

DATE

2019

Between

**ANGLICAN PARISH OF LITHGOW
(ABN 72 310 605 329)**

and

**LITHGOW CITY COUNCIL
(ABN 59 986 092 492)**

**LICENCE AGREEMENT
PART WALLERAWANG MEMORIAL HALL,
TWEEDIE STREET, WALLERAWANG**

Lithgow City Council
180 Mort Street
LITHGOW NSW 2790
Tel: (02) 6354 9999
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LICENCE AGREEMENT

This Agreement is made this day of 2019

BETWEEN: LITHGOW CITY COUNCIL (ABN 59 986 092 492) of Council Chambers, 180 Mort Street, Lithgow in the State of New South Wales ("**Licensor**")

AND: ANGLICAN PARISH OF LITHGOW (ABN 72 310 605 329) having its registered office at 2 Roy Street, Lithgow in the State of New South Wales ("**Licensee**")

WHEREAS:

- A. The Licensor is the registered proprietor of the Premises.
- B. The Licensee desires to use the Premises for the Purpose.
- C. The Licensor agrees to grant a licence of the Premises to the Licensee for the Purpose on the terms and conditions set out in this Licence Agreement.

IT IS AGREED by the Licensor and the Licensee as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Licence Agreement, unless the context otherwise requires:

"Accessories" means all wires, cables, ducts, plant, machinery, fixtures, fittings, equipment (including air-conditioning equipment and fire detection, evacuation and fighting equipment), kitchens, toilets, grease traps, wash basins, washrooms, water, gas and electrical fittings and equipment, pipes, drains, sewers and other services to the Building owned or controlled by the Licensor.

"Authority" means any government or government department, local government council, statutory authority, other person who is charged with the administration of a Law.

"Building" means the building situate on Lot 1 in DP15683 and known as Wallerawang Memorial Hall.

"Business Day" means a day that is not a Saturday, Sunday or public holiday in New South Wales.

"Claim" means any cost, claim, compensation, expense, loss, damage, demand or liability of any kind.

"Commencing Date" means [TO BE COMPLETED].

"Common Areas" means all parts of the Building and the Land not otherwise leased or licensed to any person which are accessed by the Licensee and other occupiers of

the Building in common with each other, including entrances, exits, roads, carpark, walkways, lavatories, stairways and loading bays (as applicable).

"Due Date" means the Commencing Date and each one year anniversary of the Commencing Date.

"Expiry Date" means [TO BE COMPLETED]

"GST" means a tax in the nature of a supply of goods and services tax levied or imposed by the Commonwealth of Australia.

"Land" means the land comprised in certificates of title folio identifiers 1/15683, 2/15683, 3/15683, 4/15683 and 5/15683.

"Laws" means any requirement of any statute, regulation, regulatory instrument, proclamation or common law present or future, whether local, state, federal or otherwise.

"Licence Fee" means the amount that is the prescribed minimum base rent pursuant to Regulation 38(1) of the *Crown Land Management Regulation 2018*, and on the Commencing Date is \$[TO BE COMPLETED].

"Licence Fee Review Date" means each one year anniversary of the Commencing Date.

"Licensee's Agents" mean the Licensee's members, employees, contractors, volunteers, agents, consultants, visitors, invitees, guests, howsoever described.

"Licensee's Property" means all items of equipment, furniture, chattels or fittings, which are brought onto the Premises by the Licensee during the Term.

"Licensor" means Lithgow City Council, its successors or assigns.

"Option Term" means one term of two (2) years.

"Option Term Commencing Date" means [TO BE COMPLETED].

"Option Term Expiry Date" means [TO BE COMPLETED].

"Premises" means that part of Wallerawang Memorial Hall identified in bold on the Plan annexed, situate at Tweedie Street, Wallerawang and comprised in part certificate of title folio identifier 1/15683.

"Purpose" means church gathering and associated services, including operation of a kids club.

"Term" means two (2) years from the Commencing Date.

1.2 Except where the context otherwise requires:

- (i) A word importing the singular number shall be regarded as importing the plural number and vice versa; and

- (ii) A reference to a Clause, Recital or Schedule is a reference to a Clause, Recital or Schedule to this Licence Agreement and a reference to a Paragraph is a reference to that Paragraph in the Clause in which the reference occurs.

2. TERM

This Agreement will continue in force for the Term, unless terminated as provided in this Licence Agreement.

3. OPTION TERM

If the Licensee wishes to renew this Licence Agreement from the Option Term Commencing Date it may do so only if:

- (a) it gives the Licensor notice of renewal in writing not less than 3 months and not more than 6 months prior to the Expiry Date; and
- (b) at the time of serving notice on the Licensor all obligations of the Licensee under this Licence Agreement have been complied with or remedied in accordance with the terms of any notice to remedy given to the Licensee.

4. LICENCE FEE

- 4.1 The Licensee must pay the Licence Fee to the Licensor, or as otherwise directed by the Licensor, on or before the Due Date, without demand by the Licensor.
- 4.2 The Licensee acknowledges that the Licence Fee is contingent upon the Premises being utilised to provide a direct benefit to the community and the Licensee being registered as a charity or not for profit organisation in accordance with the *Charities Act 2013*.

5. SERVICES

The Licensee is responsible for payment of all service and usage charges for telephone, gas, water, sewer and electricity which may properly be assessed in respect of the Premises, and any other charges incurred directly for the Purpose.

6. GOODS AND SERVICES TAX

- 6.1 The supply of the Premises under this Licence Agreement is a taxable supply under the *A New Tax System (Goods and Services Tax) Act 1999*.
- 6.2 In addition to the Licence Fee, the Licensee will pay the applicable GST amount to the Licensor, which at the Commencing Date is 10% of the Licence Fee.
- 6.3 The Licensor must provide the Licensee with an annual tax invoice in respect of such Licence Fee and GST.
- 6.4 If GST applies to any other supply made under this Licence Agreement or any other rights granted pursuant to this Licence Agreement then the Licensor will be entitled to

recover from the Licensee an additional amount on account of GST, calculated in accordance with the relevant GST legislation.

7. LICENCE FEE REVIEW

On each Licence Fee Review Date the Licence Fee will be reviewed in line with the then current minimum base rent prescribed under the *Crown Land Management Regulation 2018*.

8. USE OF PREMISES

8.1 The Licensee will:

- (a) only use the Premises for the Purpose;
- (b) keep the Premises open during usual business hours and conduct its business in accordance with the best methods and in an efficient, reputable and businesslike manner;
- (c) keep current all licences and permits required for the Purpose;
- (d) only use light, power or heat generated by electric current or gas supplied through meters;
- (e) promptly pay all utility and service charges in relation to the Premises;
- (f) immediately notify the Licensor and the proper public authorities of any infectious illness in the Premises;
- (g) promptly notify the Licensor in writing of any defect in or need to repair the Premises;
- (h) promptly notify the Licensor in writing of any circumstance of which the Licensee is aware which is likely to cause a danger or hazard to the Premises or to any person in the Premises;
- (i) keep the Premises free of all pests and vermin;
- (j) keep the Premises clean and tidy and arrange for the regular removal of any waste or rubbish from the Premises;
- (k) comply on time with all Laws and the requirements of an Authority in connection with the Licensee's use or occupation of the Premises;
- (l) use its best endeavours to ensure that the Licensee's Agents comply with the Licensee's obligations under this Licence Agreement.

8.2 The Licensee must not:

- (a) use the Premises for any purposes other than the Purpose;
- (b) use the Premises in an unsafe, noisy, offensive or unlawful manner;

- (c) mark or damage the Premises;
- (d) use the Accessories for any purposes other than those for which they are supplied;
- (e) obstruct the Common Areas or any windows, lights, air vents, air-conditioning ducts, sprinklers or fire equipment in the Premises or the Building or the emergency exits from the Premises or the Building;
- (f) store inflammable or dangerous substances in the Premises other than where reasonably required by the Licensee in connection with the Purpose but then only in such quantities and containers as are permitted by law;
- (g) keep any animal, bird, fish or reptile in the Premises;
- (h) put on the Building or on the outside of the Premises any sign, advertisement or notice without the Licensor's prior written consent;
- (i) allow the floors of the Premises to be broken, strained or damaged by overloading;
- (j) smoke or allow smoking in the Premises.

9. COMMON AREAS

9.1 Use of Common Areas

The Licensee can use the Common Areas only in connection with the use of the Premises.

9.2 Obstructing Common Areas

The Licensee must not obstruct the Common Areas.

9.3 Damage to Common Areas

The Licensee must make good any damage caused to the Common Areas by the Licensee or the Licensee's Agents within fourteen (14) days of any such damage.

10. CONDITION AND REPAIR

10.1 The Licensor licences the Premises to the Licensee in its present condition and state of repair.

10.2 The Licensor must maintain in a state of good condition and serviceable repair the essential services, the roof, the ceiling, the external walls and external doors and associated door jambs, and the floors of the premises and must fix structural defects, unless the defects were caused by the Licensee or the Licensee's Agents, in which case the Licensee must fix the structural defects.

10.3 The Licensee must otherwise maintain the Premises in its condition at the Commencing Date and promptly do repairs needed to keep it in that condition, but the Licensee does not have to alter or improve the Premises or repair fair wear and tear.

- 10.4 Upon the Expiry Date or sooner termination, the Licensee must deliver up the Premises to the Licenser in the condition and state of repair at the Commencing Date, fair wear and tear excepted.

11. LICENSEE'S PROPERTY

- 11.1 Within fourteen (14) days of the Expiry Date or sooner termination the Licensee must remove the Licensee's Property from the Premises and make good any damage caused to the Premises by the removal of the Licensee's Property.
- 11.2 If the Licensee fails to remove the Licensee's Property from the Premises in accordance with clause 11.2 the Licensee's Property will automatically vest in the Licenser and the Licenser may dispose of it at its discretion, and account to the Licensee for the cost of disposal.

12. INSURANCES AND INDEMNITIES

- 12.1 The Licensee must keep and maintain the following insurances:
- (a) public liability insurance for an amount of not less than \$20,000,000 (for each accident or event) for the Premises;
 - (b) workers compensation for its members, officers, employees, agents or contractors;
 - (c) any other insurance required by law that the Licensee is required to maintain.
- 12.2 Prior to the Commencing Date and upon each one year anniversary of the Commencing Date, the Licensee must provide to the Licenser a certificate of currency evidencing the validity and currency of insurances referred to in clause 12.1.
- 12.3 The Licensee indemnifies the Licenser and keeps the Licenser indemnified against all claims against the Licenser as a consequence of the Licensee's:
- (a) use of the Premises; and/or
 - (b) default or negligence,
- except if and to the extent that a Claim arises because of the Licenser's default or negligence.
- 12.4 The Licensee releases the Licenser from any Claim which the Licensee may have against the Licenser in connection with or arising from the Licensee's use of the Premises, unless the Claim arises from the Licenser's default or negligence.

13. SIGNS AND ADVERTISING

Notwithstanding any other provision of this Licence Agreement the Licensee must not, without the prior approval in writing of the Licenser, erect, display, affix or exhibit on or to the exterior of the Premises any signs, lights, embellishments, advertisements, names or notices PROVIDED HOWEVER that the Licenser will not withhold consent in

respect of a sign which identifies the Licensee and which advertises the activities the Licensee is conducting in the Premises.

14. NOTICES

Any notice given under this Licence Agreement:

- (a) must be in writing addressed to the intended recipient at the address shown below or the address last notified in writing by the Licensee or the Licensor (as appropriate):
 - (i) The Warden
Anglican Parish of Lithgow
2 Roy Street
LITHGOW NSW 2790
Email: office@lpachurch.org.au
 - (ii) The General Manager
Lithgow City Council
180 Mort Street
LITHGOW NSW 2790
Email: council@lithgow.nsw.gov.au
- (b) must be signed by an authorised representative of the sender; and
- (c) will be taken to have been given or served:
 - (i) if delivered in person, the date of delivery;
 - (ii) if sent by ordinary post, four (4) Business Days after it was posted; and
 - (iii) if sent by email before 5pm on a Business Day, the date it was sent, and otherwise on the next Business day.

15. DISPUTES

- 15.1 In the event of any dispute or difference between the parties as to any matter or thing arising out of this Licence Agreement, and if after diligent efforts to resolve the dispute or difference it remains unresolved, the parties may submit the matter to an agreed independent third party for dispute resolution and both parties shall abide by the ensuing decision.
- 15.2 The parties must share equally the fees and out of pocket expenses of the independent third party for the decision, and bear their own expenses.
- 15.3 The parties agree to continue performing their obligations under this Licence Agreement while the dispute or difference is being dealt with in accordance with this clause 15.

16. TERMINATION

16.1 Termination due to acquisition or force majeure event

Notwithstanding any other provision of this Licence Agreement:

- (a) if the Premises or any part thereof is acquired by compulsory process for any public purpose; or
- (b) if the Premises is totally destroyed or damaged by fire, storm, tempest or other force majeure event; or
- (c) if the Premises is partially destroyed or damaged by fire, storm, tempest or other force majeure event to the extent that the Premises cannot be used for the Purpose and the Licensor elects not to repair or rebuild the Premises after its damage,

then either party may terminate this Licence Agreement by giving the other thirty (30) days' notice in writing.

16.2 Termination for breach

If and whenever there is a breach by a party of any of the terms or conditions of this Licence Agreement:

- (a) the non-defaulting party may provide the defaulting party with a notice in writing specifying the nature of the breach and requiring the defaulting party to rectify the breach within the period specified in the notice;
- (b) the period specified in the notice must be reasonable having regard to the nature of the breach;
- (c) if the defaulting party has not rectified the breach by the expiration of the period specified in the notice, the non-defaulting party may terminate this Licence Agreement by giving thirty (30) days' notice in writing to the defaulting party, but without prejudice to any claim which the non-defaulting party may have against the defaulting party in respect of any breach under this Licence Agreement.

17. GENERAL COVENANTS – THE LICENSEE

17.1 Compliance with laws

- (a) The Licensee must comply with all Laws applicable to the Licensee's business and the Purpose for which it licences the Premises.
- (b) The Licensee will hold harmless and indemnify the Licensor in relation to any Claim against the Licensor by the Licensee or any third party arising out of the Licensee's use of the Premises or a breach by the Licensee of any Laws.

17.2 Waiver, Variation

None of the provisions of this Licence Agreement shall be taken either at law or in equity to have been varied, waived, discharged or released by the Licensor or the Licensee except by express agreement in writing signed by both parties.

17.3 Floor Overloading

The Licensee must not, and must not allow, anything to be done that may overload the walls or floors of the Premises that might cause strain or sag to the walls or floors or otherwise cause damage.

17.4 Sanitary facilities

The Licensee must not use, or allow to be used, the toilets, sinks and drainage and other plumbing facilities in the Premises for any purpose other than the purpose for which they were constructed.

17.5 Pest Control

The Licensee must take all reasonable steps to keep the Premises free from rodents, vermin, insects, pests, birds and animals and if required by the Licensor engage, from time to time, pest exterminators approved by the Licensor.

17.6 Notice of Defects

The Licensee must give the Licensor prompt notice in writing of any accident or defect in any services or fixtures, fittings, plant or equipment in the Premises and of any circumstances likely to be or to cause any danger, risk or hazard to the Premises or any person at the Premises.

18. MISCELLANEOUS

18.1 No Tenancy

The parties acknowledge and agree that this Licence Agreement is not, and not to be construed as, a demise or be deemed to create any lease or tenancy in favour of the Licensee.

18.2 No Partnership

Nothing contained in this Licence Agreement shall be deemed to constitute a partnership between the parties.

18.3 Governing Law

This Licence Agreement is governed by the laws of New South Wales.

18.4 Severability

If any part of this Licence Agreement is void or voidable then that part is severed from this Licence Agreement but without affecting the continued operation of the remainder of the Licence Agreement.

18.5 No assignment, novation or sub-licence

This Licence is personal to the Licensee and Licensor and neither party shall assign this Licence nor grant any sub-Licence without the prior written consent of the other party.

18.6 Rights Cumulative

The rights and remedies under this Licence Agreement are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

EXECUTED by the parties as an agreement

EXECUTED by **LITHGOW CITY**)
COUNCIL (ABN 59 986 092 492) by)
its General Manager pursuant to section)
377 of the Local Government Act 1993, in
the presence of:

.....
Witness signature

.....
Graeme James Faulkner
General Manager

.....
Witness name

.....
Witness address

EXECUTED by **ANGLICAN PARISH OF**)
LITHGOW (ABN 72 310 605 329) by)
its duly Authorised Officer in the presence)
of:

.....
Witness signature

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Authorised Officer signature

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Witness name

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Authorised Officer name

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Witness address

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