

DATE

2023

Between

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

and

**WALLERAWANG KIDS CLUB INCORPORATED
(INC 2000284)**

**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 2023

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: **WALLERAWANG KIDS CLUB INCORPORATED (INC 2000284)** having its registered office at 19 James Parade, Wallerawang 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 responsible for 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 ... 2023]**.

"**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, carparks, walkways, lavatories, stairways and loading bays (as applicable).

“Due Date” means [TO BE COMPLETED] of each year during the Term.

“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 \$350 per annum plus GST, subject to review on the Licence Fee Review Date.

“Licence Fee Review Date” means [TO BE COMPLETED] of each year during the Term or any extension thereof.

“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 not applicable.

“Option Term Commencing Date” means not applicable.

“Option Term Expiry Date” means not applicable.

“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 kids club.

“Term” means 5 years being the period from the Commencing Date to the Expiry Date.

“Shared Use Agreement” means the agreement between Lithgow City Council, Anglican Parish of Lithgow and Wallerawang Kids Club Incorporated of the same date as this Licence Agreement.

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 sooner under a provision of this Licence Agreement.

3. LICENCE FOR FIVE DAYS PER WEEK

- 3.1 The Licensor grants this licence to the Licensee to use the Premises every Tuesday, Wednesday, Thursday, Friday and Saturday during the Term.
- 3.2 The Licensee acknowledges that on the date of this agreement, the Licensor will enter a separate and independent licence agreement with the Anglican Parish of Lithgow for use of the Premises on Sunday and Monday of each week, and the Licensee must not make any Claim against the Licensor in respect of such licence arrangement.

4. 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.

5. LICENCE FEE

- 5.1 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.
- 5.2 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 remaining a registered charity in accordance with the *Charities Act 2013* (Cth) or an incorporated not for profit organisation under the *Associations Incorporation Act 2009* (NSW).

6. 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*.

7. UTILITY SERVICES

- 7.1 The Anglican Parish of Lithgow is responsible for connection to and payment of all service and usage charges for telephone, electricity and gas (as applicable).

7.2 The Anglican Parish of Lithgow may apportion the charges exceeding a total of \$2,000 per annum in the manner set out in clause 6.3 of the Shared Use Agreement, and the Licensee will pay the apportioned amount directly to the Anglican Parish of Lithgow.

8. GOODS AND SERVICES TAX

8.1 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*.

8.2 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.

8.3 The Licensor must provide the Licensee with an annual tax invoice in respect of such Licence Fee and GST.

8.4 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.

9. USE OF PREMISES

9.1 The Licensee will:

- (a) only use the Premises for the Purpose;
- (b) conduct its business in accordance with the best methods and in an efficient, reputable and professional 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.

9.2 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.

10. GENERAL COVENANTS – THE LICENSEE

10.1 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, including obtaining working with children checks.
- (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.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

11. COMMON AREAS

11.1 Use of Common Areas

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

11.2 Obstructing Common Areas

The Licensee must not obstruct the Common Areas.

11.3 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.

12. CONDITION AND REPAIR

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

12.2 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.

12.3 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.

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

13. LICENSEE'S PROPERTY

- 13.1 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.
- 13.2 If the Licensee fails to remove the Licensee's Property from the Premises in accordance with clause 13.1 the Licensee's Property will automatically vest in the Licensor and the Licensor may dispose of it at its discretion, and account to the Licensee for the cost of disposal.

14. INSURANCES AND INDEMNITIES

- 14.1 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.
- 14.2 Prior to the Commencing Date and upon each one year anniversary of the Commencing Date, the Licensee must provide to the Licensor a certificate of currency evidencing the validity and currency of insurances referred to in clause 14.1.
- 14.3 The Licensee indemnifies the Licensor and keeps the Licensor indemnified against all claims against the Licensor 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 Licensor's default or negligence.
- 14.4 The Licensee releases the Licensor from any Claim which the Licensee may have against the Licensor in connection with or arising out of the Licensee's use of the Premises, unless the Claim arises from the Licensor's default or negligence.

15. SIGNS AND ADVERTISING

Notwithstanding any other provision of this Licence Agreement the Licensee must not, without the prior approval in writing of the Licensor, 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 Licensor 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.

16. 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 President
Wallerawang Kids Club Incorporated
19 James Parade
WALLERAWANG NSW 2845
Email: pug405-505@hotmail.com
 - (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, and the sender has not received a failed delivery notice, the date it was sent, and otherwise on the next Business day.

17. TERMINATION

17.1 Licensee's right of termination

At any time during the Term the Licensee may terminate this Licence Agreement, without reason, by giving one month's notice in writing to the Licensor, and the Licensee must comply with clauses 12.4 and 13.1 of this Licence Agreement upon termination.

17.2 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.

17.3 Termination for breach under this Licence Agreement

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.

17.4 Termination for breach under the Shared Use Agreement

- (a) A breach of a term of the Shared Use Agreement by the Licensee constitutes a breach of this Licence Agreement.
- (b) The Licensor may terminate this Licence Agreement in the circumstances set out in clause 9.4 of the Shared Use Agreement by giving the Licensee 30 days' notice in writing.

17.5 Termination due to defect(s) in Premises

- (a) The Licensor may terminate this Licence Agreement if any substantial repair, renovation or reconstruction of the Premises is required due to a defect or potential risk to health and/or safety, and such repair cannot practicably be carried out without vacant possession of the Premises.
- (b) Should the situation in clause 17.5(a) arise, the Licensor must give the Licensee written notice of termination providing a reasonable notice period having regard to the nature and extent of the defect.
- (c) The Licensee must not make any Claim in respect of the Licensor's termination under this clause 17.5 provided it is a valid termination.

17.6 Accrued rights or remedies

A termination under this clause 17 will not affect any rights or remedies which may have accrued at the termination date to any party against any other party in respect of any prior breach of any of the covenants and conditions contained in this Licence Agreement.

18. CONSENT AUTHORITY

18.1 The Licensee acknowledge that:

- (a) the Licensor is a consent authority with statutory rights and obligations as a Council under legislation; and
- (b) Lithgow City Council enters into this License Agreement solely in its capacity as registered proprietor of the Premises, and this Licence Agreement does not, and is not to be construed as, conferring on the Licensee any right, licence, approval, authorisation or consent required under the Local Government Act 1993 or the Environmental Planning and Assessment Act 1979.

18.2 The Licensee must obtain and maintain throughout the term of this Licence Agreement any licence, approval, authorisation or consent required for the Purpose or the Licensee's activities.

19. MISCELLANEOUS

19.1 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.

19.2 No Partnership

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

19.3 Governing Law

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

19.4 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.

19.5 No assignment, novation or sub-licence

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

19.6 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.

19.7 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.

19.8 Whole agreement

This Licence Agreement and the Shared Use Agreement is the entire agreement between the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Licence Agreement and the Shared Use Agreement.

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

.....
General Manager

Name:

.....
Witness name

.....
Witness address

EXECUTED by **WALLERAWANG KIDS CLUB INCORPORATED (INC 2000284)** by its authorised signatories pursuant to section 22 of the *Associations Incorporations Act 2009*

.....
Authorised signatory - signature

.....
Authorised signature - signature

.....
Authorised signatory - name

.....
Authorised signatory - name

Premises

