

LITHGOW CITY COUNCIL (ABN 59 986 092 492)

And

LITHGOW DISTRICT MEN'S SHED ASSOCIATION INCORPORATED (ABN 81 255 715 018)

**LICENCE AGREEMENT FOR
OCCUPATION OF PART CROWN
RESERVE 590046 FOR MEN'S
SHED**

AGREEMENT dated _____

BETWEEN **Lithgow City Council (ABN 59 986 092 492)**, appointed under the *Crown Land Management Act 2016* (hereinafter referred to as the "**CLM Act 2016**"), as Crown Land Manager of Reserve Tony Luchetti Sportsground and Showground, being Crown Reserve 590046 notified 7 May 1913 (hereinafter called the "**Licensor**") of 180 Mort Street, Lithgow, NSW, 2790

AND **Lithgow District Men's Shed Association Incorporated (ABN 81 255 715 018)** of 1 Fred Burley Drive, Lithgow, NSW, 2790

THE PARTIES AGREE AS FOLLOWS.

1 INTERPRETATIONS, DEFINITIONS AND ADMINISTRATION

Authority for grant of Licence

- 1.1 The Licensor warrants that it is the Crown Land Manager responsible for the care, control and management of the Premises under the CLM Act 2016.

2 DEFINITIONS

In this Licence unless the contrary intention appears:

Base Annual Rent means:

- (a) the Initial Rent where the rent has not been redetermined or adjusted in accordance with sub-clauses 14.4 or 14.5; or
- (b) in any other case - the Rent as last redetermined or adjusted in accordance with those provisions;

Business Day means any day which is not a Saturday, Sunday or Public Holiday in New South Wales;

CLM Act 2016 means the Crown Land Management Act 2016;

Commencement Date means the date referred to in Column 2 of Item 16 of Schedule 1;

Consumer Price Index Number in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

Due Date means the date for payment of Rent under this Licence as is specified in Column 2 of Item 6, of Schedule 1;

Environment has the same meaning given to that term in the *Protection of the Environment Operations Act 1997*;

Environmental Law means any Law relating to the protection of the Environment;

Expiry Date means the date referred to in Column 2 of Item 17 of Schedule 1;

"GST", "taxable supply", "consideration", "tax invoice" and "GST amount" have the meanings given to those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Hazardous Substance means a substance that because of its quality, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, physical, chemical or infectious characteristics, may pose a hazard to property, human health or the environment when improperly treated, stored, disposed of or otherwise managed;

Improvements means any structure of a permanent nature attached to the land;

Initial Rent means the Rent payable under this Licence in respect of the Premises as is specified in Column 2 of Item 5 of Schedule 1;

Law includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise;

Licence means this licence including all Schedules and Annexures hereto;

Licensee means the licensee referred to in Column 2 of Item 2, of Schedule 1;

Licensor means the licensor referred to in Column 2 of Item 1 of Schedule 1 and includes its assigns and for the purpose of clauses 35, 36, 37, 38, 39, 40, 41, and 42 includes Her Majesty the Queen, the State of New South Wales and the Minister and their heirs, successors, agents, servants, employees and contractors;

Market Rent means the Rent as specified in Column 2 of Item 3, of Schedule 1 that would reasonably be expected to be paid for the site if it were offered for the same or a substantially similar use to which the site may be put under the Licence;

Market Rent Review Date means the date described as such in Column 2 of Item 8, of Schedule 1 and expressed as an absolute dollar or as a percent of the Market Rent;

Minister means the Minister administering the *Crown Land Management Act 2016*;

Party/Parties means the parties to this Licence;

Premises means the land and/or the buildings described in the Premises Appendix and on the plan annexed thereto;

Permitted Use means the use shown in Column 2 of Item 15, of Schedule 1;

Regulations means the *Crown Land Management Regulation 2018*, as amended or replaced from time to time; or the Local Government (General) Regulation 2005;

Rent means the Base Annual Rent calculated and payable upon each Due Date less any Rent Rebate granted to the Licensee together with all other payments due to be paid by the Licensee as Rent under this Licence;

Rent Rebate means such amount as specified in Column 2 of Item 4 of Schedule 1 given to the Licensee from the Licensor as per clause 14.6 as expressed either as an absolute dollar value or a percentage of the market value;

Sub-Licensee means a person who holds a sub-licence of any part of the Premises from the Licensee in accordance with the provisions of this Licence;

Tenant Fixtures means any plant or equipment, fittings or improvements in the nature of fixtures brought onto the Premises by, or on behalf of, or at the request of, the Licensee;

Term means the term of operation of this Licence in relation to the Premises;

Term of Agreement means the figure set out in Column 2 of Item 18, of Schedule 1;

Third Party Exclusive Areas means those areas that are exclusively for the use of third parties as shown on the Plan annexed to each Premises Appendix.

3 CONSTRUCTION

3.1 This Licence must be constructed in accordance with this clause unless the context requires otherwise;

3.1.1 Plurals

Words importing the singular include the plural and vice versa;

3.1.2 Gender

Words importing any gender include the other gender;

3.1.3 Persons

A reference to a person includes:

- (a) an individual, a firm, unincorporated association, corporation and a government;
and
- (b) the legal personal representatives, successors and assigns of that person;

3.1.4 Headings

Headings (including any headings described as parts and sub-headings within clauses) wherever appearing will be ignored in constructing this Licence;

3.1.5 Clauses and sub-clauses

- (a) A reference to a clause includes all sub-clauses, paragraphs, sub-paragraphs and other components which form part of the clause referred to;
- (b) A reference to a sub-clause includes any sub-paragraphs and other components of the sub-clause referred to;

3.1.6 Time

A reference to time is a reference to local Sydney time;

3.1.7 **Money**

A reference to \$ or dollars is a reference to the lawful currency of Australia;

3.1.8 **Defined Terms**

If a word or phrase is defined cognate words and phrases have corresponding definitions. A defined term, unless inconsistent with the context of its use, is denoted by the appearance of that word using a capital letter at the beginning of that word;

3.1.9 **Writing**

A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form;

3.1.10 **Contra Preferentum**

No rules of construction will apply to the disadvantage of any Party responsible for preparation of this Licence or any part of it;

3.1.11 **Statutes**

A reference to a Statute, Act, legislation, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority;

3.1.12 **Licence**

A reference to this Licence will include any extension or variation of this Licence;

3.1.13 **Priority**

If an inconsistency occurs between the provisions of this Licence and the provisions of a licence granted in accordance with this Licence, the provisions of this Licence will prevail.

3.2 **Warranties and Undertakings**

(a) The Licensee warrants that it:

- (i) has relied only on its own inquiries about this Licence; and
- (ii) has not relied on any representation or warranty by the Licensor or any person acting or seeming to act on the Licensor's behalf.

(b) The Licensee must comply on time with undertakings given by or on behalf of the Licensee.

3.3 **Further Assurances**

Each Party must do everything necessary to give full effect to this Licence.

3.4 **Relationship of Licensor and Licensee**

Nothing contained or implied in this Licence will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the

Licensor and the Licensee. Specifically, the Parties understand and agree that neither the method of computation of Rent, nor any other provision, nor any acts of the Licensee and the Licensor or either of them will be deemed to create any relationship between them other than the relationship of Licensor and Licensee upon the terms and conditions only as provided in this Licence.

3.5 Time to be of the Essence

Where in any provision of this Licence a Party is given or allowed a specified time within which to undertake or do any act or thing or any power is conferred or any event occurs after the lapsing of a specified time, time shall be the essence of the contract in that regard.

4 SEVERABILITY

Any provision of this Licence which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction, be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provisions in any other jurisdiction.

5 ESSENTIAL CONDITIONS OF LICENCE

The Licensor and the Licensee agree that the clauses specified in Column 2 of Item 19 of Schedule 1 are essential conditions of this Licence.

6 PERMITTED USE

6.1 Grant of Licence

The Licensor grants to the Licensee a right to occupy the area delineated in red on the plan that forms Annexure A of this Licence Agreement, for the Permitted Use.

6.2 Permitted Use only

The Licensee must not:

- (a) use the Premises;
- (b) or allow them to be used (except pursuant to a Licence lawfully granted by the Licensor),

for any purpose other than the Permitted Use specified or referred to in Column 2 of Item 15 of Schedule 1.

6.3 No exclusive possession

The Licensee acknowledges that this Licence does not confer exclusive possession of the Premises upon the Licensee.

7 COMMENCEMENT OF LICENCE AND TERM

This Licence will commence on the date (and where a time is specified or referred to at that time) specified or referred to in Column 2 of Item 16, of Schedule 1 and subject to clauses 10 and 11 will continue in force until the Expiry Date (and where a time is specified or referred to at that time) specified or referred to in Column 2 of Item 17, of Schedule 1.

8 NO RIGHT TO PURCHASE OR TRANSFER OF LICENCE RIGHTS

- 8.1 In respect of this Licence, and without limitation, the grant of this Licence does not confer upon the Licensee:
- (a) a right to purchase or lease any part of the Premises; or
 - (b) any tenancy or other estate or interest in any part of the Premises other than contractual rights as Licensee under this Licence.
- 8.2 Subject to any other provisions of this Licence the Licensee must not during the Term of this Licence, sub-licence, part with possession of the Premises, transfer or create any interest in the Licence or authorise or permit any person to occupy the Premises without the prior written consent of the Licensor.

9 LICENSEE TO YIELD UP

- 9.1 The Licensee must forthwith upon the termination of this Licence or any extension of it peaceably vacate the Premises at the Licensee's expense.
- 9.2 The Licensee must:
- (a) unless otherwise provided for in this Licence, remove all Licensee Fixture/s, signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon, to or within the Premises by or on behalf of the Licensee (other than a notice displayed by the Licensor); and
 - (b) unless otherwise provided for in this Licence, rehabilitate the Premises, (to the extent to which it has been altered or affected by the Licensee's occupation and use of the Premises) as nearly as practicable to the original condition before the installation of the Licensee's Fixtures to the reasonable satisfaction of the Licensor; and
 - (c) ensure that when it vacates the Premises in relation to its occupation of the Premises under this Licence, the Premises comply with any Environmental Law to the extent applicable at the time of granting of this Licence; and
 - (d) leave the Premises in a clean and tidy condition.
- 9.3 Sub-clause 9.2 does not apply unless the Licensor permits the Licensee to carry out any works on the Premises reasonably required in order to comply with that clause.

10 TERMINATION OF LICENCE - S. 3.43 OF CLM ACT 2016 TO APPLY

- 10.1 Without limiting the Licensee's statutory or other rights apart from this Licence, the Parties acknowledge that subject to subclause 10.2 this Licence will terminate under section 3.43 of the CLM Act 2016 if the reservation or dedication over that part of the Reserve that comprises the whole or part of the Premises is revoked, unless the revocation notification otherwise provides.
- 10.2 Where only part of the Premises is affected by the revocation or proposed revocation the Parties undertake to consult to determine if an agreement under section 3.43(2) can be reached for the continuation of this Licence in respect to that part of the Premises not affected by the revocation.

10.3 The Licensee expressly acknowledges that as provided by section 3.43(4) of the CLM Act 2016 no compensation will be payable in respect of the Termination of this Licence by the operation of section 3.43.

11 TERMINATION OF LICENCE ON DEFAULT

11.1 The Licensor may terminate this Licence in the manner set out below in the following circumstances:

- (a) if the Rent or any part of it or any moneys owing to the Licensor under the Licence is or are in arrears for one month, whether formally demanded or not;
- (b) if the Licensee breaches an essential condition of this Licence or any rule or regulation made under this Licence;
- (c) if defects notified under a provision of this Licence are not remedied within the time specified in the notice;
- (d) if the Licensee is a corporation and an order is made or a resolution is passed for its winding up except for reconstruction or amalgamation;
- (e) if the Licensee is a company and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntarily or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (f) if the Licensee is a company and is placed under official management under corporations law or enters a composition or scheme of arrangement;
- (g) if the interest the Licensee has under this Licence is taken in execution;
- (h) if the Licensee or any person claiming through the Licensee conducts any business from the licensed Premises after the Licensee has committed an act of bankruptcy.

11.2 In the circumstances set out in sub-clause 11.1 the Licensor may end this Licence by:

- (a) notifying the Licensee that it is ending the Licence; or
- (b) re-entering the Premises, with force if necessary, and ejecting the Licensee and all other persons from the Premises and repossessing them; or
- (c) doing both.

11.3 If the Licensor ends this Licence under this clause, the Licensee will not be released from liability for any prior breach of this Licence and other remedies available to the Licensor to recover arrears of Rent shall not be prejudiced.

11.4 If the Licensor ends this Licence under this clause or the Licence terminates under clause 10, the Licensor may remove the Licensee's property and store it at the Licensee's expense without being liable to the Licensee for trespass, detinue, conversion or negligence. After storing it for at least one month, the Licensor may sell or dispose of the property by auction or private sale. It may apply any proceeds of the auction or sale towards any arrears of Rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.

12 ACCEPTANCE OF RENT NOT WAIVER

Demand or acceptance of Rent or any other moneys due under this Licence by the Licensor after termination does not operate as a waiver of the termination.

13 HOLDING OVER BY LICENSEE

- (a) At the end of the Term of Agreement as specified in Column 2 of Item 18 of Schedule 1, the Licensee will be entitled with the consent of the Licensor to remain in possession of the Premises on the following terms and conditions:
- (i) the Licensee will become a monthly tenant of the Licensor at a monthly rental equivalent to one twelfth proportion of the annual Rent payable at the time of expiration or sooner determination of this Licence;
 - (ii) the Licensee must comply with and be bound by the terms and conditions of this Licence insofar as the terms and conditions are applicable, provided that the Licensor may from time to time by notice in writing served on the Licensee direct that any particular condition not apply or be amended in the manner set out in the notice.
- (b) The Licensor and the Licensee expressly agree that where any provision of this Licence confers any right, duty, power or obligation on a Party upon the expiration or determination of this Licence or on the Expiry Date and the Licensee is authorised to remain in possession of the Premises pursuant to a consent granted under this clause the emergence of the right, duty, power or obligation shall be postponed until such time as the Licensee ceases to be entitled to possession pursuant to this clause.
- (c) The tenancy created by operation of this clause may be determined by the Licensor serving on the Licensee a notice to quit. The notice shall take effect at the expiration of the period of one month from the date of service of the notice or such further period as may be specified in the notice.
- (d) The tenancy created by operation of this clause may be determined by the Licensee serving on the Licensor a notice stating that as from a date specified in the notice the tenancy is surrendered.

14 LICENSEE'S RENT AND OUTGOINGS

14.1 Licensee to Pay Rent

The Licensee covenants with the Licensor that the Licensee must, during the whole of the Term of Agreement and any extension of it, pay the Rent to the Licensor in accordance with the provisions of this clause without demand free of exchange and without deduction whatsoever.

14.2 Goods and Services Tax

- (a) The Parties agree that all payments to be made and other consideration to be provided by the Licensee under the Licence are GST exclusive unless explicitly expressed otherwise. If any payment or consideration to be made or provided by the Licensee to the Licensor is for a taxable supply under the Licence on which the Licensor must pay GST and the Licensor gives the Licensee a tax

invoice, the Licensee must pay to the Licensor an amount equal to the GST payable ("the GST Amount") by the Licensor for that taxable supply upon receipt of that tax invoice.

- (b) The Parties agree that they are respectively liable to meet their own obligations under the GST Law. The GST Amount shall not include any amount incurred in respect of penalty or interest or any other amounts payable by the Licensor as a result of default by the Licensor in complying with the GST Law.

14.3 Rent and Adjusted Rent

The Licensee must pay to the Licensor on the Commencement Date the Initial Rent and thereafter must pay on each Due Date, Rent in advance adjusted as provided in sub-clauses 14.4 and 14.5.

14.4 Calculation of Annual Rental Adjustment

- (a) On each anniversary of the Due Date the Rent will be adjusted in accordance with the following formula:

$$R = B \times \frac{C}{D}$$

where:

- R represents the Base Annual Rent following adjustment under this clause;
- B represents the Base Annual Rent before adjustment under this clause;
- C represents the Consumer Price Index Number for the last quarter for which such a number was published before the Due Date; and
- D represents the Consumer Price Index Number for the last quarter of the last adjustment of Rent for which such a number was published.

- (b) In the event that such index be discontinued or abolished the Minister may at his absolute discretion nominate another Index.
- (c) Any Rent adjusted under this sub-clause shall be adjusted to the nearest whole dollar.
- (d) An adjustment of Rent made under this clause shall take effect on its Due Date, notwithstanding than any Rent notice to the Licensee is not issued until after that date specified or referred to in Column 2 of Item 6 of Schedule 1.

14.5 Market Rent Review

- (a) In addition to the Rent adjustment provided for in clause 14.4 the Rent may, subject to the following provisions of this clause, be redetermined to an amount that is the Market Rent in accordance with Division 6.3 of the CLM Act 2016 on that date with effect on and from each Market Rent Review Date by the Licensor;
- (b) A redetermination of Rent for the purposes of sub-clause 14.5(a) will be taken to have been made on the Market Rent Review Date if it is made at any time within the period of six months before and up to six months after that Market Rent Review Date specified or referred to in Column 2 of Item 8 of Schedule 1.
- (c) Where the Licensor does not redetermine the Rent as provided for in sub-clause 14.5(a) it may subsequently redetermine the Rent at any time before the next Market Rent Review Date. No succeeding Market Rent Review Date shall be postponed by reason of the operation of this clause.

- (d) A redetermination of Rent made under sub-clause 14.5(a) or 14.5(c) will take effect and be due and payable on the next Due Date following the date of issue of the notice of redetermination (or where the said Due Date and the date of issue of the notice of redetermination are the same, then that date) even if the Licensee wishes to dispute the redetermination.

14.6 Rebate for Charitable or Non Profit Organisations

- (a) At the absolute discretion of the Licensor, the Licensor may determine that the Licensee is entitled to a Rent Rebate on the basis that the Licensee is a recognised charitable or non-profit organisation;
- (b) Subject to sub-clause 14.6(a), the Rent is calculated by subtracting the Rent Rebate from the Base Annual Rent, but the Rent must exceed the statutory minimum rental applicable to tenures under the CLM Act;
- (c) Where the Licensee is not entitled to a Rent Rebate, the Base Annual Rent applies.

15 CONTINUING OBLIGATION

The obligation of the Licensee to pay Rent is a continuing obligation during the Term of Agreement and any extension of it and shall not abate in whole or in part or be affected by any cause whatsoever.

16 NO REDUCTION IN RENT

Subject to this Licence the Licensee must not without the written consent of the Licensor by any act, matter or deed or by failure or omission impair, reduce or diminish directly or indirectly the Rent reserved or imposed by this Licence. However, if at any time during the Licence:

- (a) some natural disaster or other serious event occurs which is beyond the reasonable control of the Licensee; and
- (b) as a result of the damage caused by the natural disaster or other serious event, the Licensee is not able to use the Premises in a reasonable manner,

the Licensee's obligations to pay Rent will abate to the extent proportional to the effect on the Licensee's ability to occupy and use the Premises until the Premises are restored to a condition in which the Licensee is able to conduct the Licensee's activities and/or occupy the Premises in a reasonable manner.

17 LICENSEE TO PAY RATES

- 17.1 The Licensee must when the same become due for payment pay all (or in the first and last year of the Term of Agreement the appropriate proportionate part) rates, taxes, assessments, duties, charges and fees whether municipal, local government, parliamentary or otherwise which are at any time during the currency of this Licence separately assessed and lawfully charged upon, imposed or levied in respect of the Licensee's use or occupation of the Premises to the extent referable to the Licensee's use or occupation of the Premises.

17.2 Where the Licensor requires evidence for such payments the Licensee must produce such evidence within ten Business Days after the respective due dates for payment.

17.3 In the case where such rates, taxes, duties and fees so covenanted to be paid by the Licensee are not paid when they become due the Licensor may if it thinks fit pay the same and any such sum or sums so paid may be recovered by the Licensor as if such sums were Rent.

18 LICENSEE TO PAY OTHER CHARGES

The Licensee must pay all other fees, charges and impositions for which it may properly be liable which are imposed by an authorised third party and which are at any time during the Term of Agreement payable in respect of the Premises or on account of the use and occupation of the Premises by the Licensee.

19 LICENSEE TO PAY FOR SERVICES

The Licensee must as and when the same become due for payment pay to the Licensor or to any other person or body authorised to supply the same all proper charges for gas, electricity, water or other services supplied to the Licensee or consumed in or on the Premises, by the Licensee.

20 LICENSEE TO PAY COST OF WORK

Whenever the Licensee is required under this Licence to do or effect any act, matter or thing then the doing of such act matter or thing shall unless this Licence otherwise provides be at the sole risk, cost and expense of the Licensee.

21 COSTS PAYABLE BY LICENSEE TO LICENSOR

Except when law limits costs being recovered from a Licensor by a Licensee, the Licensee must pay in full the Licensor's reasonable legal costs, the fees of all consultants and all duties fees, charges and expenses incurred reasonably, properly and in good faith by the Licensor in consequence of or in connection with or incidental to:

- (a) the preparation and completion of this Licence;
- (b) any variation of this Licence made otherwise than at the request of the Licensor;
- (c) any application for the consent of the Licensor and the Minister if applicable under this Licence;
- (d) any and every failure to comply breach or default by the Licensee under this Licence;
- (e) the exercise or attempted exercise of any right power privilege authority or remedy of the Licensor under or by virtue of this Licence;
- (f) the examination of plans, drawings and specifications of any improvement erected or constructed or to be erected or constructed on the Premises by the Licensee and the inspection of it, in this case the costs to be mutually agreed;
- (g) any entry, inspection, examination, consultation or the like which discloses a breach by the Licensee of any covenant of this Licence;

- (h) the Licensee requiring the Licensor to do any act, matter or thing under this Licence, unless otherwise provided for in this Licence.

22 COSTS PAYABLE BY LICENSOR

The Licensor must pay its own direct and external consultants costs in relation to any rental redetermination matter without reimbursement from the Licensee.

23 INTEREST ON OVERDUE MONEYS

The Licensee must pay interest to the Licensor on any moneys due and payable under this Licence or on any judgment in favour of the Licensor in an action arising from this Licence until all outstanding moneys including interest are paid in full. The rate of interest applicable is the rate set by the Licensor's Bank for the time being as its benchmark rates for overdrafts of one hundred thousand dollars (\$100,000.00) or more. Interest shall accrue and be calculated daily.

24 MANNER OF PAYMENT OF RENT AND OTHER MONEYS

The Rent and other moneys payable in accordance with this Licence must be paid to the address or bank account specified in Column 2 of Item 9, of Schedule 1 or to such other person or at such other address as the Licensor may from time to time direct by notice in writing served on the Licensee.

25 OBLIGATIONS AND RESTRICTIONS RELATING TO PREMISES

25.1 Access

Subject to the sub-clauses hereunder the Licensor confirms that the Licensee will have unfettered and free access to and from, the Premises at all times, provided however that:

- (a) The Licensee must strictly observe the reasonable directions and requirements of the Licensor at all times regarding the methods and routes of access to the Premises taken by the Licensee;
- (b) If the Licensee has shown the position of its intended access on the Access Plan and described the nature of the activity to be conducted on the land at those positions, then in respect of that access, the Licensor will not require further notice;
- (c) The Licensee as far as is practicable, must use existing access tracks to, from, within and surrounding the Premises.

25.2 Entry by the Public

The Licensee must allow the public to have right of access over that part of the Premises as specified in Column 2 of Item 20, of Schedule 1 and any such part of the Premises shall be suitably signposted. Otherwise the Licensee may prohibit unauthorised entry to the remainder of the Premises. If required by the Licensor plans

showing the areas where public access is authorised and unauthorised shall be displayed in a prominent location at the entrance to the Premises.

25.3 Additions and Alterations

The Licensee shall not make any additions or alterations to the Premises without first obtaining the written consent of the Licensor, the Minister (unless it has been deemed to have been given under section 2.23 of the CLM Act 2016) and any development consent required under the *Environmental Planning & Assessment Act 1979*. Any additions or alterations consented to by the Licensor and the Minister shall be carried out at the Licensee's expense.

25.4 Maintenance of Premises and Enclosed Areas

The Licensee must keep the Premises clean and tidy and in good order and condition.

25.5 Licensee to erect barricades etc

Where the Premises or any part of the Premises become to the knowledge of the Licensee (or which ought reasonably to be in the knowledge of the Licensee) unsafe, hazardous or dangerous the Licensee shall forthwith erect such warning signs, fences and barricades as may be necessary until the Premises are rendered safe.

25.6 No residence on Premises

The Licensee must not reside or permit any other person to reside on the Premises, unless Schedule 2, Special Conditions, permit otherwise.

25.7 Licensee not to remove materials

- (a) The Licensee must not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell or similar substance from, on or in the Premises or permit any other person to undertake such action without the prior consent in writing of the Licensor and the Minister and subject to such conditions as the Licensor or the Minister may determine.
- (b) Sub-clause 25.7(a) does not apply to any removal, digging up or excavation as may be necessary to construct or undertake any Improvement authorised by or under this Licence provided that any such removal, digging up or excavation is undertaken in accordance with the requirements of that authorisation.
- (c) A failure by the Licensee to comply with any condition imposed pursuant to sub-clause 25.7(a) constitutes a failure by the Licensee to comply with a provision or covenant of this Licence.

25.8 Licensee not to burn off

The Licensee must not carry out any burning off on the Premises except with the prior consent of the Licensor in writing, which consent shall not be unreasonably withheld, and after compliance with the requirements of the *Rural Fires Act 1997*. Any consent granted in accordance with this clause shall be subject to such reasonable conditions as the Licensor may impose.

25.9 Rodents and Vermin

The Licensee must take all reasonable precautions to keep the Premises free of rodents, vermin, insects and pests and shall in the event of failing to do so if required by the Licensor employ from time to time a duly certified pest exterminator at cost of the Licensee and as approved by the Licensor whose approval will not be unreasonably withheld. In performing its obligations pursuant to this clause the Licensee and any one acting on the Licensee's behalf shall not use any substance or undertake any activity prohibited by any legislation.

26 ADVERTISING

- (a) The Licensee must not permit to be displayed or placed on the Premises or any part of them any sign, advertisement or other notice without first obtaining the Licensor's written consent other than safety signs, in respect of which the Licensor's consent shall not be required; and
- (b) The Licensor may at any time by notice in writing require the Licensee to discontinue to use any piece or mode of advertising to which the Licensor has granted consent under sub-clause 26(a) which in the opinion of the Licensor has ceased to be suitable or has become unsightly or objectionable and the Licensee on receipt of the notice shall comply accordingly.

27 NOTIFICATION OF ACCIDENT

The Licensee must give to the Licensor prompt notice in writing of any serious accident or serious defect at or in the Premises or any part of them unless the defect or accident is capable of being and is promptly remedied by the Licensee.

28 LICENSEE NOT TO COMMIT NUISANCE ETC

The Licensee must not:

- (a) carry on or permit to be carried on at the Premises any noxious, nuisance or offensive trade or business; or
- (b) carry on or permit to be carried on at the Premises any act, matter or thing which results in nuisance damage or disturbance to the Licensor or owners or occupiers of adjoining or neighbouring lands or buildings; or
- (c) use the Premises for any illegal activity.

29 HAZARDOUS SUBSTANCES

The Licensee must not keep any Hazardous Substance on the Premises without prior consent of the Licensor, which consent shall not be unreasonably withheld.

30 RELICS

- (a) Unless authorised to do so by a permit under section 87 or a consent under section 90 of the *National Parks and Wildlife Act 1974* and subject to observance and compliance with any conditions imposed on the grant of such permit or consent the Licensee must not knowingly disturb, destroy, deface or

damage any aboriginal relic or place or other item of archaeological significance within the Premises and shall take every reasonable precaution in drilling excavating or carrying out other operations or works in the Premises against any such disturbance, destruction, defacement or damage.

- (b) If the Licensee becomes aware of any aboriginal relic or place or other item of archaeological significance within the Premises the Licensee must within 24 hours notify the Licensor and the Chief Executive of the Office of Environment and Heritage of the existence of such relic place or item.
- (c) The Licensee must not continue any operations or works on the Premises likely to interfere with or disturb any relic, place or item referred to in sub- clause 30(b) without the approval of the Chief Executive of the Office of Environment and Heritage and the Licensee shall observe and comply with all reasonable requirements of the said Director-General in relation to carrying out the operations or works.

31 ARTEFACTS

All fossils, artefacts, coins, articles of value, articles of antiquity, structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall be deemed to be the absolute property of the Licensor and the Licensee must as authorised by the Licensor watch or examine any excavations and the Licensee must take all reasonable precautions to prevent such articles or things being removed or damaged and shall as soon as practicable after discovery thereof notify the Licensor of such discovery and carry out the Licensor's orders as to the delivery up to or disposal of such articles or things at the Licensor's expense.

32 OWNERSHIP AND REMOVAL OF TENANT FIXTURES AND IMPROVEMENTS

- (a) During the Term of Agreement and any extension of it, ownership of Tenant Fixtures vests in the Licensee. Notwithstanding anything contained in this Licence, so long as any Rent or other moneys are due by the Licensee to the Licensor or if the Licensee has committed any breach of this Licence which has not been made good or remedied and whether the Licensee is still in possession or not, the Licensee shall not be entitled to remove any of the Tenant Fixtures, fittings or equipment from the Licensed property.
- (b) Upon expiry of the Licence all Improvements undertaken by the Licensee become the property of the Licensor.

33 GENERAL REQUIREMENT TO REPAIR

Without prejudice to the specific obligations contained in this Licence the Licensee must to the satisfaction of the Licensor at all times keep the Premises in good repair and properly maintained in all respects.

34 BREAKAGES

The Licensee must, immediately at the Licensee's expense, make good any breakage defect or damage to the Premises (including but not limited to broken glass) or to any adjoining premises or to any facility or appurtenance of the Licensor occasioned by want of care, misuse or abuse on the part of the Licensee or the Licensor's other Licensees

occupants occupiers or other persons claiming through or under the Licensee or otherwise occasioned by any breach or default of the Licensee hereunder.

35 INDEMNITIES AND INSURANCE

35.1 Indemnity for use of Premises

- (a) The Licensee indemnifies and keeps indemnified the Licensor from and against all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses whatsoever to which the Licensor will or may be or becomes liable for or in respect of the Licensee's occupation operation and use of the Premises or for or in respect of all losses, damages, accidents or injuries of whatsoever nature or kind and howsoever sustained or occasioned (and whether to any property or to any person or resulting in the destruction of any property or the death of any person or not) at or upon the Premises or originating on the Premises although occurring or sustained outside the same except to the extent that any such claims and demands:
- (i) arise from or are contributed to by the negligence or wilful act or omission on the part of the Licensor; or
 - (ii) arise from the occupation, operation or use of the Premises by any other occupier, or the acts of any person who has access to the Premises with the consent of another occupier, and the Licensor is adequately indemnified by that other occupier in respect of the relevant claim or demand, and the Licensor must use its reasonable endeavours to ensure that an indemnity in this form is contained in any agreement with any other occupier of the Premises.

35.2 Indemnity Continues After Expiration of Licence

The obligations of the Licensee under this clause continue after the expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination for the period limited by the Statute of Limitations.

35.3 Exclusion of Consequential Loss

Despite any other provision of this Licence, both Parties exclude, and agree that they will have no rights against the other for liability for consequential or indirect loss arising out of this Licence including (without limitation) in respect of loss of profits or loss of business. This clause does not apply in respect of wilful acts by either Party.

36 INSURANCE - PUBLIC RISK

The Licensee must effect and maintain with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises public risk insurance for an amount not less than the amount set out in Column 2 of Item 12, of Schedule 1 or such other amount as the Licensor may from time to time reasonably require as the amount payable in respect of liability arising out of any one single accident or event. The Licensor acknowledges that the Licensee may effect the public risk insurance pursuant to an insurance policy which is not specific as to the location of risk.

37 PROVISIONS RE POLICIES

- (a) All insurance policies required to be effected by the Licensee pursuant to this Licence shall be in place prior to the Licensee occupying the Premises.
- (b) The Licensee must produce to the Licensor, once per calendar year or once per period of insurance (whichever first occurs), a certificate of insurance and/or a certificate of currency in respect of the insurance policies required to be effected by the Licensee pursuant to this Licence.
- (c) The Licensee must not at any time during the Term of Agreement do or bring upon the Premises anything which it ought reasonably believe may render void or voidable any policy of insurance. If the Licensee brings anything onto the Premises whereby the rate of premium on such insurance is liable to be increased, the Licensee must obtain insurance cover for such increased risk and pay all additional premiums on the Premises required on account of the additional risk caused by the use to which the Premises are put by the Licensee.
- (d) The Licensee must use all reasonable endeavours to ensure that full, true and particular information is given to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys there under.

38 INDEMNITY FOR NON-COMPLIANCE WITH LEGISLATION

The Licensee indemnifies and keeps indemnified the Licensor from and against any and all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses whatsoever arising from the non-compliance by the Licensee with any New South Wales or Commonwealth legislation that may apply to the Licensee's use, occupation of and access to the site and the Licensee's operation of their business from and access to the site.

This clause does not merge on the expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination.

39 INDEMNITY FOR BREACH OF ENVIRONMENTAL LAW

Without prejudice to any other indemnity granted by this Licence, the Licensee indemnifies and keeps the Licensor indemnified against all claims whatsoever arising from a breach by the Licensee of any Environmental Law which breach is in relation to the Premises. This clause shall not merge on expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination.

40 NO LIABILITY FOR FAILURE OF SERVICES

The Licensor is not liable for any loss, injury or damage sustained by the Licensee or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Licensor or enjoyed by the Licensee in conjunction with the Premises or this Licence provided that such failure is not due to the negligent or wilful act or omission of the Licensor its servants or agents.

41 LICENSEE NOT TO IMPOSE LIABILITY ON LICENSOR

Subject to any other provision of this Licence, the Licensee must not without the written consent of the Licensor by any act, matter or deed or by failure or omission cause or permit to be imposed on the Licensor any liability of the Licensee under or by virtue of this Licence even though the Licensee is entitled to do so under any law present or future or otherwise.

42 RELEASE OF LICENSOR FROM LIABILITY

- (a) The Licensee occupies, uses and keeps the Premises at the risk of the Licensee and hereby releases to the full extent permitted by law the Licensor from all claims and demands of every kind resulting from any accident, damage or injury occurring therein but excluding such claims and demands to the extent that such claims and demands arise out of the negligent or wilful acts omissions or default of the Licensor. The Licensor has no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Licensee or any agent or servant of the Licensee or of any member of the public whilst in or upon the Premises (but excluding such loss or damage claims and demands to the extent that such loss or damage, claims and demands arise out of the negligent acts or wilful omissions or default of the Licensor).
- (b) The obligations of the Licensee under this clause continue after the expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination for which the Licensee is responsible. Such obligation is to be governed by the Statute of Limitations.

43 LICENSOR'S WARRANTIES AND COVENANTS

43.1 Hazardous Chemicals

The Licensor warrants that it has not received any notices pursuant to the *Contaminated Land Management Act 1997* (NSW).

44 LICENSOR'S POWERS AND FUNCTIONS

44.1 Approval by Licensor

- (a) In any case where pursuant to this Licence the doing or executing of any act, matter or thing by the Licensee is dependent upon the approval or consent of the Licensor such approval or consent is not effective unless given in writing and may be given or withheld (unless the context otherwise requires) by the Licensor and may be given subject to such conditions as the Licensor may determine unless otherwise provided in this Licence provided such consent or approval is not unreasonably withheld or such terms and conditions are not unreasonable.
- (b) Any failure by the Licensee to comply with a condition imposed by the Licensor pursuant to sub-clause 44.1(a) constitutes a failure by the Licensee to comply with a condition of this Licence.

45 APPLICATION OF CERTAIN STATE AND COMMONWEALTH LAWS

45.1 Proportionate Liability

Part 4 of the Civil Liability Act 2002 (NSW) does not apply to this Licence.

45.2 Licensee to Comply with all Commonwealth and NSW State Laws

- (a) The Licensee must comply with the requirements of all Statutes, regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the Premises to the extent to which the Licensee is bound at law to comply with the same and nothing in this Licence affects this obligation.
- (b) The Licensee must forthwith on being served with a notice by the Licensor comply with any notice or direction served on the Licensor by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs alterations or works on or to the Premises.

45.3 Licensee to Comply with Environmental Laws

In relation to its use of the Premises, the Licensee shall, during the Term of Agreement, and in relation to the Premises:

- (a) comply with relevant Environmental Law;
- (b) use its best endeavours to prevent a breach of any Environmental Law;
- (c) report any breach even if accidental; and
- (d) provide to the Licensor as soon as reasonably practicable details of notices received by or proceedings commenced against the Licensee pursuant to an Environmental Law:
 - (i) relating to a breach or alleged breach by the Licensee of an Environmental Law; or
 - (ii) requiring the Licensee to carry out works to decrease the affectation of the Premises by any Hazardous Substance.

45.4 Licensee's Failure to Comply with Statutory Requirements

Where the Licensee breaches any law in relation to its use of the Premises it is taken to breach a condition of the Licence, provided that:

- (a) the Licensee has been found guilty of the breach, and
- (b) the Licensor determines that the breach warrants the Termination of the Licence.

46 NOTICES

46.1 Service of Notice on Licensee

Any notice served by the Licensor on the Licensee must be in writing and is sufficiently served if:

- (a) served personally or left addressed to the Licensee at the address stated in Column 2 of Item 10, of Schedule 1 or such other address as the Licensee notifies in writing to the Licensor; or
- (b) sent by email to the Licensee's email address stated in Column 2 of Item 10, of Schedule 1 or such other address as the Licensee notifies in writing to the Licensor;
- (c) forwarded by prepaid security mail addressed to the Licensee at the address stated in Column 2 of Item 10, of Schedule 1;

and every such notice must also be served on the Licensee's solicitors as they may be nominated from time to time, or such other address as the Licensee's solicitors notify in writing to the Licensor, by any methods identified in subclauses 46.1 (a) and (b).

46.2 Service of Notice on Licensor

Any notice served by the Licensee on the Licensor must be in writing and is sufficiently served if:

- (a) served personally or left addressed to the Licensor at the address stated in Column 2 of Item 11, of Schedule 1 or such other address as the Licensor notifies in writing to the Licensee; or
- (b) sent by email to the Licensor's email address stated in Column 2 of Item 11, of Schedule 1 or such other address as the Licensor notifies in writing to the Licensee;
- (c) forwarded by prepaid security mail addressed to the Licensor at the address stated in Column 2 of Item 11, of Schedule 1

and every such notice must also be served on the Licensor's solicitors, as they may be nominated from time to time, or such other address as the Licensor's solicitors notify in writing to the Licensee, by any methods identified in subclauses 46.2 (a) and (b).

46.3 Notices

- (a) Any notice served by the Licensor or the Licensee under this Licence is effective if signed by a director or secretary or the solicitors for the Party giving the notice or any other person or persons nominated in writing from time to time respectively by the Licensor or by the Licensee to the other.
- (b) Any notice sent by prepaid security mail is deemed to be served at the expiration of 2 Business Days after the date of posting.

47 PROCEDURE - DISPUTE RESOLUTION

- (a) In the event that the Licensor and the Licensee are in dispute regarding any matter relating to or arising under this Licence or in respect of any approvals or consents to be granted by the Licensor (except those approvals or consents where the Licensor has an obligation to act reasonably) to the Licensee hereunder or where it is acting in its statutory capacity, then either the Licensor or the Licensee may give notice and particulars of such dispute to the other Party.
- (b) Where a notice of dispute is served pursuant to this clause the Parties agree to enter into informal negotiations to try and resolve the dispute in good faith and in an amicable manner.
- (c) If the dispute is not resolved informally within 21 days of service of written notification, the Parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the dispute. The Parties agree to provide all information and assistance reasonably requested by such third party, including access to any accounting or other business records relating to or arising out of the Licence.
- (d) A third party appointed in accordance with this clause may decide in which proportions any fees will be borne by the respective Parties. In the absence of any such decision by the third party fees shall be borne equally by the Parties.
- (e) Neither Party shall be entitled to commence or maintain any proceedings in any court or tribunal until negotiations or mediations have taken place pursuant to this clause except where either Party seeks urgent interlocutory relief.
- (f) Either Party may at any time bring negotiations or mediation to an end by serving upon the other Party written notice stating that the dispute has failed to be resolved. Upon service of such notice both Parties shall be entitled to pursue any legal remedies available to them in relation to the dispute. This sub-clause does not in any way limit a mediator's power to apportion fees under sub-clause 47(d).
- (g) Notwithstanding the existence of a dispute under this or any other clause of this Licence the Parties must, unless acting in accordance with an express provision of this Licence, continue to perform their obligations under this Licence.

MISCELLANEOUS

48 NO MORATORIUM

Any present or future legislation which operates to vary obligations between the Licensee and the Licensor, except to the extent that such legislation is expressly accepted to apply to this Licence or that its exclusion is prohibited, is excluded from this Licence.

49 NO WAIVER

No waiver by a Party of any breach of any covenant obligation or provision in this Licence either express or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Licence contained or implied. None of

the provisions of this Licence shall be taken either at law or in equity to have been varied waived discharged or released by a Party unless by express consent in writing.

50 NO MERGER

Nothing in this Licence merges, postpones, extinguishes lessens or otherwise prejudicially affects the rights and remedies of the Parties under this Licence or under any other agreement.

51 COUNTERPARTS

- (a) A Party may execute this Licence by signing any counterpart.
- (b) All counterparts constitute one document when taken together.

52 CONTACT PERSON

The Licensor and the Licensee each must nominate a person to contact about matters arising under this Licence. The person so nominated is the person referred to in Column 2 of Items 13 and 14, of Schedule 1 or such other person as the Licensor nominates in writing to the Licensee and the Licensee nominates in writing to the Licensor from time to time.

53 APPLICABLE LAW

This Licence shall be construed and interpreted in accordance with the law of New South Wales.

54 NO HOLDING OUT

- (a) The Licensee must not in connection with the Premises or otherwise directly or indirectly hold out or not permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises or the business conducted or operated thereon or any parts or parts thereof are or is being carried on or managed or supervised by the Licensor.
- (b) The Licensee must not act as or represent itself to be the servant or agent of the Licensor.

55 WHOLE AGREEMENT

- (a) The provisions contained in this Licence expressly or by statutory implication cover and comprise the whole of the agreement between the Parties.
- (b) No further or other provisions whether in respect of the Premises or otherwise will be deemed to be implied in this Licence or to arise between the Parties hereto by way of collateral or other agreement by reason or any promise representation warranty or undertaking given or made by any Party hereto to another on or prior to the execution of this Licence.
- (c) The existence of any such implication or collateral or other agreement is hereby negated.

56 SPECIAL CONDITIONS

The Special Conditions set out in Schedule 2 apply and form part of this Licence.

SCHEDULE 1

Item	Clause	Column 1	Column 2
1	2	Licensor	Lithgow City Council (ABN 59 986 092 492)
2	2	Licensee	Lithgow District Men's Shed Association Incorporated (ABN 81 255 715 018)
3	2	Market Rent	Not applicable
4	2	Rent Rebate	Not applicable
5	2	Initial Rent	\$597.10 per annum plus GST
6	2	Due Date	As indicated in a tax invoice issued by Lithgow City Council
7	14.4	Annual Rental Adjustment	1 July each year during the Term and any holding over period under clause 13
8	14.5	Market Rent Review Date	Not applicable
9	24	Address for Payment of Rent Electronic Funds Transfer details for payment of rent	Lithgow City Council, 180 Mort Street, Lithgow, NSW, 2790 Name of financial institution: Commonwealth Bank BSB: 062 566 Acc no: 2800 8904 Account in name of: Lithgow City Council
10	46.1	Licensee's address for Service of Notices	1 Fred Burley Drive, Lithgow, NSW, 2790 Attention: Rob Corke Phone: 0499 226 746/0432 926 902 Email: lithgowshedder@hotmail.com
11	46.2	Licensor's address for Service of Notices	180 Mort Street, Lithgow, NSW, 2790 Attention: The General Manager Phone: 02 6354 9999 Email: council@lithgow.nsw.gov.au
12	36	Public Risk Insurance amount	\$20 Million
13	52	Licensor's Contact Person	Sandra Politi (Property and Legal Services Officer)
14	52	Licensee's Contact Person	Rob Corke (Secretary)
15	6	Permitted Use	Men's Shed
16	7	Commencement Date	TO BE COMPLETED
17	7	Expiry Date	TO BE COMPLETED
18	2	Term of Agreement	Five (5) years

19	5	Essential Conditions of Licence	Clauses 1.1, 1.2, 6.2, 6.3, 8, 14, 33, 35, 36, 37, 38,39, 41, 42, 45.2, 45.3, 45.4
20	25.2	Entry by the public	Not applicable

SCHEDULE 2

Special Conditions

Nil

PREMISES APPENDIX

THIS IS THE PREMISES APPENDIX REFERRED TO AND DEFINED IN THE LICENCE AGREEMENT BETWEEN LITHGOW CITY COUNCIL AND LITHGOW DISTRICT MEN'S SHED ASSOCIATION INCORPORATED, IN ACCORDANCE WITH THE PROVISIONS OF THE LOCAL GOVERNMENT ACT 1993 AND CLM ACT 2016 FOR THE PERMITTED USE OF MEN'S SHED ACTIVITIES

THIS PREMISES APPENDIX VARIES AND FORMS PART OF THE LICENCE AND ITS TERMS ARE INCORPORATED IN THEIR ENTIRETY INTO THE LICENCE

Description of Premises:

Reserve Number	Part Crown Reserve 590046 – Tony Luchetti Sportsground and Showground
Parish	Lett
County	Cook
Locality	Lithgow
Lot in Deposited Plan	Part Lot 1 in DP1123449
Area of licence	Approximately 665 m ²
Commencement Date	TO BE COMPLETED
Expiry Date	TO BE COMPLETED
Initial Rent	\$597.10 per annum + GST
Plan	Plan attached and marked as "A"
Description of any structures	Old amenities block, Lithgow Aquatic Centre located at Tony Luchetti Sportsground and Showground
Third Party Exclusive Area	Not applicable
Enclosed Area <i>(where land is, or is intended to be fenced)</i>	Not applicable

APPENDIX “A”

THIS IS APPENDIX “A” REFERRED TO IN THE LICENCE AGREEMENT BETWEEN LITHGOW CITY COUNCIL AND LITHGOW DISTRICT MEN’S SHED ASSOCIATION INCORPORATED IN ACCORDANCE WITH THE PROVISIONS OF THE LOCAL GOVERNMENT ACT 1993 AND CLM ACT 2016 FOR THE PERMITTED USE OF MEN’S SHED ACTIVITIES

