) Pittwater Council hereby grants to Avalon Beach SLSC an option to have an exclusive right and licence to use the Club Room / Community Function Space and First Floor Balcony for use for Avalon Beach SLSC's major annual events on six (6) occasions during any twelve (12) month period commencing on 1 April and ending on 31 March each year and on any week day free of charge, provided always that:
 - (i) the Annual Events shall include New Year's Eve and Halloween each year;
 - (ii) Avalon Beach SLSC shall provide Pittwater Council and the Commercial Operator with at least three (3) months' advance written notice of the dates of any other Annual Events;
 - (iii) Avalon Beach SLSC shall provide Pittwater Council and the Commercial Operator with at least three (3) months' advance written

notice if it does not intend to hold a function on New Year' Eve or Halloween;

(iv) Avalon Beach SLSC may have exclusive access to and the use of the Club Room / Community Function Space and First Floor Balcony from 6:00am on the date of an Annual Event;

(v) Avalon Beach SLSC must not prior to 5:00pm on the date of any Annual Event make use of the Club Room / Community Function Space or First Floor Balcony in any way that may disturb the quiet enjoyment of the Restaurant or be incompatible with the reasonable use of the Restaurant for its designed purpose;

(vi) no Annual Event may be held within one (1) month of an earlier Annual Event; and

(vii) Annual Events must end:

i. at 10:00pm on any Sunday, Monday, Tuesday, Wednesday or Thursday;

ii. at 12:00 midnight on any Friday or Saturday night; and

iii. at 1:00am following New Years Eve

(b) For the avoidance of doubt, Avalon Beach SLSC's right to use the Club Room / Community Function Space and First Floor Balcony for an Annual Event is **not** subject to the obligations imposed by sub-clause 10(e) and/or 11(m)(i) and those obligations are hereby expressly waived in respect of any Annual Event. To the extent that the terms of this sub-clause is incompatible with any other clause herein, the terms of this sub-clause shall prevail.

(c) Annual Events must not exceed the Maximum Number of Patrons at any time.

(d) Avalon Beach SLSC may otherwise hold an Annual Event at any other time and for such duration but only if Avalon Beach SLSC has sought and obtained the Commercial Operator's prior written consent.

13. Liquor Licence

(a) Avalon Beach SLSC may keep and hold an on-premises liquor licence permitting the service of alcohol by it in the Club Room / Community

Function Space and the First Floor Balcony during any Annual Event as a catering service.

(b) The Avalon Beach SLSC liquor licence:

(i) shall include the following business type: "Club activity and support and catering service".

(ii) the licensed premises must not include the Club Room / Community Function Space or the First Floor Balcony.

(c) Avalon Beach SLSC warrants that it will comply with the conditions of its liquor licence at all times.

(d) Subject to the conditions of Avalon Beach SLSC's liquor licence, Avalon Beach SLSC may serve alcohol in the Club Room / Community Function Space and the First Floor Balcony during an Annual Event as a catering service.

14. Maintenance

(a) During the term of this Licence Agreement, the parties agree that:

(i) Pittwater Council will be responsible 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; and

(ii) Avalon Beach SLSC is otherwise responsible to keep the Licence Area in a state of good condition and serviceable repair.

(b) Avalon Beach SLSC shall be responsible to arrange and pay to repair, replace and maintain all glass broken in the Licence Area and all non-operative light fittings within the Licence Area.

(c) Avalon Beach SLSC shall be responsible to maintain and repair the first floor timber floor within the Licence Area as may reasonably be required from time to time and the parties shall equally share the cost of replacing the first floor timber floor if necessary in future.

(d) Avalon Beach SLSC shall be responsible to arrange and pay to dispose of all waste from within the Licence Area and shall take all necessary steps to control any pest infestation within the Licence Area.

- (e) Avalon Beach SLSC shall be responsible to arrange and pay to repair, replace and maintain any heating, cooling and electrical fittings installed in the Licence Area which are broken or damaged as a result of the use thereof by the Avalon Beach SLSC or its servants, agents, employees, members, hirers or invitees.
- (f) Avalon Beach SLSC shall keep and maintain the plumbing fittings, waste pipes, drains and water closets servicing the First Floor Toilets in a clean, clear and operative condition and shall employ licensed tradesman to clear any blockages which may occur therein.
- (g) Avalon Beach SLSC shall keep and maintain all tables, chairs, audio visual and other equipment required for use for Community Hire and/or Functions in a state of good and serviceable repair and shall repair and replace such items as and when reasonably necessary.
- (h) In the event of Avalon Beach SLSC failing to perform any of its obligations under the foregoing provisions then Pittwater Council may do such things as are necessary to comply with such provisions and may recover from the Avalon Beach SLSC the costs of so doing.
- (i) Avalon Beach SLSC shall give such access to Pittwater Council and its servants, experts, agents and building contractor as may be reasonable and necessary for the building contractor to finalise all outstanding works and rectify all defects to the Avalon Beach SLSC Building.
- (j) Avalon Beach SLSC warrants that it shall not interfere or take any action which might prejudice Pittwater Council's claim to have any defects to the Avalon Beach SLSC rectified by the building contractor.

15. Cleaning

- (a) Avalon Beach SLSC will be responsible to arrange and pay for the Licence Area (including all glass windows, doors and balustrades) to be professionally cleaned at regular intervals and otherwise kept in a clean and tidy condition at all times until 31 March 2015.
- (b) After 31 March 2015, Avalon Beach SLSC will be responsible to arrange and pay for the Hall of Champions, First Floor Corridor, Eastern Access Stairs, Western Access Stairs and Lift (including all glass windows, doors and

balustrades) to be professionally cleaned at regular intervals and otherwise kept in a clean and tidy condition at all times.

- (c) After 31 March 2015, Avalon Beach SLSC will be responsible to arrange and pay for the First Floor Toilets to be professionally cleaned and stocked with all necessary consumables on a daily basis and otherwise to be kept in a clean and tidy condition at all times. Avalon Beach SLSC warrants that the First Floor Toilets will be cleaned and stocked at all times to a standard consistent and compatible with the reasonable use thereof by Restaurant patrons.
- (d) Subject always to the Commercial Operator's obligations pursuant to clause 11(p), after 31 March 2015, Avalon Beach SLSC will be responsible to arrange and pay for the Club Room / Community Function Space (including all glass windows, doors and balustrades) to be professionally cleaned and available for use by the Commercial Operator in a clean and tidy condition by 06:00am each Friday morning and otherwise as may reasonably be required on any Monday, Tuesday, Wednesday or Thursday.
- (e) After 31 March 2015, the Commercial Operator will be responsible to arrange and pay for the Club Room / Community Function Space and First Floor Balcony (including all glass windows, doors and balustrades) to be professionally cleaned and available for use by Avalon Beach SLSC in a clean and tidy condition by 06:00am each Monday morning and otherwise as may reasonably be required on any Friday, Saturday or Sunday.
- (f) After 31 March 2015 Avalon Beach SLSC will be responsible to arrange and pay for the Club Room / Community Function Space (including all glass windows, doors and balustrades) to be professionally cleaned and available for use in a clean and tidy condition by 06:00am the morning after an Annual Event.
- (g) After 31 March 2015 the Commercial Operator will be responsible to arrange and pay for the Club Room / Community Function Space and First Floor Balcony (including all glass windows, doors and balustrades) to be professionally cleaned and available for use in a clean and tidy condition by 06:00am on the morning of an Annual Event.

16. Lift Maintenance

Pittwater Council will be responsible at all times to service and, if necessary, repair or replace the Lift.

17. Use

The rights conferred on Avalon Beach SLSC herein are at all times subject to the following obligations:

- (a) Avalon Beach SLSC shall not use the Licence Area or any of the fixtures or fittings therein at any time otherwise than for its designed purpose;
- (b) Avalon Beach SLSC shall not store or use an inflammable or dangerous substance upon the Licence Area;
- (c) Avalon Beach SLSC shall not do or permit to be done within the Licence Area anything which in the opinion of Pittwater Council may become a nuisance or a disturbance, obstruction or cause of damage, whether to Pittwater Council or to other tenants or users of Avalon Beach SLSC Building nor to use the Licence Area in any noisy, noxious or offensive manner;
- (d) Avalon Beach SLSC shall not obstruct or interfere with any of the entrances or common areas of Avalon Beach SLSC Building;
- (e) Avalon Beach SLSC shall advise Pittwater Council of the private address and telephone number of its managing secretary or other responsible person employed by Avalon Beach SLSC and shall keep Pittwater Council informed of any change of such address or telephone number;
- (f) Avalon Beach SLSC shall secure the Licence Area against unauthorized entry at all times when Licence Area is left unoccupied and Pittwater Council reserves the right by its servants and agents to enter upon the Licence Area and fasten same if the Licence Area is left unsecured;
- (g) Avalon Beach SLSC shall not cause or permit any signs to be affixed to the Licence Area without the prior written consent of Pittwater Council which shall not be unreasonably withheld;
- (h) Avalon Beach SLSC will not make any structural or other alterations to the Licence Area without the prior written consent of Pittwater Council which shall not be unreasonably withheld;

- (i) Avalon Beach SLSC will ensure compliance with all Essential Fire Safety Measures; and
- (j) Insofar as they relate to Avalon Beach SLSC's use of the Licence Area, Avalon Beach SLSC will ensure compliance with all conditions of development consent for the Avalon Beach SLSC Building.

18. Insurance and Indemnity

- (a) Avalon Beach SLSC shall keep current at all times during the currency of this Licence Agreement an insurance policy noting the interest of Pittwater Council (as applicable), including:
 - (i) a policy of public risk insurance applicable to its use of the Licence Area for an amount of not less than \$20,000,000 or such other amount as Pittwater Council may reasonably determine from time to time;
 - (ii) loss or damage to the fixtures, fittings and goods of Avalon Beach SLSC, its servants, agents, employees, members, hirers or invitees; and
 - (iii) the replacement value of all glass in or enclosing the Licence Area.
- (b) Avalon Beach SLSC shall keep current at all times during the currency of this Licence Agreement workers compensation insurance;
- (c) Avalon Beach SLSC shall supply to Pittwater Council annually certificates of currency of the insurances required to be held by it pursuant to this Licence Agreement, and at such other times as Pittwater Council may reasonably require.
- (d) Avalon Beach SLSC hereby indemnifies Pittwater Council and the Minister against all claims, actions, losses and expenses for which Pittwater Council may become liable arising out of the act or neglect of Avalon Beach SLSC, its servants, agents, employees, members, hirers or invitees in their use of the Licence Area.
- (e) Avalon Beach SLSC covenants at all times and in all respects to comply at its own expense with the requirements of the Insurance Council of Australia, Fire & Rescue NSW and the requirements of any other relevant statute or regulation.

- (f) Avalon Beach SLSC may not enforce, conduct, settle or compromise claims under any insurance policy required by this agreement even if that policy also covers other property, if Pittwater Council gives Avalon Beach SLSC a notice that Pittwater Council wishes to do these things.
- (g) Avalon Beach SLSC may not do anything which may affect rights under any insurance which may increase an insurance premium payable in connection with the Licence Area or the Leasehold Area or the Avalon Beach SLSC.
- (h) 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 Avalon Beach SLSC, Pittwater Council and, if required, by the Pittwater Council, 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.

19. Building Rules

- (a) Pittwater Council (acting reasonably) may from time to time make Building Rules for the purpose of controlling, regulating and administering:
 - (i) the Licence Area; and
 - (ii) the use of the Avalon Beach Reserve by occupiers of the Avalon Beach SLSC Building,for the benefit of all potential users of the Avalon Beach SLSC Building to achieve a compatibility of uses.
- (b) Pittwater Council will in future convene a Building Management Committee for the purpose of assisting to control, regulate and administer the Licence Area and the Avalon Beach Reserve for the benefit of all users of the Avalon Beach SLSC Building to achieve a compatibility of uses.
- (c) The Building Management Committee shall consist of one (1) representative each from Avalon Beach SLSC, Pittwater Council and the Commercial Operator. If the Restaurant and Café are operated by different proprietors, then in such case each such proprietor may appoint a representative to the Building Management Committee.

- (d) The Building Management Committee will meet quarterly to make recommendations to Pittwater Council regarding suitable Building Rules and for the general purpose of controlling, regulating and administering the Licence Area and the Avalon Beach Reserve for the benefit of all users of the Avalon Beach SLSC Building to achieve a compatibility of uses.
- (e) Avalon Beach SLSC must:
 - (i) appoint a representative to attend quarterly meetings of the Building Management Committee;
 - (ii) assist with the affairs of the Building Management Committee in good faith to achieve its stated objectives;
 - (iii) at all times obey and comply with the Building Rules;
 - (iv) convey the Building Rules to its servants, agents, employees, members, hirers and invitees; and
 - (v) act reasonably to ensure compliance with the Building Rules by its servants, agents, employees, members, hirers and invitees.

20. Expiry or Termination

- (a) Two (2) years prior to the expiry date of the Lease, the parties:
 - (i) will inspect the Licence Area and Pittwater Council will inform Avalon Beach SLSC in writing of any remedial work required to bring the Licence Area to a reasonable condition having regard to Avalon Beach SLSC's repair and maintenance obligations herein;
 - (ii) will discuss the opportunity for a new Licence Agreement and Pittwater Council will give an indication of its intentions and any likely change in conditions.
- (b) Avalon Beach SLSC shall complete the remedial works required by Pittwater Council no later than twenty-eight (28) days prior to the expiry date of the Lease.
- (c) If the parties do not enter into a new licence agreement concerning the Licence Area then Avalon Beach SLSC must vacate the Licence Area on the expiry date of the Lease and, having regard to the repair and maintenance obligations of Avalon Beach SLSC herein, leave the Licence Area in a condition satisfactory to Pittwater Council acting reasonably.

21. Default

- (a) The essential obligations of Avalon Beach SLSC include but are not limited to the obligations to:
- (i) pay money;
 - (ii) repair and maintain the Licence Area;
 - (iii) comply with the Building Rules;
 - (iv) keep the Club Room / Community Function Space available for Community Hire and to comply with its obligations concerning Community Hire;
 - (v) keep the Club Room / Community Function Space available for Function Hire and to comply with its obligations concerning Function Hire;
 - (vi) comply with its obligations concerning its use of the Licence Area;
 - (vii) comply with the conditions of its liquor licence; and
 - (viii) comply with the conditions of the development consent.
- (b) Pittwater Council may terminate this Licence Agreement by giving Avalon Beach SLSC notice if Avalon Beach SLSC persistently breaches an essential or other obligation and does not remedy the breach within reasonable time after Pittwater Council has given notice of the breach.
- (c) Pittwater Council may terminate this Licence Agreement with immediate effect if:
- (i) Avalon Beach SLSC repudiates its obligations under this Licence Agreement; or
 - (ii) Avalon Beach SLSC breaches an essential or other obligation and the breach cannot be remedied or compensated; or
 - (iii) Avalon Beach SLSC breaches an essential or other obligation and the breach can be compensated but Avalon Beach SLSC refuses or fails to pay such compensation within reasonable time after Pittwater Council has given notice to pay.

22. Dispute resolution

- (a) 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.
- (b) If the dispute is not resolved within 14 days:
 - (i) if the dispute also concerns the Commercial Operator or the lessee of the Café, then the parties must convene an urgent meeting of the Building Management Committee to discuss the issue and seek resolution within a further 14 day period; or
 - (ii) if the dispute does not also concern the Commercial Operator or the proprietor of the Café, then in such case 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.
- (c) 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.

23. Mediation

- (a) 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 22 by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.
- (b) The mediation must be conducted in accordance with the ACDC guidelines for commercial mediation operating at the time the dispute is referred to ACDC.
- (c) The guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (d) The terms of the guidelines are deemed incorporated into this agreement.
- (e) This clause survives termination of this agreement.

24. No Assignment

This Licence Agreement is personal to Avalon Beach SLSC and cannot be sub-licensed, assigned, charged or the subject of any other like transaction. Nothing in this clause shall be constructed so as to restrict the hiring arrangements contemplated by clauses 10 and 11 hereof.

25. Damage

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

26. Indemnity

Avalon Beach SLSC hereby indemnifies and holds harmless Pittwater Council and the Minister from and against all suits, actions, claims, demands, losses, damages, costs and expenses arising from the use of the Licence Area by Avalon Beach SLSC, its servants, agents, employees, members, hirers or invitees.

27. Risk of property

Any property of Avalon Beach SLSC that is kept within the Licence Area shall be at the sole risk of Avalon Beach SLSC except where loss or damage is caused by any wilful or negligent act or omission of Pittwater Council, its servants, employees or agents.

28. Rights conferred

The rights hereby conferred are contractual only and do not create any estate or interest in or over the Licence Area or any part thereof and the rights of Avalon Beach SLSC shall be those of a licensee only.

29. Notices

A communication required by this agreement, by a party to another, must be in writing and may be given to them by being:

- (a) Delivered personally; or
- (b) Posted to their address specified in this agreement, or as later notified by them, in which case it will be treated as having been received on the second business day after posting; or
- (c) Faxed to the facsimile number of the party with acknowledgment of receipt received electronically by the sender, when it will be treated as received on the day of sending; or
- (d) Sent by email to their email address, when it will be treated as received on that day.

30. Counterparts

This agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the agreement will be the date on which it is executed by the last party.

31. Costs

Each party will pay their own costs in relation to this agreement.

SIGNED AS AN AGREEMENT

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

Signature of witness

Print name of witness

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

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

Signature of authorised officer

Signature of witness

Authorised officer's name:

Authority of officer:

Print name of witness

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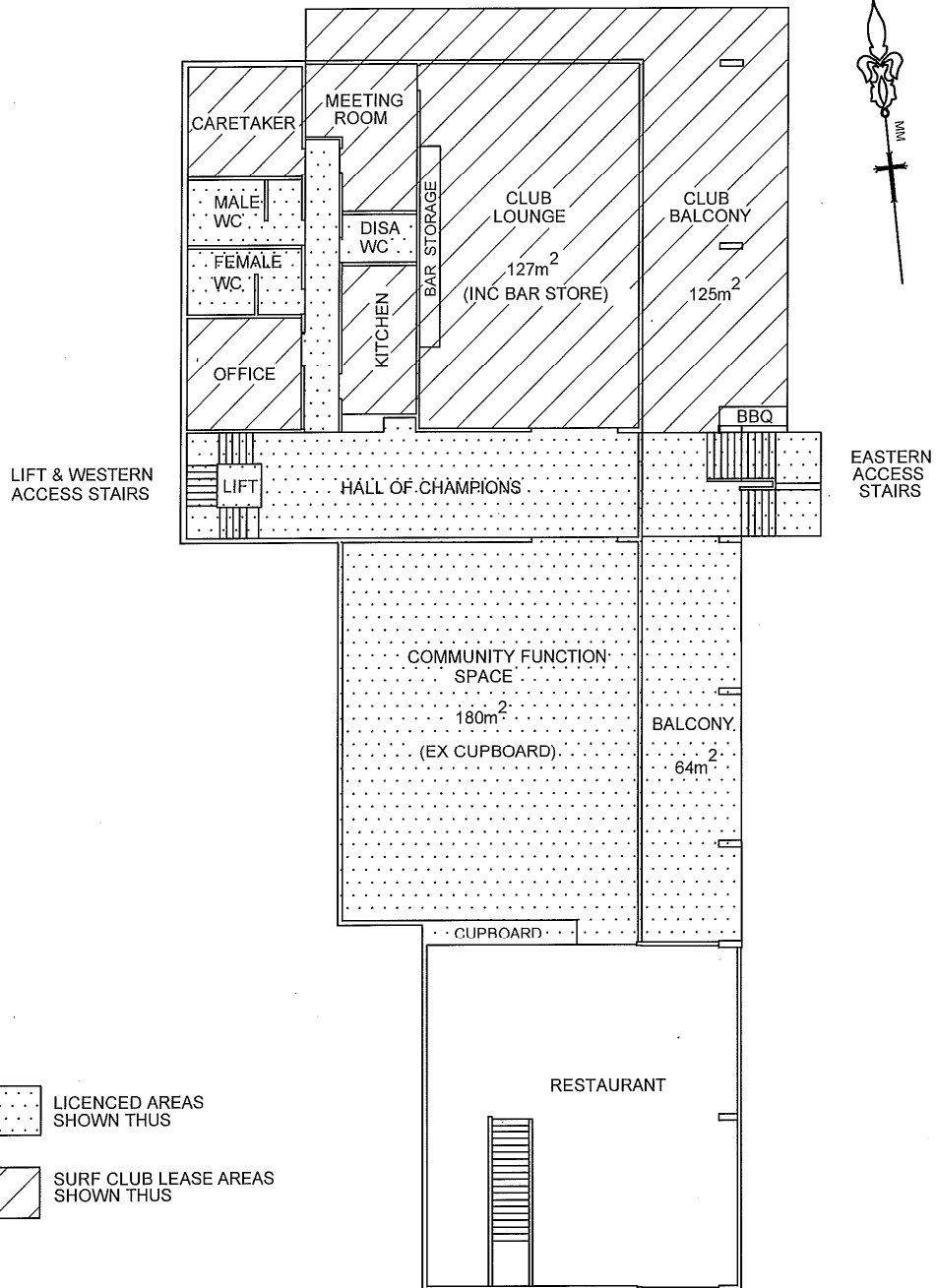
SCHEDULE 1 – PLAN OF LICENCE AREA

DRAFT FOR PUBLIC EXHIBITION

PLAN OF AVALON SURF CLUB

SHEET 2/2

LEVEL ONE



DRAWN AT 1:200 ON AN A4 SHEET
PLAN PREPARED OCTOBER 2014

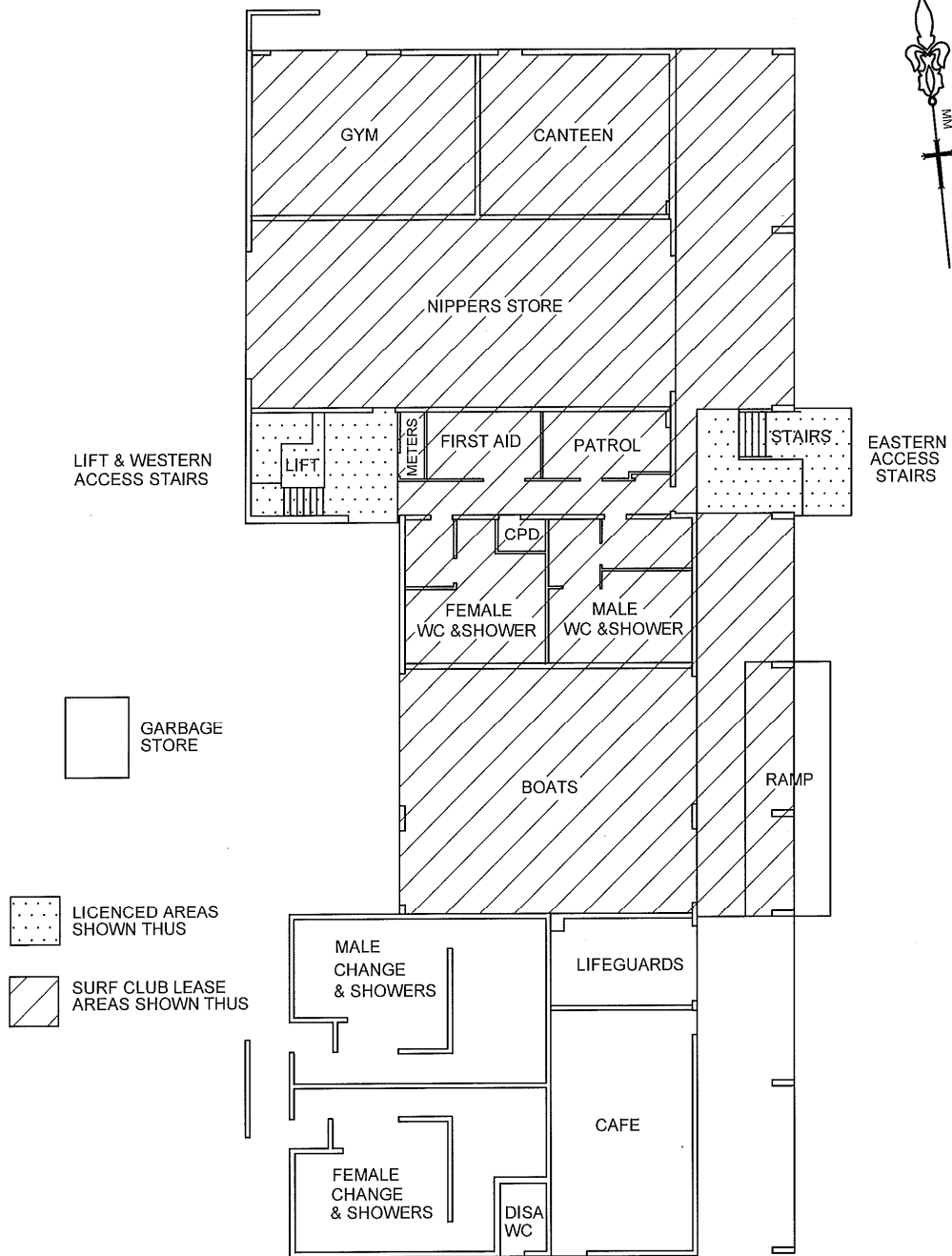
LAND : LOT 202 IN DP1107408 LGA PITTWATER

Steve Davey
STEVE DAVEY
REGISTERED SURVEYOR

PLAN OF AVALON SURF CLUB

SHEET 1/2

GROUND LEVEL



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

Steve Davey
STEVE DAVEY
REGISTERED SURVEYOR

SCHEDULE 2 – TERMS & CONDITIONS OF COMMUNITY HIRE

DRAFT FOR PUBLIC EXHIBITION

**AVALON BEACH SURF LIFE SAVING CLUB INC
CLUB ROOM / COMMUNITY FUNCTION SPACE
TERMS AND CONDITIONS OF COMMUNITY HIRE
OCTOBER 2014**

GENERAL

1. The hirer or a natural person representing the hirer is required to be present at the premises for the duration of any person's use or occupation of the premises in connection with the hirer's booking.
2. The hirer must advise Avalon Beach SLSC in writing the type of activity that is to take place in connection with the hirer's booking and use only that part of the premises for which a fee has been paid, and adhere to booking times as stated in the application.
3. The hirer undertakes that in connection with the use or occupation of the premises the hirer will not permit or suffer anything to be done which is disorderly, offensive or illegal.
4. The premises are to be inspected by the hirer before use. The floor of the premises is to be free of dirt, grit, water, obstacles, etc to ensure the safety of people using the facility. The hirer is not permitted the use of any adhesive materials to secure signs, posters or decoration on any internal or external wall or floor surfaces. All reasonable steps must be taken by the hirer to satisfy themselves that there is no reasonable risk of injury to any person participating in the hirer's activities. Any damage/untidiness to the premises prior to booking must be brought to the attention of Avalon Beach SLSC by the hirer prior to use or occupation of the premises by the hirer.
5. Setting up may only be done during the period of the booking or at other times arranged with Avalon Beach SLSC. Setting up or otherwise using or occupying the premises outside the period of the booking or any times arranged with Avalon Beach SLSC may result in the levying of a further fee or cancellation of the booking or any other booking involving the hirer.
6. The hirer undertakes that the hirer will not permit or suffer anything to be done which disturbs the quiet enjoyment of the neighbouring Restaurant and/or Club Lounge, or is incompatible with the reasonable use of the neighbouring Restaurant and/or Club Lounge for its designed purpose.
7. The hirer undertakes that the hirer will not use or permit the premises be used by more than 60 users or for any purpose other than any of the following permissible uses:

Permissible Uses

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.

8. Any music played must be kept to a reasonable level to avoid disruption to any other hirers or users of the Club Lounge or Restaurant in accordance with the provisions of clause 6 above.
9. The hirer must be at least 18 years of age. Proof of age is required.
10. The hirer is responsible for ensuring that children are in the company of a responsible adult at all times.
11. Avalon Beach SLSC may request the removal of any hirer or person attending the premises at any time in connection with the hirer's booking found to be in breach of these Terms and Conditions of Hire.

12. The hirer is responsible for the behaviour of all persons attending the premises at any time in connection with the hirer's booking. This will include instructing all such persons to leave quietly within the stipulated times.
13. Avalon Beach SLSC reserves the right to have priority to use the premises for certain functions and events throughout the year. (e.g. Avalon Beach SLSC Annual Events, Community Events, Elections, Restaurant Functions, School Holiday Programs etc). A minimum of a months' notice will be given to any hirer who is required to give up their booking in the above circumstances. Avalon Beach SLSC will attempt to relocate the booking.
14. Avalon Beach SLSC expressly reserves the right without ascribing any reason, to refuse to accept any booking or to cancel any booking already made and to refund any deposit paid on account, if considered to be warranted and Avalon Beach SLSC shall not be liable in any way for any loss or damage or otherwise in consequence of the exercise of this right.
15. The hirer must use the premises only in the confirmed booking times. Access to the premises at other times is prohibited unless prior arrangements have been made with the centre manager, as insurance is not covered other than the booked times.
16. Avalon Beach SLSC is not responsible for any property left upon or in the premises.
17. The riding of bikes, scooters and skateboards is not permitted on the premises. These items are to be left outside the premises.
18. At the completion of the booking, all keys should be promptly returned to Avalon Beach SLSC for reimbursement of the bond. Return of the bond, in whole or in part, is at the discretion of Avalon Beach SLSC, subject to compliance with these Terms and Conditions of Hire. Responsibility for all keys issued rests with the hirer, who must pay Avalon Beach SLSC's costs in replacing all lost or misplaced keys and resetting all locks at the premises.
19. The hirer undertakes that the hirer will not permit or suffer the premises to be used after 10:00pm.
20. The hirer must ensure that all persons in attendance at the premises in connection with the hirer's booking leave the premises in a quiet and orderly manner.
21. The hirer must ensure that all persons in attendance at the premises in connection with the hirer's booking leave the premises in a quiet and orderly manner.
22. The hirer must ensure that all persons in attendance at the premises in connection with the hirer's booking comply strictly with all relevant conditions of the Avalon Beach Surf Life Saving Club Building Rules as they shall exist from time to time.

FEES

23. Booking Rates

- 23.1 All hirers must pay Avalon Beach SLSC's published hiring rates as determined by Avalon Beach SLSC from time to time.
- 23.2 The hiring rates will be reviewed annual and increase as at 1 July each year.
- 23.3 Avalon Beach SLSC will give regular hirer's at least one month's notice of the rate increase each year.

24. **General**

- 24.1 All hirers, either casual or permanent, must pay in advance a **\$600 Bond ("the Bond")** which will be forfeited in the event of any non adherence to the terms and conditions of hire and in the event of all keys not being returned within 24 hours of the hiring.
- 24.2 The Bond includes a \$300 Garbage Removal Bond which will be forfeited in the event of any of the hirer's garbage or refuse not being removed from the premises at the conclusion of the hiring or if the hirer disposes of such garbage or refuse in the bins immediately in front of the Avalon Beach SLSC or located within Avalon Beach Reserve.
- 24.3 The Bond also includes a \$100 Cleaning Bond which will be for forfeited in the event of the premises or any part of the Avalon Beach SLSC building, or the Avalon Beach Reserve being left in an unclean, unswept, or untidy condition.

PAYMENTS & CANCELLATIONS

25. **Regular hirers**

- 25.1 A regular hirer is a hirer who hires the premises more than 12 times over any 12 month period.
- 25.2 All regular hirers must pay the fees due (plus bond) within 14 days of invoicing.
- 25.3 All regular hirers must give Avalon Beach SLSC not less than one month's notice of termination of hire in writing, or pay the equivalent hiring fees in lieu. Payment will be required for bookings where due notice is not given

26. **Casual hirers**

- 26.1 A casual hirer is a hirer who does not hire the premises more than 12 times over any 12 month period.
- 26.2 All casual hirer hirers must pay the fees due (plus bond) prior to the booking.
- 26.3 All casual hirers must give Avalon Beach SLSC not less than 7 days' notice of cancellation in writing, or pay the equivalent hiring fee in lieu. Payment will be required for bookings where due notice is not given.

ASSIGNMENT & TRANSFER OF BOOKINGS

- 27. This agreement is personal to the hirer and cannot be sub-licensed, assigned, charged or the subject of any other like transaction without the prior written consent of Avalon Beach SLSC.
- 28. The hirer may at any time request for the booking to be assigned for the benefit of a third party. Any such request must be made in writing to Avalon Beach SLSC, and Avalon Beach SLSC will not unreasonably withhold its consent.

FIRST AID

29. The hirer is responsible for providing first aid at the premises in the case of an emergency, and undertakes that the hirer has and will keep current appropriate first aid training and first aid kit.

EMERGENCY PROCEDURES / INSTRUCTIONS

30. The hirer must be aware of and observe the Emergency Evacuation Management Plan for the premises.
31. The hirer must take direction from Avalon Beach SLSC management in the case of an emergency, when such persons are present.
32. The hirer is responsible for ensuring that fire doors and emergency exits are not obstructed.
33. The hirer is responsible for ensuring that fire-fighting equipment is not discharged, used or interfered with for any reason other than its designated or manifest purpose, and only by trained personnel.
34. Avalon Beach SLSC will notify all regular hirers of Emergency Evacuation training that is carried out. Regular hirers are required to attend two Emergency Evacuation training sessions per year. All regular hirers should ensure at least one member of their group attends.
 - 34.1 Fire doors and exits must be kept clear at all times. Locking or obstructing the fire doors is prohibited.
 - 34.2 The hirer is responsible for ensuring that the capacity of the premises and any equipment associated with it is not exceeded.

SECURITY

35. The hirer must observe the secure closing of the premises; windows and doors must be secured, all lights, fans, air conditioners, heaters etc and accessories must be turned off and any alarm must be "armed" if instructed by Avalon Beach SLSC. Failure to "arm" the alarm system will incur a call out fee of \$200.

FOOD & ALCOHOL

36. The hirer is not permitted to serve and/or supply any food or alcohol and must not permit the service/and or supply of food or alcohol on the premises.

SIGNS & DECORATIONS

37. The hirer is not permitted to use any adhesive materials to secure signs, posters or decoration on any internal or external wall or floor surfaces. Nails, screws or any other fastenings must not be driven into or attached in any way to the walls, floors, timberwork, furniture or fittings. The hirer is liable to Avalon Beach SLSC for full restoration and repair costs in connection with any damage resulting from this action.

38. The hirer must not erect any signs on or outside the premises without Avalon Beach SLSC's prior written approval.
39. Decorations are not to be placed on any fans, heaters or electrical fittings.

DAMAGE TO PREMISES

40. The hirer is responsible for the cost of making good any damage caused to the premises, furniture or fittings during the course of the hirer's use or occupation of the premises, including scratches on floors caused by items being dragged across floor surfaces. Table and chair trolleys are to be used where available.
41. The hirer must report immediately to Avalon Beach SLSC any damaged or dangerous electrical fittings and ensure that steps are taken to prevent use of the same until repaired.

FURNITURE & EQUIPMENT

42. The setting up of tables, chairs and other equipment is the responsibility of the hirer.
43. Furniture and fittings must not be removed from the premises.
44. The hirer shall not store any of the hirer's furniture or equipment upon the premises.
45. All portable electrical equipment or leads that are brought into or used in the premises shall comply with the Work Health and Safety Act 2011 No. 10 and the Regulation as per the attached link http://www.austlii.edu.au/au/legis/nsw/consol_reg/whsr2011309.
46. The hirer is responsible for any equipment and/or goods used and left upon the premises.

KITCHEN

47. The hirer must not make use of the kitchen adjoining the Club Lounge without the prior written consent of Avalon Beach SLSC.

CLEANING

48. The hirer must at the conclusion of the booking:
- 48.1 leave the premises in a neat and tidy condition free of dirt, grit, water, obstacles, etc to ensure the safety and convenience of future users of the premises;
- 48.2 sweep the floor;
- 48.3 remove all garbage and refuse from the premises and dispose of such garbage and refuse off-site;
- 48.4 not dispose of any such garbage or refuse in the bins immediately in front of the Avalon Beach SLSC or located within Avalon Beach Reserve; and
- 48.5 wipe clean and pack away Avalon Beach SLSC's furniture and equipment.

NO SMOKING / BBQ / NAKED FLAMES

49. The hirer must not or permit upon the premises any smoking, candles (save for candles in protective covers), naked flames, BBQs, or sparklers.

INSURANCE

50. The hirer must effect and maintain public liability insurance (however described) covering the hirer's legal liability for:

- 50.1 damage to any real or personal property;
- 50.2 injury to, or death of, any person;
- 50.3 arising out of the use or occupation of the premises by the hirer or the performance of its obligations under these Terms and Conditions; and
- 50.4 with a limit of indemnity in relation to legal liabilities relating to the use or occupation of the premises by the hirer or the performance of its obligations under these Terms and Conditions of not less than \$10,000,000 for each occurrence.

51. In relation to the insurance policy referred to in paragraph 50, the hirer must:

- 51.1 maintain that insurance policy for the duration of the hirer's, or any other person's, use or occupation of the premises in connection with the hirer's booking;
- 51.2 effect and maintain that insurance policy with an insurer which is, or with insurers which are, rated all correct by Standard & Poor's or AM Best as "A-" or higher, and which is or are:
 - 51.2.1 authorised to carry on insurance business in Australia by the Australian Prudential Regulation Authority; or
 - 51.2.2 approved in writing by Avalon Beach SLSC.

52. The hirer must effect and maintain workers' compensation insurance if required by (and, if so, in accordance with) all relevant laws.

53. In relation to the insurance policies referred to in paragraphs 50 and 52, the hirer must (if, and to the extent, it is required to affect either or both of those insurance policies) whenever requested by Avalon Beach SLSC, give Avalon Beach SLSC, in respect of each of those insurance policies:

- 53.1 the policy wording;
- 53.2 the schedule and any endorsement slips;
- 53.3 renewal certificates or certificates of currency issued by the insurer; and
- 53.4 other information reasonably required by Avalon Beach SLSC,

unless to do so would constitute a breach of the insurance policy and entitle the insurer to cancel or void the contract or reduce its liability for a claim to which the insurance policy otherwise responds;

54. In relation to the insurance policies referred to in paragraphs 50 and 52, the hirer must (if, and to the extent, it is required to affect either or both of those insurance policies):

- 54.1 not do or omit to do anything which might vitiate, impair or derogate from the cover under either or both of those insurance policies or which might prejudice any claim under either or both of those insurance policies;
- 54.2 promptly pay any deductible or excess payable or retained in connection with any claim made in respect of any liability or risk covered by either or both of those insurance policies; and
- 54.3 immediately notify Avalon Beach SLSC of any occurrence that may give rise to a claim under either or both of those insurance policies and thereafter keep Avalon Beach SLSC informed of developments concerning the claim.

55. If the hirer is a permanent hirer, the hirer must use best endeavours (which shall be taken to include paying a reasonable additional premium) to have the insurance policy referred to in paragraphs 50:

- 55.1 extend to name as an interested party and cover the legal liabilities of Avalon Beach SLSC which fall within the scope of cover; and
- 55.2 contain clauses or stipulations:
 - 55.2.1 in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons entitled to coverage under that insurance policy;
 - 55.2.2 for the purposes of which the insurer accepts the term "insured" as applying to each of the persons entitled to coverage under that insurance policy as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);
 - 55.2.3 to the effect that any non-disclosure by an insured does not prejudice the rights under that insurance policy of the other person or other persons entitled to coverage under that insurance policy; and
 - 55.2.4 to the effect that a liability is not excluded from coverage by reason only that it is owed to a person entitled to coverage under the policy.

SCHEDULE 3 – TERMS & CONDITIONS OF FUNCTION HIRE

DRAFT FOR PUBLIC EXHIBITION

**AVALON BEACH SURF LIFE SAVING CLUB INC
CLUB ROOM / COMMUNITY FUNCTION SPACE
TERMS AND CONDITIONS OF FUNCTION HIRE**

GENERAL

1. Avalon Beach SLSC acknowledges that the hirer has exclusive and other rights concerning the hire of the Club Room / Community Function Space on any Friday, Saturday or Sunday pursuant and subject to the terms and conditions of a Licence and Hiring Agreement between the hirer and Pittwater Council. Avalon Beach SLSC is responsible to manage such hiring arrangements subject to the terms and conditions set out herein.
2. The hirer is the commercial operator of the Restaurant and Cafe adjoining the Club Room / Community Function Space.
3. The hirer or a natural person representing the hirer is required to be present at the premises for the duration of any person's use or occupation of the premises in connection with the hirer's booking.
4. The hirer must advise Avalon Beach SLSC in writing the type of function that is to take place in connection with the booking.
5. The hirer must use only that part of the premises for which a fee has been paid.
6. The hirer must adhere to booking times as stated in the booking request. Setting up may only be done during the period of the booking or at other times arranged with Avalon Beach SLSC. Setting up or otherwise using or occupying the premises outside the period of the booking or any times arranged with Avalon Beach SLSC may result in the levying of a further fee.
7. The hirer undertakes that in connection with the use or occupation of the premises the hirer will not permit or suffer anything to be done which is disorderly, offensive or illegal.
8. The premises are to be inspected by the hirer before use. The floor of the premises is to be free of dirt, grit, water, obstacles, etc to ensure the safety of people using the facility.
9. The hirer is not permitted to use any adhesive materials to secure signs, posters or decoration on any internal or external wall or floor surfaces.
10. All reasonable steps must be taken by the hirer to satisfy itself that there is no reasonable risk of injury to any person participating in the hirer's activities.
11. Any damage/untidiness to the premises prior to booking must be brought to the attention of Avalon Beach SLSC by the hirer prior to use or occupation of the premises by the hirer.
12. The hirer undertakes that the hirer will not use or permit the premises be used by more than 180 users.
13. The hirer is responsible for ensuring that children are in the company of a responsible adult at all times.
14. Avalon Beach SLSC may request the removal of any person attending the premises at any time in connection with the hirer's booking found to be in breach of these Terms and Conditions of Hire.
15. The hirer is responsible for the behaviour of all persons attending the premises at any time in connection with the hirer's booking. This will include instructing all such persons to leave quietly within the stipulated times.

16. Avalon Beach SLSC is not responsible for any of the hirer's property left upon or in the premises outside of booking times.
17. The riding of bikes, scooters and skateboards is not permitted on the premises. These items are to be left outside the premises.
18. The hirer undertakes that the hirer will not permit or suffer the premises to be used after 10:00pm on any Sunday, Monday, Tuesday, Wednesday or Thursday, after 12:00 midnight on any Friday or Saturday, or after 01:00am following New Year's Eve.
19. The hirer must ensure that all persons in attendance at the premises in connection with the hirer's booking leave the premises in a quiet and orderly manner.
20. The hirer must ensure that all persons in attendance at the premises in connection with the hirer's booking comply strictly with all relevant conditions of the Avalon Beach Surf Life Saving Club Building Rules as they shall exist from time to time.

FEES

21. The hirer must pay Avalon Beach SLSC's function hire rates commencing in 2015 as follows:

- 21.1 For any Friday, Saturday or Sunday function:

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

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.

- 21.2 For any Monday, Tuesday, Wednesday or Thursday function, as agreed by the hirer and Avalon Beach SLSC in advance of the booking.

PAYMENTS & CANCELLATIONS

22. The hirer must pay the hiring fee within 14 days of invoicing and prior to the booking date.
23. The hirer must give Avalon Beach SLSC notice of the cancellation of any booking hire in writing. If:
 - 23.1 the hirer gives 90 or more days notice of the cancellation, then Avalon Beach SLSC must refund 100% of any hiring fee paid;
 - 23.2 the hirer gives less than 90 but 30 or more days notice of the cancellation, then Avalon Beach SLSC must refund 75% of any hiring fee paid, provided always that if the hiring fee has not been paid then in such case the hirer must pay to Avalon Beach SLSC 25% of the hiring fee;

- 23.3 the hirer gives less than 30 but 14 or more days notice of the cancellation, then Avalon Beach SLSC must refund 50% of any hiring fee paid, provided always that if the hiring fee has not been paid then in such case the hirer must pay to Avalon Beach SLSC 50% of the hiring fee;
- 23.4 the hirer gives less than 14 days notice of the cancellation, then Avalon Beach SLSC is not required to refund any hiring fee paid, provided always that if the hiring fee has not been paid then in such case the hirer must pay to Avalon Beach SLSC 100% of the hiring fee.

ASSIGNMENT & TRANSFER OF BOOKINGS

24. This agreement is personal to the hirer and cannot be sub-licensed, assigned, charged or the subject of any other like transaction without the prior written consent of Avalon Beach SLSC.

FIRST AID

25. The hirer is responsible for providing first aid at the premises in the case of an emergency, and undertakes that the hirer has and will keep current appropriate first aid training and first aid kit.

EMERGENCY PROCEDURES / INSTRUCTIONS

26. The hirer must be aware of and observe the Emergency Evacuation Management Plan for the premises.
27. The hirer must take direction from Avalon Beach SLSC management in the case of an emergency, when such persons are present.
28. The hirer is responsible for ensuring that fire doors and emergency exits are not obstructed.
29. The hirer is responsible for ensuring that fire-fighting equipment is not discharged, used or interfered with for any reason other than its designated or manifest purpose, and only by trained personnel.
30. Avalon Beach SLSC will notify the hirer of any Emergency Evacuation training that is carried out. The hirer is required to attend two Emergency Evacuation training sessions per year.
31. The hirer is responsible for ensuring that the capacity of the premises and any equipment associated with it is not exceeded.

SECURITY

32. The hirer must observe the secure closing of the premises; windows and doors must be secured, all lights, fans, air conditioners, heaters etc and accessories must be turned off and any alarm must be "armed" if instructed by Avalon Beach SLSC. Failure to "arm" the alarm system will incur a call out fee of \$200.

FOOD & ALCOHOL

33. The hirer is permitted to serve and/or supply food and/or alcohol during any function but only in strict compliance with the hirer's relevant licence conditions.
34. The hirer must not hold an on-premises liquor licence permitting the service of alcohol by it in the premises, but may serve alcohol in the premises as a catering service.

SIGNS & DECORATIONS

35. The hirer is not permitted to use any adhesive materials to secure signs, posters or decoration on any internal or external wall or floor surfaces. Nails, screws or any other fastenings must not be driven into or attached in any way to the walls, floors, timberwork, furniture or fittings. The hirer is not permitted to supply or permit the use of not supply or permit the use of any coloured hairspray, glitter, paint, rice or confetti, party poppers, crepe and paper streamers. The hirer is liable to Avalon Beach SLSC for full restoration and repair costs in connection with any damage resulting from this action.
36. The hirer must not erect any signs on or outside the premises without Avalon Beach SLSC's prior written approval.
37. Decorations are not to be placed on any fans, heaters or electrical fittings.

DAMAGE TO PREMISES

38. The hirer is responsible for the cost of making good any damage caused to the premises, furniture or fittings during the course of the hirer's use or occupation of the premises, including scratches on floors caused by items being dragged across floor surfaces. Table and chair trolleys are to be used where available.
39. The hirer must report immediately to Avalon Beach SLSC any damaged or dangerous electrical fittings and ensure that steps are taken to prevent use of the same until repaired.

FURNITURE & EQUIPMENT

40. The setting up of tables, chairs and other equipment is the responsibility of the hirer.
41. Furniture and fittings must not be removed from the premises.
42. The hirer shall not store any of the hirer's furniture or equipment upon the premises.
43. All portable electrical equipment or leads that are brought into or used in the premises shall comply with the Work Health and Safety Act 2011 No. 10 and the Regulation as per the attached link http://www.austlii.edu.au/au/legis/nsw/consol_reg/whasr2011309.
44. The hirer is responsible for any equipment and/or goods used and left upon the premises.

KITCHEN

45. The hirer must not make use of the kitchen adjoining the Club Lounge without the prior written consent of Avalon Beach SLSC.

CLEANING

46. The hirer must at the conclusion of the booking:
- 46.1 leave the premises in a neat and tidy condition free of dirt, grit, water, obstacles, etc to ensure the safety and convenience of future users of the premises;
 - 46.2 sweep the floor;
 - 46.3 remove all garbage and refuse from the premises and dispose of such garbage and refuse off-site or in the hirer's receptacles;
 - 46.4 not dispose of any such garbage or refuse in the Avalon Beach SLSC's receptacles; and
 - 46.5 wipe clean and pack away Avalon Beach SLSC's furniture and equipment.

NO SMOKING / BBQ / NAKED FLAMES

47. The hirer must not or permit upon the premises any smoking, candles (save for candles in protective covers), naked flames, BBQs, or sparklers.

INSURANCE

48. The hirer must effect and maintain public liability insurance (however described) covering the hirer's legal liability for:
- 48.1 damage to any real or personal property;
 - 48.2 injury to, or death of, any person;
 - 48.3 arising out of the use or occupation of the premises by the hirer or the performance of its obligations under these Terms and Conditions; and
 - 48.4 with a limit of indemnity in relation to legal liabilities relating to the use or occupation of the premises by the hirer or the performance of its obligations under these Terms and Conditions of not less than \$20,000,000 for each occurrence.
49. In relation to the insurance policy referred to in paragraph 48, the hirer must:
- 49.1 maintain that insurance policy for the duration of the hirer's, or any other person's, use or occupation of the premises in connection with the hirer's booking;
 - 49.2 effect and maintain that insurance policy with an insurer which is, or with insurers which are, rated by Standard & Poor's or AM Best as "A-" or higher, and which is or are:
 - 49.2.1 authorised to carry on insurance business in Australia by the Australian Prudential Regulation Authority; or
 - 49.2.2 approved in writing by Avalon Beach SLSC.
50. The hirer must effect and maintain workers' compensation insurance if required by (and, if so, in accordance with) all relevant laws.

51. In relation to the insurance policies referred to in paragraphs 48 and 50, the hirer must (if, and to the extent, it is required to affect either or both of those insurance policies) whenever requested by Avalon Beach SLSC, give Avalon Beach SLSC, in respect of each of those insurance policies:

- 51.1 the policy wording;
- 51.2 the schedule and any endorsement slips;
- 51.3 renewal certificates or certificates of currency issued by the insurer; and
- 51.4 other information reasonably required by Avalon Beach SLSC,

unless to do so would constitute a breach of the insurance policy and entitle the insurer to cancel or void the contract or reduce its liability for a claim to which the insurance policy otherwise responds.

52. In relation to the insurance policies referred to in paragraphs 48 and 50, the hirer must (if, and to the extent, it is required to affect either or both of those insurance policies):

- 52.1 not do or omit to do anything which might vitiate, impair or derogate from the cover under either or both of those insurance policies or which might prejudice any claim under either or both of those insurance policies;
- 52.2 promptly pay any deductible or excess payable or retained in connection with any claim made in respect of any liability or risk covered by either or both of those insurance policies; and
- 52.3 immediately notify Avalon Beach SLSC of any occurrence that may give rise to a claim under either or both of those insurance policies and thereafter keep Avalon Beach SLSC informed of developments concerning the claim.

53. The hirer must have the insurance policy referred to in paragraph 48:

- 53.1 extend to name as an interested party and cover the legal liabilities of Avalon Beach SLSC which fall within the scope of cover; and
- 53.2 contain clauses or stipulations:
 - 53.2.1 in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons entitled to coverage under that insurance policy;
 - 53.2.2 for the purposes of which the insurer accepts the term "insured" as applying to each of the persons entitled to coverage under that insurance policy as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);
 - 53.2.3 to the effect that any non-disclosure by an insured does not prejudice the rights under that insurance policy of the other person or other persons entitled to coverage under that insurance policy; and
 - 53.2.4 to the effect that a liability is not excluded from coverage by reason only that it is owed to a person entitled to coverage under the policy.

SCHEDULE 4 – SUNSET DATE

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.

Gross Revenue means the total revenue due and payable to and received by Pittwater Council during the period commencing on 1 April 2015 from:

- (1) rent generated from the lease of the Restaurant and Café; and
- (2) Pittwater Council's share of Function Hire fees in accordance with the provisions of clause 11(j)(iv) hereof.

C9.2	Expression of Interest (EOI) - Restaurant, Café and Functions at Avalon Beach Surf Life Saving Club (ASLSC) and the associated lease and licence
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Meeting: Connecting Communities Committee

Date: 3 November 2014

STRATEGY: Corporate Management

ACTION: Continue to identify, evaluate and manage commercial opportunities

PURPOSE OF REPORT

To provide Council with information on the background, approach and steps taken by the EOI evaluation panel leading to their recommendation which is contained in the confidential section of this agenda.

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 2a, 2b & 4. Recommendations 3 & 4 are contained in the Confidential section of this Agenda (C9.2).

- 1.2 Following a Committee Recommendation made at a Council meeting on 21 July 2014, Council authorised the General Manager to engage a specialist food and beverage consultant to identify and secure a commercial operator. The General Manager was given approval to enter into direct negotiations with the preferred operator and negotiate a subsequent lease agreement.
- 1.3 From the recommendation mentioned in 1.2 above the General Manager decided on an Expression of Interest (EOI) process. This process was managed by council staff and was supported by Brain and Poulter Pty Ltd as detailed below in 1.4. The EOI process provided a robust framework in which to accurately assess submissions.
- 1.4 On 30 July 2014 Pittwater Council engaged Brain and Poulter Pty Ltd (an expert and experienced hospitality consultancy firm) to assist in locating and negotiating with a commercial operator for a lease and licence associated with the restaurant, café and the Club Room / Community function space at the Avalon Surf Life Saving Club.
- 1.5 The EOI was advertised in the Good Food supplement of the Sydney Morning Herald on 26 August 2014. The EOI was also distributed to 64 commercial operators on the Brain & Poulter database.
- 1.6 There were 18 registrations following the initial release and a further 4 registrations following a second call of interest on 3 September 2014.
- 1.7 A total of 11 registered parties attended site visits at Avalon Surf Club on Tuesday 26 August and Wednesday 27 August 2014.
- 1.8 Two submissions were received by 25 September 2014, from:
- Trippas White Catering Pty Ltd (TA Trippas White Group)
 - Serge Dansereau, Bather's Pavilion. Balmoral Beach NSW
- 1.9 The lease and licence (**Attachments 1 and 2**) for the commercial operation of the restaurant, café and the Club Room / Community Function Space (Friday 6am to Sunday 10pm) at the Avalon Surf Life Saving Club were developed and refined by Stuart Latham Solicitors, in consultation with council staff and ASLSC.

2.0 ISSUES

- 2.1 Evaluation Criteria (**Attachment 3**) were issued to the Evaluation Panel and were independently completed for each submission.

The panel included: Peter Stokes (Principal Officer, Property and Special Projects, Pittwater Council), Mark Jones (Chief Financial Officer, Pittwater Council), Fiona Chan (Senior Property Officer, Pittwater Council), Bridget Bolewski (Senior Property Officer, Pittwater Council) and Alex Herbert (Brain & Poulter).

Note: Each panel member was required to declare any conflict of interest or pecuniary interest associated with the EOI or any of the Companies that have submitted an EOI

- 2.2 On 7 October 2014 site visits to a selection of the applicant's venues were conducted by the Evaluation Panel.
- 2.3 On 14 October 2014 the Evaluation Panel conducted interviews with both applicants and following this a Final Evaluation Panel Meeting was conducted to consider all information provided by the applicants and to consider any further information collated during the site visits. Following this a unanimous decision was made to recommend one of the two applicants.

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

- 3.1.1 Respondents were requested to provide information on activities that provide support to the communities in which their businesses reside. Information was provided on school based educational support programs and financial support to charitable organisations and respondents were assessed accordingly.

3.2 Valuing & Caring for our Natural Environment (Environmental)

- 3.2.1 The Expression of Interest required respondents to provide catering and commercial management services that meet the needs of the Pittwater community that are fully compliant with all statutory regulations.
- 3.2.2 Respondents were required to demonstrate the minimisation of the impact of their services through the use of compostable packaging and products and sourcing local produce where possible, thereby reducing transport requirements and recycling and re-using wherever possible.
- 3.2.3 Information on participation in environmental or “green” programs was also sought and assessed accordingly.

3.3 Enhancing our Working & Learning (Economic)

- 3.3.1 Respondents were required to demonstrate their commitment to developing strategies and communication that would engage with community groups and schools that may use the beach throughout the year.
- 3.3.2 Respondents also provided information on how they would assist in improving the local amenity of the recreational area adjacent to the café.

3.4 Leading an Effective & Collaborative Council (Governance)

- 3.4.1 Responsible fiscal and asset management includes in particular providing the community with a good net return from its assets. In this regard the financial benefit of the commercial offers are both in line with this premise.

3.5 Integrating our Built Environment (Infrastructure)

- 3.5.1 The provision of infrastructure is a vital ingredient to realise the opportunities around social, economic and environmental sustainability. The Expression of Interest provides the opportunity to develop a lasting and sustainable commercial operation within this infrastructure.

4.0 EXECUTIVE SUMMARY

- 4.1 Brain and Poulter Pty Ltd in conjunction with Pittwater Council prepared an EOI to assist in locating and negotiating with a commercial operator for a lease and licence associated with the restaurant, café and the Club Room / Community function space at the Avalon Surf Life Saving Club.
- 4.2 Two submissions were received by 25 September 2014, from:
- Trippas White Catering Pty Ltd (TA Trippas White Group)
 - Serge Dansereau, Bather's Pavilion. Balmoral Beach NSW

- 4.3 The EOI Evaluation is presented to Council for consideration in the confidential section of this Agenda.
-

RECOMMENDATION

1. That the recommendation contained in the confidential report, (Expression of Interest (EOI) Restaurant, Café and the Club Room / Community function space at Avalon Surf Life Saving Club be adopted.
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 proposed lease and license be granted and the General Manager be authorised to complete negotiations and execute the necessary documents, if there are no objections received within the 28 day notification period.
4. That a further report be presented to Council if there are any objections received within the 28 day notice period.

Report prepared by
Peter Stokes – Principal Officer, Property & Special Projects

Paul Reid
MANAGER, CORPORATE DEVELOPMENT & COMMERCIAL

Mark Jones
CHIEF FINANCIAL OFFICER

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

LEASE

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

New South Wales
 Real Property Act 1900

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 of the premises known as Avalon Beach Surf Life Saving at 558a Barrenjoey Road Avalon Beach
 being the shaded area shown on the plans that are annexed hereto and marked "D"

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE
	Reference: <input type="text"/>	L

(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

TENANCY:

- (G)**
- TERM:** Ten (10) years
 - COMMENCING DATE:** 1 January 2015
 - TERMINATING DATE:** 31 December 2024
 - With an **OPTION TO RENEW** for a period of five (5) years and a further five (5) years set out in Item 12 of Annexure A
 - 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, B, C and D hereto.
 - Incorporates the provisions set out in N/A No.
 - The **RENT** is set out in clause No 13 of Annexure A

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.

Page 1 of 36

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].
- Certified correct for the purposes of the Real Property Act 1900 by the lessor's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of witness:

Signature of attorney:

Name of witness:

Attorney's name: Mark Ferguson

Address of witness:

Signing on behalf of: Pittwater Council

Power of attorney-Book: 4548

-No.: 203

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appears(s) below pursuant to the authority specified.

Corporation:

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held: Director

Office held: Director/Secretary

(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 lodgment. # 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.

INDEX

Annexure A	Schedule of Items
Annexure A1	Additional Clauses and Amendments to Lease Covenants
Annexure B	Lease Covenants
Annexure C	Building Rules
Annexure D	Plan of Premises

NOTE: Any alterations and additions to Lease Covenants in Annexure B **must** be made by additional clauses in Annexure A1. The printed clauses in Annexure B are to remain in their copyright form without alteration.

Annexure A

Lessor: Pittwater Council of Village Park, 1 Park Street Mona Vale NSW 2103

Lessee: [INSERT DETAILS]

Property:

Street address:	Part Avalon Beach Surf Life Saving Club Building at 558a Barrenjoey Road, Avalon, NSW 2107
Nature of property:	Restaurant and Café
Title:	Part 202/1107408
Parking:	Nil

SCHEDULE OF ITEMS

- Item 10
(cl 2.3, 13.1)
- A. The guarantors:**
- (cl 13.7) **B. Limit of guarantors' liability:** Unlimited
- Item 11
(cl 3) **Additional leased property:** Not Applicable
- Item 12
(cl 4) **Option to renew**
- A. First Option: Five (5) years from 1 January 2025 to 31 December 2029.
 - B. Second Option: Five (5) years from 1 January 2030 to 31 December 2034.
 - C. Maximum period of tenancy under this lease and permitted renewals: 20 years
 - D. First day First Option for renewal can be exercised: 1 July 2024.
 - E. Last day First Option for renewal can be exercised: 30 September 2024.
 - F. First day Second Option for renewal can be exercised: 1 July 2029.
 - G. Last day Second Option for renewal can be exercised: 30 September 2029.
- Item 13
(cl 5) **A. Rent**
- Commencing rent for the lease period:
- From 1 January 2015 - 31 December 2015
- Base rent of \$ per annum (excluding GST) payable monthly in advance

- Item 13
(cl 15) **Goods and Services Tax**
Services Tax. The Payment of Rent as indicated in Item 13A above is exclusive of Goods and
- Item 14 **Outgoings:**
- A. Land tax (if any), all insurances required in accordance with clause 20 of Annexure A1, and strata levies (if any) applicable to the Premises.
 - B. All gas, electricity, telephone and other utilities that are provided to the Premises are to be paid by the Lessee as they fall due.
 - C. All costs to regularly clear and service the grease trap servicing the Premises.
- Item 15
(cl 5.1.5) **Interest rate:** 12%
- Item 16
(cl 5.4) **Rent review:**
- | | |
|--|--|
| From 1 January 2016 – 31 December 2024 | Rent reviewed annually on 1 January each year according to Method 2 - CPI. |
| From 1 January 2025 – 31 December 2025 | Rent reviewed according to Method 3 - current market rent at the commencement of the First Option period. |
| From 1 January 2026 – 31 December 2029 | Rent reviewed annually on 1 January each year according to Method 2 - CPI. |
| From 1 January 2030 – 31 December 2030 | Rent reviewed according to Method 3 - current market rent at the commencement of the Second Option period. |
| From 1 January 2031 – 31 December 2034 | Rent reviewed annually on 1 January each year according to Method 2 - CPI. |
- Item 17
(cl 6.1) **Permitted use:** Restaurant and Café
- Item 18 **Amount of required public liability insurance:** \$20,000,000.00 or such other amount as may reasonably be required by the Lessor from time to time.
- Item 19 **Bank Guarantee:** The equivalent of three month's rent including GST as applicable from time to time.

- Item 20 **Not Applicable**
- Item 21 **Maximum Seating Capacity:**
In accordance with the conditions of the development consent applicable to the use of the Premises.
- Item 21 **Additional Clauses and amendments to Lease Covenants set out in Annexure B:**
As set out in Annexure A1

DRAFT

Annexure A1

1. DEFINITIONS AND INTERPRETATIONS

In this Agreement the following expressions have the following meanings.

"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 Annual Event" means an Annual Event as defined in the Licence Agreement.

"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.

"Building Management Committee" means the committee to be formed to assist manage the Avalon Beach SLSC and Avalon Beach Reserve in accordance with the Licence Agreement.

"Business" means the restaurant/cafe business conducted by the Lessee in the Premises.

"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 in the Licence Agreement.

"Commencing Date" the date shown on the first page hereof.

"Community Hire" has the meaning ascribed to the term in the Licence Agreement.

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

"Deed" means this Deed and the schedules and annexures attached to it;

"Lessor" means Council;

"Lease" means this lease;

"Licence Agreement" means the Licence Agreement between the Lessor and Lessee concerning the Lessee's rights to use and hire parts of the Avalon Beach SLSC Building during the term of this Lease;

"Outgoings" means the outgoings set out in Item 14 of the Schedule;

"Premises" means the leased premises as described in Part (A) on the first page of this Lease;

"Rules" means the rules for the management and use of the Avalon Beach SLSC and its immediate surrounds within the Avalon Beach Reserve as set out in Annexure C hereto or as amended by Pittwater Council (acting reasonably) from time to time in consultation with the Building Management Committee.

"Lessee" means [INSERT DETAILS] and

- i) if the Lessee is a natural person, the Lessee's executors, administrators and assigns; and

- ii) if the Lessee is a corporation, the Lessee's successors in title and assigns:

2. RENT REVIEW

The rent is to be reviewed in accordance with Item 16 of Annexure A of this lease.

3. OUTGOINGS

- 3.1 The Lessee must pay all Outgoings directly to the supplier concerned unless otherwise directed by the Lessor.
- 3.2 The Lessee must pay to the Lessor all Outgoings which the Lessor directs to be paid to it at the times set out in the estimates and statements referred to in clauses 3.3 and 3.4.
- 3.3 Estimates
 - 3.3.1 If the Lessor requires any Outgoings to be paid to it, the Lessor must give the Lessee a written estimate of the outgoings to which the Lessee contributes under the Lease, itemising those outgoings under the item descriptions used in the list of outgoings in the form of the Lessor's disclosure statement.
 - 3.3.2 If the Lessor requires any Outgoings to be paid to it, the estimate of outgoings must be given to the Lessee in respect of each accounting period of the Lessor during the term of the lease and must be given before the lease is entered into and thereafter during the term of the lease at least 1 month before the commencement of the accounting period concerned.
- 3.4 Outgoings statements
 - 3.4.1 If the Lessor requires any Outgoings to be paid to it, the Lessor must give the Lessee a written statement (an outgoings statement) that details all expenditure by the Lessor in each accounting period of the Lessor, during the term of the lease on account of outgoings, to which the Lessee is required to contribute.
 - 3.4.2 The outgoings statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards made by the Australian accounting standards board as in force from time to time.
 - 3.4.3 The outgoings statement is to be given to the Lessee within 3 months after the end of the accounting period to which it relates.
 - 3.4.4 The outgoings statement need not be accompanied by an auditor's report if the statement does not relate to any outgoings other than land tax, water, sewerage and drainage rates and charges, local council rates and charges, insurance and strata levies, and it is accompanied by copies of assessments, invoices, receipts or other proof of payment in respect of all expenditure by the Lessor.

4. LEGAL COSTS

Further to clause 5.1.9 of Annexure B, the Lessor may only require payment by the Lessee of a reasonable sum in respect of lease preparation expenses incurred in connection with making an amendment to a proposed lease that was requested by or on behalf of the Lessee.

5. MAKING GOOD

Upon termination or expiry of the Lease all of the Lessee's fixtures and fittings within the Premises will become the property of the Lessor except those which the Lessor requests in writing the Lessee to remove. The Lessee will at its own expense remove all such fixtures and fittings as requested by the Lessor in writing and make good all surfaces and services and any other damage caused by such removal.

6. SUB-CONTRACTORS

- 6.1 The Lessee must, as far as reasonably practicable, perform the services to be provided from the Premises personally or by the Lessee's staff.
- 6.2 If the Lessee engages a subcontractor the Lessee will:
 - 6.1.1 notify the Lessor, and provide the Lessor with the name and contact details of the sub-contractor;
 - 6.1.2 ensure that the services to be performed by the subcontractor be undertaken with due care and diligence and in accordance with the best practice standard in providing the services;
 - 6.1.3 ensure that the sub-contractor is accredited by or holds any necessary licence or membership of a professional or other body in relation to the provision of the services;
 - 6.1.3 be responsible for any act or omission of any subcontractor as if such act or omission was an act or omission of the Lessee.

7. REPORTS AND MEETINGS

The Lessee will prepare such reports for and attend such meetings with the Lessor as the Lessor may reasonably require from time to time, but not more than once in every six (6) month period.

8. DISPUTES

- 8.1 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.
- 8.2 If the dispute is not resolved within 14 days:
 - 8.2.1 if the dispute also concerns Avalon Beach SLSC, then the parties must convene an urgent meeting of the Building Management Committee to discuss the issue and seek resolution within a further 14 day period; or
 - 8.2.2 if the dispute does not also concern the Avalon Beach SLSC, then in such case the parties must convene a meeting including the Pittwater Council General Manager and a representative of the Commercial Operator to discuss the issue and seek resolution within a further 14 day period.
 - 8.2.3 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.

9. MEDIATION

- 9.1 The parties agree to endeavour to settle any dispute arising in relation to this Lease that cannot be resolved in accordance with the provisions of clause 8 by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.
- 9.2 The mediation must be conducted in accordance with the ACDC guidelines for commercial mediation operating at the time the dispute is referred to ACDC.
- 9.3 The guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- 9.4 The terms of the guidelines are deemed incorporated into this agreement.
- 9.5 This clause survives termination of this agreement.

10. CROWN LANDS ACT

This Lease is subject to the provisions of the *Crown Lands Act 1989*, including s109 of that Act.

11. CAPITAL IMPROVEMENTS

- 11.1 The Lessee must provide to the Lessor all proposed plans and specifications of any proposed fit out for the approval of the Lessor, and must commence or carry on any fit out works without the Lessor's prior written consent.
- 11.2 The Lessor must not unreasonably withhold its consent to the Lessee's proposed plans and specifications but may impose any conditions or guidelines as it may reasonably require.
- 11.3 The Lessor will apply normal planning, legislation, regulations and standards when considering the Lessee's proposed plans and specifications.
- 11.4 The Lessee must complete any fit out or upgrade consistent with the Premises' age and utility as the Lessor may reasonably require from time to time.

12. BANK GUARANTEE

The Lessee shall provide a bank guarantee in the amount specified in Item 19 of the Schedule as security for the due performance by the Lessee of its covenants hereunder. A breach of covenant shall entitle the Lessor to call upon the guarantee for, or utilise such amount towards, the cost of rectifying any breach, otherwise the amount less any necessary expenditure shall be refunded to the Lessee at the end of the lease and the guarantee otherwise released. The bank guarantee shall be in favour of the Lessor, not have a termination date and shall be expressed to be security for the performance by the Lessee's obligations under this lease.

13. TRADING HOURS

- 13.1 The permissible trading hours of the Café and Restaurant are the permissible trading hours specified in the development for the use of the Premises as may exist from time to time.

14. LIQUOR COVENANTS

- 14.1 Subject to the approval of the Lessor (which shall not be unreasonably withheld) and the conditions of any development consent, the Lessee may apply for and hold an on-premises liquor licence permitting the service of alcohol from the Premises.
- 14.2 The Lessee's licensed premises must not include the Club Room / Community Function Space or the First Floor Balcony.
- 14.3 Subject to the conditions of its liquor licence, the Lessee may serve alcohol from the Club Room / Community Function Space as a catering service.
- 14.4 The Lessee may apply to the Lessor seeking approval to vary the conditions of its liquor licence at any time.
- 14.5 The Lessor will apply normal planning, legislation, regulations and standards when considering any application made by the Lessee to obtain or vary the conditions of its liquor licence.

15. INSURANCE & INDEMNITY

- 15.1 The Lessee shall keep current at all times during the currency of this Lease an insurance policy with a reputable insurer approved by the Lessor and in the name of the Lessee noting the interest of the Lessor:
 - 15.1.1 a policy of public risk insurance applicable to the Premises and the business carried on therein for an amount of not less than the amount specified in Item 18 of the Schedule;
 - 15.1.2 an insurance policy against the loss or damage to the fixtures, fittings and goods of the Lessee, its servants, agents, licensees or invitees; and
 - 15.1.3 for the replacement value of all glass in or enclosing the Premises.
- 15.2 The Lessee hereby indemnifies the Lessor against all claims, actions, losses and expenses for which the Lessor may become liable arising out of the act or neglect of the Lessee, its servants, agents, employees, licensees and invitees in the use of the Premises.
- 15.3 The Lessee covenants at all times and in all respects to comply at its own expense with the requirements of the insurance council of Australia, the Fire & Rescue NSW and the requirements of any other relevant statute or regulation.
- 15.4 In the event that the Lessee does, or omits to do, anything whereby the premiums of any insurance effected by the Lessor are increased then the Lessee shall pay such increase in insurance to the Lessor.
- 15.5 The Lessee shall keep current at all times during the currency of this lease worker's compensation insurance policy in respect of all staff and contractors (as applicable).
- 15.6 The Lessee must produce to the Lessor a Certificate of Currency of all insurances required to be held under this lease annually or at shorter intervals at the Lessor's request.

16. WASTE DISPOSAL

The Lessee will store and dispose of all waste in accordance with the Rules or as otherwise directed by the Lessor from time to time.

17. GLASS & LIGHT FITTINGS

The Lessee shall repair, replace and maintain all glass broken in the Premises and all non-operative light fittings.

18. WASTE & PEST CONTROL

The Lessee shall at its own expense regularly clean the Premises, dispose of all waste, and shall take all necessary steps to control any pest infestation.

19. ADDITIONAL SEATING

- 19.1 The Lessee must ensure that the Restaurant has no more than the Maximum Seating Capacity set out in Item 21 of the Schedule at any time.
- 19.2 The Lessee must ensure that the Café has no more than the Maximum Seating Capacity set out in Item 21 of the Schedule.
- 19.3 The Lessee may lodge a development application with the Lessor for additional seating in either the Restaurant or the Café (or both) at any time.
- 19.4 The Lessor will apply normal planning, legislation, regulations and standards when considering any development application made by the Lessee for additional seating.

20. LEASED AREA

The Premises hereby leased is more particularly described and set out in the plans forming Annexure D of this Lease.

21. LICENCE & HIRING AGREEMENT

The parties will enter into the Licence Agreement simultaneously with this Lease.

22. INDEMNITIES BY THE LESSEE

- 22.1 The Lessee indemnifies and keeps indemnified the Lessor against all actions, suits, debts, claims, costs, expenses, obligations and other liabilities during this Lease, for which the Lessor is liable in relation to any death, personal injury or property damage to the extent caused by any act or failure to act by the Lessee or because of the Lessee's use of the Premises, the except to the extent that any claims, costs or expenses are caused by the Lessor's negligence.
- 22.2 The Lessee indemnifies the Lessor against all loss or damage caused by the Lessee including, but not limited to, the Lessee's use or misuse of the Premises, or by the Lessee's failure to notify the Lessor of any major or continuing defect in the Premises of which the Lessee is aware or ought reasonably to be aware.
- 22.3 The Lessor is not liable for any damage caused to the Premises or to the Lessee's goods or equipment by burglary, theft or malicious damage except to the extent that such damage is caused by the Lessor's negligence.

- 22.4 The Lessee will indemnify the Lessor in respect of any claims, suits, debts, obligations and other liabilities which may arise out of the Lessee's use and/or occupation of the Premises.

23. SIGNAGE

- 23.1 The Lessee may only install signage:
- 23.1.1 on the Avalon Beach SLSC Building; or
 - 23.1.2 within the Avalon Beach Reserve; or
 - 23.1.3 visible from the outside of the Premises
- in accordance with the Rules and only with the Lessor's prior written consent (which shall not be unreasonably withheld).
- 23.2 The Lessee's signage shall:
- 23.2.1 be limited to the Lessee's trading name;
 - 23.2.3 be limited to a size, style and type consistent with other signage within the Avalon Beach Reserve;
 - 23.2.3 not include any moving, flashing, animated or illuminated features.
- 23.3 The Lessee must submit to the Lessor a draft design of any sign proposed to be installed in any of the locations specified in clause 28.1 seeking the Lessor's prior written approval.
- 23.4 Any sign installed by the Lessee will be maintained by the Lessee in good repair and condition throughout the term of this Lease.
- 23.5 The Lessee must ensure that the sign does not contain words, pictures or material which are or may reasonably be considered to be defamatory, illegal, immoral or offensive.
- 23.6 If the Lessor, acting reasonably, including at the request of the general public, objects to a sign affixed by the Lessee, on the grounds that it does not comply with any of the forgoing conditions, the Lessee must remove the sign within 48 hours of receiving a request from the Lessor to do so.

24. MECHANICAL VENTILATION

The Lessee must attend to the following at its own expense:

- 24.1 install such mechanical ventilation system as may reasonably be required for the use of the Premises as a Restaurant and Café and upgrade the system as reasonably required from time to time, provided that:-
- 24.1.1 the Lessee obtains all relevant approvals and complies with the conditions of these approvals;
 - 24.1.2 the Lessee ensures that any upgrade of the mechanical ventilation is carried out:-

- 24.1.2.1 in accordance with any plans, specifications, and schedule of finishes which will be provided to the Lessor for the Lessor's prior written approval, which approval will not be unreasonably withheld;
- 24.1.2.2 by contractors approved by the Lessor, which approval will not be unreasonably withheld, in a proper and workmanlike manner and of good quality materials;
- 24.1.2.3 in accordance with all legislation, regulations, standards and the requirements of any authority; and
- 24.1.2.4 in accordance with the Lessor's reasonable requirements and directions.
- 24.1.3 the Lessee shall keep in good order and condition the mechanical ventilation which services the Premises having regard to wherein fair, wear and tear and damage under *force major* accepted;
- 24.1.4 the Lessee shall comply with all reasonable requirements of the Lessor and those contracted to maintain and service the mechanical ventilation system;
- 24.1.5 notify the Lessor of all failures of the mechanical ventilation system;
- 24.1.6 at the Lessee's cost ensure regular maintenance of the mechanical ventilation system by the manufacturer or persons approved by the manufacturer of the system; and
- 24.1.7 not in any way interfere with, or damage the mechanical ventilation system or use it for a purpose for which it was not designed.
- 24.1.8 the mechanical ventilation system and any upgrades become property of the Lessor upon termination and no compensation is payable.

25. ADDITIONAL WORKS TO BE CARRIED OUT BY LESSOR

- 25.1 The Lessor will have the right for itself, its servant, agents, architects, surveyors, builders and workmen with all necessary materials and equipment from time to time to enter upon the Premises at all reasonable times and upon reasonable notice but at any time and without any notice in the case of an emergency in order to carry out any works or make any repairs or alterations or additions to the Premises and to enter upon all or any part of the Premises and to use the same for the purposes of effecting or carrying out any repairs, alterations or additions or other works which the Lessor considers necessary or desirable to any part of the Premises.
- 25.2 the Lessee acknowledges that noise, dust and disruption to pedestrian flow may be caused and accordingly the Lessee may not make any claim for compensation for any loss or damage suffered as a result of the Lessor carrying out work in accordance with clause 30.1 above.

26. COMPENSATION FOR DISTURBANCE

The Lessee hereby acknowledges and agrees that it will not make any claim for compensation pursuant to section 34(1) of the Retail Leases Act 1994 or otherwise in respect of:

- 26.1 the ordinary activities of Avalon Beach SLSC conducted from the Avalon Beach SLSC Building from time to time;

- 26.2 the ordinary activities of the Lessor's contracted lifeguard service conducted from the Avalon Beach SLSC Building from time to time;
- 26.3 the use of the Club Room / Community Function Space and First Floor Balcony by Avalon Beach SLSC for any Avalon Beach SLSC Annual Event, as more particularly describe in the Licence Agreement, and on not more than on six (6) occasions annually, and the Lessee hereby acknowledges and accepts that its quiet enjoyment and use of the Restaurant may be disturbed on these occasions;
- 26.4 the use of the Club Room / Community Function Space for Community Hire purposes, a specific description of which is set out in the Licence Agreement.

27. BUILDING RULES

Use of the Premises shall at all times be governed by:

- 27.1 the Rules which are incorporated into and form part of the terms of this Lease; and
- 27.2 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)).

28. AMENDMENTS TO LEASE COVENANTS

The covenants contained within Annexure B hereto are hereby varied as follows:

- 28.1 Clause 1: Delete sub-clause 1.1 and replace with:

"There are five (5) parts to this lease – a lease form, Annexure A, Annexure B, Annexure C and Annexure D."
- 28.2 Delete clause 6.1.2 and replace with the following:

"only open for business at times strictly in accordance with the conditions of the development consent for the use of the property"
- 28.3 Delete clause 6.2 and replace as follows:

"The Lessor may refuse its consent to a change of use for any reason."
- 28.4 Delete clause 7.1.1 and replace as follows:

"maintain in a state of good condition and serviceable repair 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"
- 28.5 Add clause 7.3.5:

"meet the cost of all damage to the Avalon Beach SLSC Building and Avalon Beach Reserve occasioned by the Lessee or any invitee or licensee of the Lessee."
- 28.6 Add clause 7.3.6 in the following terms:

"permit the Landlord, temporarily, to close any part of the Avalon Beach SLSC Building and Avalon Beach Reserve for the purpose of making or effecting repairs to it."

28.7 Delete clause 8.1.

28.8 Delete clause 11.3.2.1.

28.9 Amend clause 12.3.2 by adding the following words to the beginning of the clause:

"at the request of the Lessor and at the cost of the Lessee"

DRAFT

ANNEXURE B

ANNEXURE B
PAGE 1 OF 13 PAGES

SEE A SOLICITOR ABOUT THIS LEASE

Lessor:

Lessee:

This annexure consists of 13 pages.

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NOTE: Any alterations and additions to Lease Covenants in Annexure B **must** be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

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RETAIL LEASE CERTIFICATE

If section 16 of the *Retail Leases Act 1994* applies to this lease, and the term plus any further terms are less than 5 years (subject to section 16(4)), the term will be extended unless a section 16 certificate is given. Sections 16(1) and (2) provide –

- 16(1) The term for which a retail shop lease is entered into, together with any further term or terms provided for by any agreement or option for the acquisition by the lessee of a further term as an extension or renewal of the lease, must not be less than 5 years. An agreement or option is not taken into account if it was entered into or conferred after the lease was entered into.
- 16(2) If a lease is entered into in contravention of this section, the validity of the lease is not thereby affected but the term of the lease is extended by such period as may be necessary to prevent the lease contravening this section.

I certify that I am a solicitor not acting for the lessor and that at the request of the lessee I explained to the lessee before (or within 6 months after) the lessee entered into this lease –

- the effect of sections 16(1) and (2); and
- that the giving of this certificate would result in section 16 not applying to this lease.

.....
Date

.....
Signature

.....
NAME (BLOCK LETTERS)

CLAUSE 1 FORM OF THIS LEASE

What are the parts to this lease?

- 1.1 There are three parts to this lease – a lease form, Annexure A and this annexure.
- 1.2 This lease is a deed even if it is not registered.
- 1.3 A reference in this deed to the schedule is to the schedule of items commencing at item 1 on the lease form and ending with item 20 in Annexure A.

CLAUSE 2 PARTIES

Who are the parties to this lease?

- 2.1 The lessor is named on page 1 of this lease.
- 2.2 The lessee is named on page 1 of this lease.
- 2.3 The guarantor is named in item 10 in the schedule, if there is a guarantor.
- 2.4 If a party consists of two or more persons, obligations of that party can be enforced against any one or more of them.

CLAUSE 3 THE PROPERTY

What property is leased?

- 3.1 The property leased is described on page 1 of this lease.
- 3.2 The lessor's fixtures are included in the property leased.
- 3.3 If anything else is leased (such as furniture belonging to the lessor) and is described in item 11 in the schedule it is included in the property.
- 3.4 If the property has facilities and services shared in common with other persons in the same building as the property, clause 11.3.2 applies to those common facilities. The lessee shares the common facilities with the lessor, and with other lessees of the lessor. The lessor can set reasonable rules for sharing these common facilities.

CLAUSE 4 LEASE PERIOD

How long is this lease for?

- 4.1 This lease is for the period stated in item 1 in the schedule, commences on the date stated in item 2 in the schedule and ends on the date stated in item 3 in the schedule.
 - 4.2 If a further period, commencing when this lease ends, is stated in item 12A in the schedule then the lessee has the option to renew this lease for that period.
 - 4.3 The lessee can renew this lease more than once if that is stated in item 12B in the schedule. However the period of tenancy under this lease and under any renewal(s) is, in total, not longer than the maximum period stated in item 12C in the schedule.
 - 4.4 The lessee can exercise the option only if –
 - 4.4.1 the lessee serves on the lessor a notice of exercise of option not earlier than the first day stated in item 12D in the schedule and not later than the last day stated in item 12E in the schedule;
 - 4.4.2 there is at the time of service no rent or outgoing that is overdue for payment; and
 - 4.4.3 at the time of service all the other obligations of the lessee have been complied with or fully remedied in accordance with the terms of any notice to remedy given by the lessor.
- If this lease is extended by legislation, items 12D and 12E in the schedule are adjusted accordingly.
- 4.5 After exercising the option the lessee must continue to pay all rents and outgoings on time and continue to comply with all of the lessee's obligations under this lease. If the lessee does not do so, the lessor may treat any breach as being a breach of the new lease as well as of this lease.

4.6 A new lease will be the same as this lease except for –

- 4.6.1 the new rent;
- 4.6.2 the commencement date and the termination date;
- 4.6.3 the omission of clauses 4.2, 4.3, 4.4, 4.5 and 4.6 and items 12A and 12B in the schedule in the last lease allowed in item 12 in the schedule;
- 4.6.4 item 12B becoming item 12A;
- 4.6.5 adjustment of item 12C in the schedule; and
- 4.6.6 adjustment of items 12D and 12E in the schedule. The number of days between the dates stated in items 12D and 12E in the schedule of the new lease and the termination date of the new lease and the number of days between each date stated in items 12D and 12E in the schedule of this lease and the termination date of this lease are to correspond.

If the new rent is to be current market rent it will be decided in the same way that current market rent is to be decided under Method 3 stated in clause 5 assuming that this lease and the new lease were one continuous lease and the commencement date of the new lease was a rent review date.

CLAUSE 5 MONEY

What money must the lessee pay?

5.1 The lessee must pay to the lessor or as the lessor directs –

- 5.1.1 the rent stated in item 13A in the schedule;
- 5.1.2 the share stated in item 14A in the schedule of those outgoings stated in item 14B in the schedule;
- 5.1.3 the reasonable cost to the lessor of remedying a default by the lessee;
- 5.1.4 the reasonable cost to the lessor of dealing with any application by the lessee for the lessor's consent under this lease (whether or not it is given);
- 5.1.5 interest on these moneys at the rate stated in item 15 in the schedule when payment is more than 14 days overdue, calculated from the due date to the date of payment;
- 5.1.6 registration fee for registration of this lease at Land and Property Information NSW (payable on delivery to the lessor's solicitor of the executed lease);
- 5.1.7 stamp duty on this lease (payable on delivery to the lessor's solicitor of the executed lease) if not previously paid by the lessee to the Office of State Revenue;
- 5.1.8 if the lessee defaults, the lessor's reasonable legal costs relating to the default;
- 5.1.9 the lessor's reasonable costs and expenses in connection with the preparation of this lease but only that part of those costs and expenses which are permitted to be recovered by a lessor under section 14 and section 45 of the *Retail Leases Act, 1994*; and
- 5.1.10 GST as provided for in clause 15.

5.2 The first month's instalment of rent is to be paid by the commencement date. Each later month's instalment of rent is to be paid in advance.

5.3 A payment under clause 5.1.2 must be paid on the next rent day after a request for payment is made by the lessor.

A request for payment can be made –

- 5.3.1 after the lessor has paid an outgoing; or
- 5.3.2 after the lessor has received an assessment or account for payment of an outgoing.

If item 14B in the schedule refers to land tax –

- if the property is a strata lot, the relevant land tax is land tax on that lot;
- if the property is not a strata lot but is part of a building, the relevant land tax is land tax on the land on which the building is situated, plus any land of the lessor used or available for use by or for the benefit of lessees conducting business in the building or in connection with trading in the building; and
- in either case, the land tax must be calculated as if the land was the only land owned by the lessor and there was no special trust or non-concessional company involved.

When and how is the rent to be reviewed?

- 5.4 The rent is to be reviewed on the rent review dates stated in item 16 in the schedule.
- If this lease is extended by legislation, the rent review dates include each anniversary of the latest rent review date stated in item 16 in the schedule (or if none is stated each anniversary of the commencement date) which falls during the extension.
- 5.5 The lessee must continue to pay rent at the old rate until the new rate is known. After that, the lessee is to pay the new rent from the next rent day. By that rent day the lessee is also to pay any shortfall between the old and new rate for the period since the rent review date. Alternatively, the lessor is to refund to the lessee any overpayment of rent.
- 5.6 There are three different methods described here for fixing the new rent on a rent review date. The method agreed by the lessor and the lessee is stated at item 16 in the schedule. The lessee is entitled to a reduction if the method produces a rent lower than the rent current just before the review date.

Method 1. By a fixed amount or percentage.

- 5.7 In this case the rent beginning on each review date will be increased by the percentage or amount stated in item 16 in the schedule.

Method 2. By reference to Consumer Price Index.

- 5.8 In this case –
- take the yearly rent as of the last review date or if none, the rent at the commencement date (\$X),
 - divide that rent by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before that date (CPI 1),
 - multiply the result by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the review date (CPI 2).

The product is the new rent for the year beginning on the review date (\$Y), written as a formula –

$$\frac{\$X}{\text{CPI 1}} \times \text{CPI 2} = \$Y$$

- 5.9 The lessor must calculate the new rent after each review date and give the lessee written notice of the new rent.
- 5.10 If the Australian Bureau of Statistics makes a change in the reference base of the index and there is a published co-relation between the old and new base then the published co-relation is to be applied to convert the CPI 1 figure to the new reference base. If there is none then the lessor and the lessee agree to accept the calculations of the lessor's solicitor who must be retained to determine a fair co-relation between the old and the new series of numbers.
- 5.11 If the index used to calculate the new rent is discontinued the lessor may substitute another index that, as nearly as practicable, serves the same purpose and, if there is no such index, then the rent will be fixed by Method 3.

Method 3. By reference to current market rent.

- 5.12 In this case the rent is to be the current market rent. This can be higher or lower than the rent payable at the rent review date and is the rent that would reasonably be expected to be paid for the property, determined on an effective rent basis, having regard to the following matters –
- 5.12.1 the provisions of this lease;
 - 5.12.2 the rent that would reasonably be expected to be paid for the property if it were unoccupied and offered for renting for the same or a substantially similar use to which the property may be put under this lease;
 - 5.12.3 the gross rent, less the lessor's outgoings payable by the lessee;
 - 5.12.4 where the property is a retail shop, rent concessions and other benefits that are frequently or generally offered to prospective lessees of unoccupied retail shops; and
 - 5.12.5 the value of goodwill created by the lessee's occupation and the value of lessee's fixtures and fittings are to be ignored.

ANNEXURE B

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- 5.13 The lessor or the lessee can inform the other in writing at least 60 days before the rent review date of the rent that the lessor or lessee thinks will be the current market rent at the review date.
- 5.14 If the lessor and the lessee agree on a new rent then that rent will be the new rent beginning on the rent review date and the lessor and the lessee must sign a statement saying so.
- 5.15 If the lessor and the lessee do not agree on the amount of the new rent 30 days before the rent review date, the current market rent will be decided by a valuer appointed under clause 5.16.
- 5.16
- 5.16.1 Unless 5.16.2 applies the lessor and the lessee can either agree upon a valuer or can ask the President of the Law Society of New South Wales to nominate a person who is a licensed valuer to decide the current market rent.
- 5.16.2 Where the property is a retail shop, the valuer appointed must be a specialist retail valuer appointed by agreement of the parties or, failing agreement, by the Administrative Decisions Tribunal.
- 5.17 The valuer will act as an expert not an arbitrator. The lessor and the lessee can each make submissions in writing to the valuer within 14 days after they receive notice of the valuer's appointment but not later unless the valuer agrees.
- 5.18 The valuer's decision is final and binding. The valuer must state how the decision was reached.
- 5.19 If the valuer
- 5.19.1 does not accept the nomination to act; or
- 5.19.2 does not decide the current market rent within 1 month after accepting the nomination; or
- 5.19.3 becomes incapacitated or dies; or
- 5.19.4 resigns,
- then another valuer is to be appointed in the same way.
- 5.20 The lessor and lessee must each pay half the valuer's costs.
- 5.21 If the lessor and lessee do not agree upon a valuer and neither asks for a valuer to be nominated before –
- 5.21.1 the next rent review date passes; or
- 5.21.2 this lease ends without the lessee renewing it; or
- 5.21.3 this lease is transferred after the rent review date with the lessor's consent; or
- 5.21.4 the property is transferred after the rent review date
- then the rent will not change on that rent review date.

CLAUSE 6 USE

How must the property be used?

- 6.1 The lessee must –
- 6.1.1 use the property for the purpose stated in item 17 in the schedule and not for any other purpose;
- 6.1.2 open for business at times usual for a business of the kind conducted by the lessee;
- 6.1.3 keep the property clean and dispose of waste properly; and
- 6.1.4 comply with all laws relating to strata schemes and all other laws regulating how the property is used, obtain any consents or licences needed, comply with any conditions of consent, and keep current any licences or registrations needed for the use of the property or for the conduct of the lessee's business there.
- 6.1.5 where the property is a lot in a strata scheme:
- 6.1.5.1 use the lessor's common property only in connection with the use of the property;
- 6.1.5.2 co-operate with all other permitted users of the common property;
- 6.1.5.3 comply with so many of the provisions of the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973* and the by-laws and all lawful orders, motions and directives under these Acts as may be applicable to the exercise of the lessee's rights and obligations under this lease.

- 6.2 The lessor can consent to a change of use and cannot withhold consent unreasonably.
- 6.3 The lessee must not –
- 6.3.1 do anything that might invalidate any insurance policy covering the property or that might increase the premium unless the lessor consents in which case the lessee must pay the increased premium; or
 - 6.3.2 use the property as a residence or for any activity that is dangerous, offensive, noxious, illegal or immoral or that is or may become a nuisance or annoyance to the lessor or to the owner or occupier of any neighbouring property; or
 - 6.3.3 hold any auction, bankrupt or fire sale in the property; or
 - 6.3.4 display signs or advertisements on the outside of the property, or that can be seen from the outside, unless the lessor consents (but the lessor cannot withhold consent unreasonably);
 - 6.3.5 overload the floors or walls of the property; or
 - 6.3.6 without the prior written consent of the lessor and/or the owners corporation, use the common property for any purpose other than for access to and egress from the property.

CLAUSE 7 CONDITION AND REPAIRS

Who is to repair the property?

- 7.1 The lessor must –
- 7.1.1 maintain in a state of good condition and serviceable repair the roof, the ceiling, the external walls and external doors and associated door jambs, and the floors of the property and must fix structural defects;
 - 7.1.2 maintain the property in a structurally sound condition; and
 - 7.1.3 maintain essential services.
- 7.2 The lessee must otherwise maintain the property in its condition at the commencement date and promptly do repairs needed to keep it in that condition but the lessee does not have to –
- 7.2.1 alter or improve the property; or
 - 7.2.2 fix structural defects; or
 - 7.2.3 repair fair wear and tear.
- 7.3 The lessee must also –
- 7.3.1 reimburse the lessor for the cost of fixing structural damage caused by the lessee, apart from fair wear and tear;
 - 7.3.2 maintain and decorate the shop front if the property has one;
 - 7.3.3 decorate the inside of the property in the last 3 months of the lease period (however it ends) – ‘decorate’ here means restoring the surfaces of the property in a style and to a standard of finish originally used e.g. by repainting;
 - 7.3.4 where the property is a lot in a strata scheme:
 - 7.3.4.1 meet the cost of all damage to the common property occasioned by the lessee or any invitee or licensee of the lessee; and
 - 7.3.4.2 permit the owners corporation, temporarily, to close any part of the common property for the purpose of making and effecting repairs to it.
- 7.4 If an authority requires work to be done on the property and it is structural work or work needed to make the property safe to use then the lessor must do the work unless it is required only because of the way the lessee uses the property. But if it is any other work or is required only because of the way the lessee uses the property then the lessee must do the work.
- 7.5 If the lessee fails to do any work that the lessee must do the lessor can give the lessee a notice in writing stating what the lessee has failed to do. After the notice is given the lessee must –
- 7.5.1 do the work immediately if there is an emergency; and
 - 7.5.2 do the work promptly and diligently in any other case.
- If the lessee does not do the work, the lessor can do it and the lessee must reimburse the lessor for the cost of the work.

- 7.6 The lessee must not make any structural alterations to the property. Any other alterations require the lessor's consent in writing (but the lessor cannot withhold consent unreasonably).

CLAUSE 8 INSURANCE AND DAMAGE

What insurances must the lessee take out?

- 8.1 The lessee must keep current an insurance policy covering –
- 8.1.1 liability to the public in an amount not less than the amount stated in item 18 in the schedule (for each accident or event); and
 - 8.1.2 damage or destruction from any cause to all plate glass in the windows and other portions of the property
- and must produce to the lessor, upon request, the policy and the receipt for the last premium.

What happens if the property is damaged?

- 8.2 If the property or the building of which it is part is damaged (a term which includes destroyed) –
- 8.2.1 the lessee is not liable to pay rent, or any amount payable to the lessor in respect of outgoings and other charges, that is attributable to any period during which the property cannot be used under this lease or is inaccessible due to that damage;
 - 8.2.2 if the property is still useable under this lease but its useability is diminished due to the damage, the lessee's liability for rent and any amount in respect of outgoings attributable to any period during which useability is diminished is reduced in proportion to the reduction in useability caused by the damage;
 - 8.2.3 if the lessor notifies the lessee in writing that the lessor considers that the damage is such as to make its repair impracticable or undesirable, the lessor or the lessee can terminate this lease by giving not less than 7 days notice in writing of termination to the other and no compensation is payable in respect of that termination;
 - 8.2.4 if the lessor fails to repair the damage within a reasonable time after the lessee requests the lessor to do so the lessee can terminate this lease by giving not less than 7 days notice in writing of termination to the lessor; and
 - 8.2.5 nothing in clause 8.2 affects any right of the lessor to recover damages from the lessee in respect of any damage or destruction to which the clause applies.

CLAUSE 9 ACCESS

What are the lessor's rights of access to the property?

- 9.1 The lessee must give the lessor (or anyone authorised in writing by the lessor) access to the property at any reasonable time for the purpose of –
- 9.1.1 inspecting the condition of the property, or how it is being used; or
 - 9.1.2 doing anything that the lessor can or must do under this lease or must do by law; or
 - 9.1.3 viewing the property as a valuer, prospective buyer or mortgagee; or
 - 9.1.4 fixing a notice in a reasonable position on the outside of the property saying that it is for sale; or
 - 9.1.5 viewing the property as a prospective lessee not earlier than 6 months before the lease period ends; or
 - 9.1.6 fixing a notice not earlier than 6 months before the lease period ends in a reasonable position on the outside of the property saying that it is to let; or
 - 9.1.7 inspecting, cleaning or repairing another property or any services to another property.
- 9.2 The lessor must give the lessee at least 2 days written notice for access (except in an emergency). The day of the giving of the notice and any Saturday, Sunday or public holiday on which the property is not open for business are not counted.
- 9.3 The lessor must promptly make good any damage caused to the property and to any of the lessee's belongings which results from exercising these rights.
- 9.4 The lessee must give to the lessor a copy of any notice relating to the property or relating to any neighbouring property immediately after receiving the notice.

CLAUSE 10 TRANSFER AND SUB-LEASE

Can this lease be transferred or the property shared or sub-let?

- 10.1 The lessee must not transfer this lease without consent.
- 10.2 The lessor can withhold consent only if –
 - 10.2.1 the proposed transferee proposes to change the use to which the property is put; or
 - 10.2.2 where the property is a retail shop, the proposed transferee has financial resources or retailing skills inferior to those of the proposed transferor and otherwise the proposed transferee has financial resources or business experience inferior to those of the proposed transferor; or
 - 10.2.3 the lessee has not complied with clause 10.3 and, where the property is a retail shop, clause 10.4.
- 10.3 A request for the lessor's consent to a transfer of lease must be made in writing and the lessee must provide the lessor with such information as the lessor may reasonably require concerning the financial standing and business experience of the proposed transferee.
- 10.4 Where the property is a retail shop, before requesting the consent of the lessor to a proposed transfer of this lease, the lessee must furnish the proposed transferee with a copy of any disclosure statement given to the lessee in respect of this lease, together with details of any changes that have occurred in respect of the information contained in the disclosure statement (being changes of which the lessee was aware or could reasonably be expected to be aware). For the purpose of enabling the lessee to comply with this obligation, the lessee can request the lessor to provide the lessee with a copy of the disclosure statement concerned and, if the lessor is unable or unwilling to comply with such a request within 14 days after it is made, this clause 10.4 does not apply.
- 10.5 Where the lessee has complied with clause 10.3 and where required to do so clause 10.4, and the lessor has not within 42 days or where the *Retail Leases Act 1994* applies 28 days after the request was made or the lessee has complied with paragraphs 41(a) and 41(b) of that Act, whichever is the later, given notice in writing to the lessee either consenting or withholding consent, the lessor is taken to have consented.
- 10.6 The lessee has to pay in connection with any consent the lessor's reasonable legal costs, the reasonable costs of obtaining any mortgagee's consent, the stamp duty and the registration fee for the transfer.
- 10.7 Where the property is a retail shop, the lessee can sub-let, grant a licence or concession, share or part with the possession of the whole or any part of the property or mortgage or otherwise charge or encumber the lessee's estate or interest in this lease only with the written consent of the lessor which can be refused in the lessor's absolute discretion. Otherwise, the lessee cannot do any of these things.

CLAUSE 11 LESSOR'S OTHER OBLIGATIONS

What are the lessor's other obligations?

- 11.1 So long as the lessee does all the things that must be done by the lessee under this lease the lessor must allow the lessee to possess and use the property in any way permitted under this lease without interference from the lessor, or any person claiming under the lessor or having superior title to the title of the lessor.
- 11.2 The lessor must pay all outgoings for the land or the building of which the property is part when they fall due.
- 11.3 If the property is part of a building owned or controlled by the lessor –
 - 11.3.1 the lessor must maintain in reasonable structural condition all parts of the building that the lessee can use under this lease; and
 - 11.3.2 if the property has facilities and service connections shared in common with other persons the lessor must –
 - 11.3.2.1 allow reasonable use of the facilities and service connections including –
 - the right for the lessee and other persons to come and go to and from the property over the areas provided for access;
 - access by the lessee to service connections; and
 - the right for the lessee's customers to park vehicles in any area set aside for customer parking, subject to any reasonable rules made by the lessor.
 - 11.3.2.2 maintain the facilities and service connections in reasonable condition.

- 11.4 Where registration is necessary for the validity of this lease, the lessor must ensure that this lease is registered.
- 11.5 If a consent is needed for this lease, from someone such as a mortgagee or head lessor of the property, then the lessor must get the consent.

CLAUSE 12 FORFEITURE AND END OF LEASE

When does this lease end?

- 12.1 This lease ends –
- 12.1.1 on the date stated in item 3 in the schedule; or
 - 12.1.2 if the lessor lawfully enters and takes possession of any part of the property; or
 - 12.1.3 if the lessor lawfully demands possession of the property.
- 12.2 The lessor can enter and take possession of the property or demand possession of the property if –
- 12.2.1 the lessee has repudiated this lease; or
 - 12.2.2 rent or any other money due under this lease is 14 days overdue for payment; or
 - 12.2.3 the lessee has failed to comply with a lessor's notice under section 129 of the *Conveyancing Act 1919*; or
 - 12.2.4 the lessee has not complied with any term of this lease where a lessor's notice is not required under section 129 of the *Conveyancing Act 1919* and the lessor has given at least 14 days written notice of the lessor's intention to end this lease.
- 12.3 When this lease ends, unless the lessee becomes a lessee of the property under a new lease the lessee must –
- 12.3.1 return the property to the lessor in the state and condition that this lease requires the lessee to keep it in; and
 - 12.3.2 have removed any goods and anything that the lessee fixed to the property and have made good any damage caused by the removal.
- Anything not removed becomes the property of the lessor who can keep it or remove and dispose of it and charge to the lessee the cost of removal, making good and disposal.
- 12.4 If the lessor allows the lessee to continue to occupy the property after the end of the lease period (other than under a new lease) then –
- 12.4.1 the lessee becomes a monthly lessee and must go on paying the same rent and other money in the same way that the lessee had to do under this lease just before the lease period ended (apportioned and payable monthly);
 - 12.4.2 the monthly tenancy will be on the same terms as this lease, except for –
 - clause 4;
 - clauses 5.4 to 5.21 inclusive; and
 - clause 6.2 unless consent has previously been given;
 - 12.4.3 either the lessor or the lessee can end the monthly tenancy by giving, at any time, 1 month written notice to the other expiring on any date; and
 - 12.4.4 anything that the lessee must do by the end of this lease must be done by the end of the monthly tenancy.
- 12.5 Essential terms of this lease include –
- 12.5.1 the obligation to pay rent not later than 14 days after the due date for payment of each periodic instalment (and this obligation stays essential even if the lessor, from time to time, accepted late payment);
 - 12.5.2 the obligations of the lessee in clause 5.1.2 (dealing with outgoings);
 - 12.5.3 the obligations of the lessee in clause 6.1 (dealing with use);
 - 12.5.4 the obligations of the lessee in clause 7 (dealing with repairs);
 - 12.5.5 the obligations of the lessee in clause 10 (dealing with transfer and sub-lease); and
 - 12.5.6 the obligations of the lessee in clause 15 (dealing with GST).