

DATE

2019

Between

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

and

**LITHGOW CROQUET CLUB INC.
(ABN 58 796 105 643)**

**LICENCE AGREEMENT
LITHGOW CROQUET FACILITY, GLANMIRE OVAL, LITHGOW**

Lithgow City Council
180 Mort Street
LITHGOW NSW 2790
Tel: (02) 6354 9999
Fax: 6351 4259
Email: council@lithgow.nsw.gov.au

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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: LITHGOW CROQUET CLUB INC. (ABN 58 796 105 643) of # in the State of New South Wales (“Licensee”)

WHEREAS:

- A. The Licensor is the owner of the Land and the Property.
- B. The Licensee desires to use and manage the Property for the purpose of playing croquet and associated activities.
- C. The Licensor agrees to grant, and the Licensee accepts, a licence of the Property 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:

“Air-conditioning Equipment” means all plant and equipment owned by the Licensor for ventilating or air-conditioning the Property.

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

“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 the commencing date of this Licence Agreement as stated within the definition of ‘Term’.

“Fire Equipment” means all fire-fighting, prevention, warning, evacuation and detection equipment within or upon any building with the Property.

“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 all of the land comprised in Lot 45 Deposited Plan 171939, which borders James Street, Young Street, Albert Street, Coalbrook Street and Sandford Lane, Lithgow and is known as Glanmire Oval.

“Laws” means any requirement of any statute, regulation, regulatory instrument, proclamation or common law present or future, whether local, state, federal or otherwise, including but not limited to *Environmental Planning & Assessment Act 1979*, *Local Government Act 1993*, *Food Act 2003*, *Roads Act 1993*, *Crown Land Management Act 2016*, *Anti-Discrimination Act 1977*, *Work Health and Safety Act 2011*, *Liquor Act 2007*.

“Legislation” means the *Environmental Planning and Assessment Act 1979* (NSW), *Local Government Act 1993* (NSW) and *the Roads Act 1993* (NSW).

“Licence Fee” means \$363.64 plus GST per annum for the term of this Licence Agreement.

“Licensee’s Agents” mean the Licensee’s members, employees, contractors, sub-contractors, suppliers, 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 Property by the Licensee or the Licensee’s Agents.

“Licensor” means Lithgow City Council.

“Property” means the area delineated on the image and site detail plan annexed and marked “A” and “B”, and includes all improvements and chattels on the Property, except the Licensee’s Property.

“Review Date” means each one year anniversary during the Term.

“Use” means playing of croquet and associated purposes, including fundraising activities.

“Term” means a period of five (5) years commencing [INSERT] and ending on [INSERT].

1.2 Except where the context otherwise requires:

- (a) A word importing the singular number shall be regarded as importing the plural number and vice versa; and
- (b) 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. COMMUNITY CLASSIFICATION

2.1 The Land, including the Property, is classified as community under *the Local Government Act 1993* and therefore the use of the Property must comply with the category assigned in a plan of management.

2.2 Lithgow City Council’s generic 2013 plan of management applies to the land and provides that the Property is categorised as “sportsground”, which is consistent with the Use under this Licence Agreement.

- 2.3 The Licensee acknowledges and agrees that it will comply with the plan of management and the provisions of *the Local Government Act 1993* (NSW) with respect to the Property classified as community land at all times during the Term.

3. LICENCE TERM

- 3.1 The Licensor grants this licence to the Licensee for the Term.
- 3.2 If requested by the Licensor, the Licensee will permit the Licensor to use the Property from time to time for community uses, provided that such usage does not unreasonably interfere with the Licensee's use and the Licensor indemnifies the Licensee from and against any loss or damage of whatever nature arising from such usage.

4. CONSIDERATION – LICENCE FEE

- 4.1 In consideration for the grant of this licence, the Licensee will pay the Licence Fee to the Licensor and covenants to observe and comply with the provisions of this Licence Agreement.
- 4.2 The Licensee acknowledges that the grant of this licence and the Licence Fee charged is contingent upon the Licensee being a not-for-profit organisation throughout the Term.

5. REVIEW OF LICENCE FEE

Not applicable for the term of this Licence Agreement.

6. GOODS AND SERVICES TAX

- 6.1 The supply of the Property 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. USE OF THE PROPERTY

- 7.1 The Licensor makes no warranty as to the suitability of the Property for the Use.
- 7.2 The Licensee covenants that it has satisfied itself as to the suitability and adequacy of the Property for the Use, and acknowledges that it uses the Property at its own risk.
- 7.3 The Licensee must:
- (a) only use the Property for the Use;

- (b) comply on time with all Laws and requirements of any Authority in connection with the Licensee's use of the Property;
- (c) obtain and maintain all licences, permits, consents or approvals required for the Use;
- (d) use its best endeavours to ensure that the Licensee's Agents comply with the Licensee's obligations under this Licence Agreement;
- (e) promptly notify the Licensor of any circumstance of which the Licensee is aware which is likely to cause a danger or hazard to any person on the Property;
- (f) provide the Licensor with a full set of keys to the Property, and in the event that the locks are changed, ensure that the Licensor receives a new set of keys.

7.4 The Licensee must not:

- (a) use the Property for any purpose other than the Use;
- (b) cause any nuisance to any person who owns or occupies surrounding land or property;
- (c) use the Property in an unsafe, noisy, offensive or unlawful manner;
- (d) take onto the Property any inflammable or dangerous substances other than those reasonably required by the Licensee in connection with the Use, but then only in such quantities and containers as are permitted by law.

8. UTILITY SERVICES

8.1 The Licensee will:

- (a) only use light, power or heat generated by electric current or gas supplied through meter;
- (b) arrange and maintain connection to utilities servicing the Property and promptly pay all charges directly to the service providers;
- (c) install at the Licensee's cost any meters necessary for the Licensee's use.

9. MAINTENANCE AND REPAIR OBLIGATIONS

9.1 **Property and amenities**

The Licensee will at all times keep the Property, including the amenities, in good repair and condition having regard to their condition at the Commencing Date.

9.2 The Licensee's obligations to repair under clause 9.1 do not extend to any repair required because of:

- (a) fair wear and tear; or
- (b) structural repairs (unless such repairs are required because of the Licensee's particular use of the Property or the Licensee's negligence, act or omission); or

- (c) the Licensor's negligence.

9.3 Outdoor area

- (a) The Licensee will ensure that any lawns, turf, gardens and trees on the Property are kept in good repair and condition throughout the Term, having regard to their condition at the Commencing Date.
- (b) The Licensee must repair or restore the grounds (or any part of them) at its cost if such repair or restoration is required because of the Licensee's negligence or failure to maintain or the Licensee's particular use of the Property.
- (c) The Licensee is not required to repair or restore the grounds (or any part of them) if such repair or restoration is required due to an act of vandalism beyond the control of the Licensee, or a force majeure event.
- (d) In the event of an act of vandalism or force majeure event, Council is under no obligation to repair the grounds (or any part of them) if Council deems it uneconomical to do so and Council may terminate this licence forthwith.

9.4 Electrical equipment - safety

The Licensee will ensure that all electrical appliances brought onto the Property or used on the Property are tested and tagged in accordance with AS/NZS 3760.

9.5 Alterations

The Licensee must not make any structural alterations or additions to the Property without obtaining the Licensor's prior written consent.

10. SIGNS AND ADVERTISING

The Licensee must not, without the prior approval in writing of the Licensor, erect, display, affix or exhibit on or to the exterior of any building or fence upon the Property 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.

11. TERMINATION

If:

- (a) the Property becomes substantially inaccessible; or
- (b) the Property or facilities on it are destroyed or otherwise become substantially unfit for the Use; or
- (c) the use of the Property or facilities on it becomes illegal,

then and in any such event, this Licence Agreement shall automatically terminate, and neither party will be liable to the other for any Claim arising out of termination of this Licence under this clause.

12. DELIVERING UP

At the end of the Term or sooner termination, unless a new Licence Agreement is entered, the Licensee must:

- (a) remove the Licensee's Property from the Property and make good any damage caused to the Property (if any) from such removal;
- (b) ensure the Property is left in good repair and condition having regard to the condition at the Commencing Date;
- (c) return all keys and access cards (as applicable) to the Licensor.

13. INSURANCE

The Licensee must effect and keep current during the Term, insurance policies covering:

- (a) public liability for \$20,000,000 in respect of any single incident, noting Lithgow City Council as an interested party on the policy;
- (b) any other insurances the Licensee is required to hold by law (including workers compensation insurance),

and prior to the Commencing Date and following each policy renewal, provide a copy of the certificate of currency for public liability insurance to the Licensor.

14. RIGHT IS PERSONAL

14.1 This licence is personal between the Licensor and the Licensee and does not grant to the Licensee a leasehold interest in the Property.

14.2 The parties agree that:

- (a) the Licence does not confer exclusive possession of the Property on the Licensee;
- (b) the Licensor can access the Property at any time and the Licensee may not exclude the Licensor, its officers, employees and invitees from:
 - (i) entry onto the Property;
 - (ii) inspection of the Property; and/or
 - (iii) the performance of any works on the Property,

provided that such entry onto, inspection of and/or performance of work on the Property does not unreasonably interfere with the use of the Property by the Licensee;

- (c) the Licensee will not at any time seek to enforce an interest in the Property in competition with the interest held by the Licensor.

14.3 The Licensee will give the Licensor (or anyone authorised in writing by the Licensor) access to the Property at any reasonable time for the purpose of inspecting the condition of the Property, or how it is being used.

15. STRONGER COUNTRY COMMUNITIES FUND ROUND 2

15.1 The parties acknowledge that the NSW Government has approved a Stronger Country Communities Fund Round 2 Grant of \$160,405 for the purpose of upgrading the croquet sports field.

15.2 Notwithstanding any other provision of this Licence Agreement, the parties agree and covenant to comply with the terms of the letter from Lithgow City Council to Lithgow Croquet Club dated 1 February [2019] noting reference SCCFR2, which sets out the responsibilities and requirements for management of the grant, the project and maintenance of the sports field.

16. OWNERSHIP OF ASSETS

16.1 The Licensee further acknowledges and agrees that:

- (a) all improvements and chattels on and in the Property, other than the Licensee's Property, vest in the Licensor absolutely; and
- (b) notwithstanding any monetary or in kind contribution, government grant, donation or benefit attributed by the Licensee to the improvement of the Property (whether made prior to or during the Term), the Licensee has no legal, equitable, common law, or other right or interest in the Property, and warrants that it will not make any Claim against the Licensor in this regard.

17. POSITION OF COUNCIL

17.1 Consent authority

The parties acknowledge that the Licensor is a consent authority with statutory rights and obligations as a Council under Legislation.

17.2 The Licensee acknowledges that:

- (a) the Licensor enters into this Licence Agreement in its capacity as Licensor, and this Licence Agreement does not, and is not to be construed as, conferring on the Licensee any right, licence, approval or consent required to be granted by a consent authority; and
- (b) the Licensee must obtain and maintain throughout the Term of this Licence any approval, consent, authorisation or licenced required for the Use or the Licensee's activities on the Property.

18. INDEMNITIES

18.1 The Licensee indemnifies the Licensor against all claims for which the Licensor may become liable, whether during or after the Term, in respect of, arising from or contributed to by:

- (a) any act, neglect, default or omission of the Licensee or the Licensee's Agents; and

(b) the Licensee's use of the Property.

18.2 This indemnity does not extend to any claim arising from or contributed to by any negligent act or omission of the Licensor.

19. ESSENTIAL TERMS

19.1 Clauses 4, 5, 6, 7, 8, 9, 12, 13, 16 are essential terms of this Licence Agreement.

19.2 A breach of an essential term of this Licence Agreement gives rise to a right of termination by the Licensor by giving 14 days' notice in writing to the Licensee.

20. 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) Licensor:

The General Manager
Lithgow City Council
180 Mort Street
LITHGOW NSW 2790
Email: council@lithgow.nsw.gov.au

(ii) Licensee:

Lithgow Croquet Club Inc.
[DETAILS TO BE INSERTED]

(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.

21. MISCELLANEOUS

21.1 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.

21.2 No Partnership

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

21.3 Governing Law

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

21.4 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.

21.5 No assignment, novation or sub-licence

This Licence is personal to the Licensor and Licensee and neither party shall assign this Licence nor grant any sub-Licence.

21.6 Non-merger

The obligations of the parties will not merge on the expiry of the Term in relation to any breach of obligation arising prior to, or consequent upon, such expiration.

21.7 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.

21.8 Entire agreement

This agreement is the entire agreement of 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 agreement.

21.9 Costs

Each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this Licence 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

.....
Graeme James Faulkner
General Manager

.....
Witness name

.....
Witness address

EXECUTED by **LITHGOW CROQUET**)
CLUB INC. (ABN 58 796 105 643) by its)
duly Authorised Officers pursuant to)
section 22(1) of the Associations)
Incorporations Act 2009:

.....
Authorised Officer signature

.....
Authorised Officer signature

.....
Authorised Officer name

.....
Authorised Officer name

DRAFT

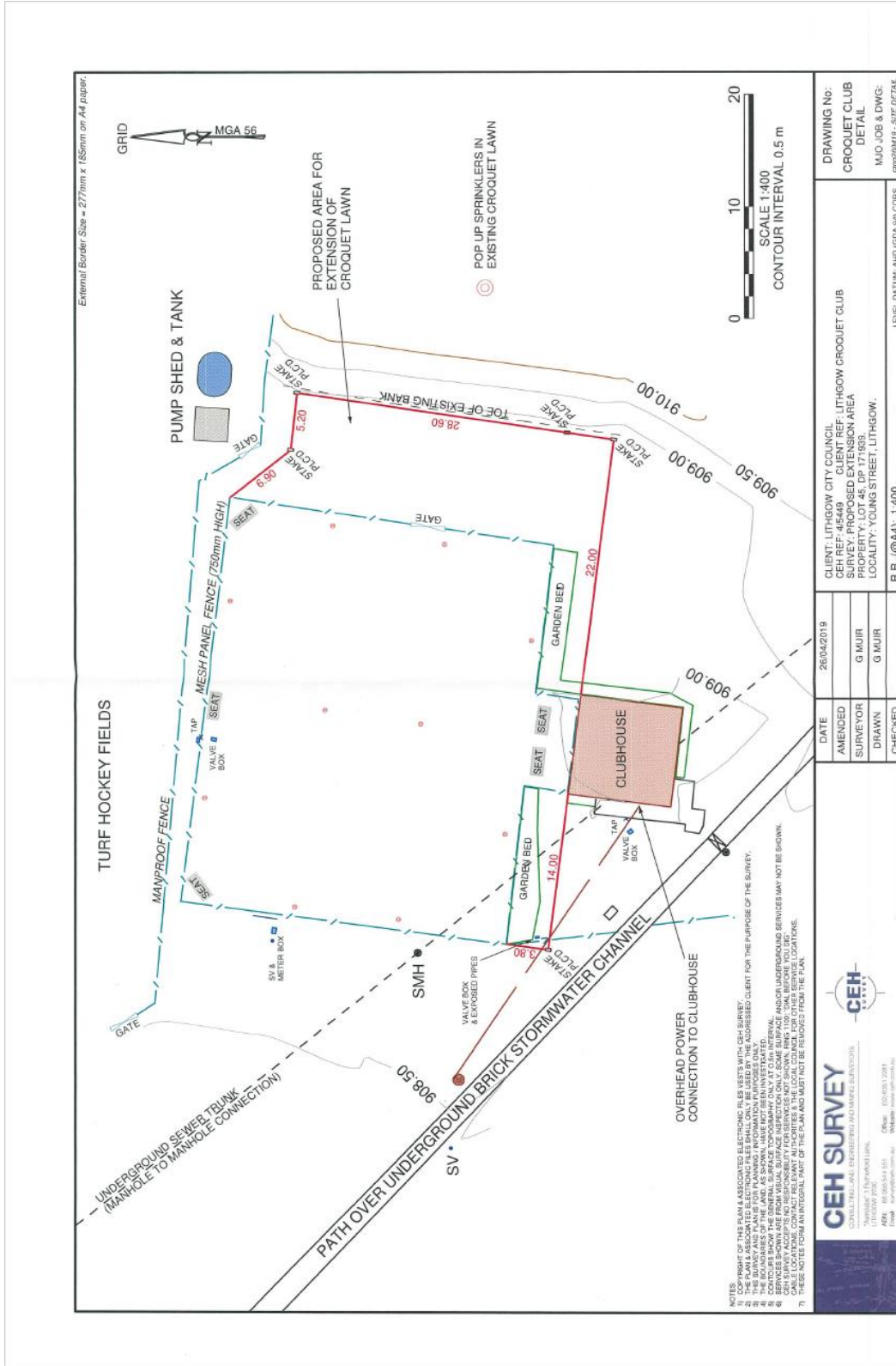
ANNEXURE "A"

**PROPERTY
(IMAGE - SHOWS APPROXIMATE BOUNDARIES ONLY)**



ANNEXURE "B"

PROPERTY (SITE DETAIL PLAN)



NOTES:
 1) THE PLAN & ASSOCIATED ELECTRONIC FILES ARE THE PROPERTY OF CEH SURVEY.
 2) THE PLAN & ASSOCIATED ELECTRONIC FILES SHALL ONLY BE USED BY THE ADDRESSED CLIENT FOR THE PURPOSE OF THE SURVEY.
 3) THE PLAN & ASSOCIATED ELECTRONIC FILES SHALL NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF CEH SURVEY.
 4) THE BOUNDARIES OF THE LAND AS SHOWN HAVE NOT BEEN INVESTIGATED.
 5) CONTOUR INTERVAL 0.5 METER.
 6) THESE NOTES FORM AN INTEGRAL PART OF THE PLAN AND MUST NOT BE REMOVED FROM THE PLAN.
 7) THESE NOTES FORM AN INTEGRAL PART OF THE PLAN AND MUST NOT BE REMOVED FROM THE PLAN.

CEH SURVEY
 CONSULTING LAND ENGINEERING AND SURVEYING SERVICES
 7/170 WINDY LAKE
 ABERDEEN, SOUTH AUSTRALIA 5005
 Phone: 08 8555 5444
 Email: info@cehsurvey.com.au Website: www.cehsurvey.com.au

DATE	26/04/2019
AMENDED	
SURVEYOR	G MUJIR
DRAWN	G MUJIR
CHECKER	

CLIENT: LITHGOW CITY COUNCIL
 CLIENT REF: #5449
 SURVEY: PROPOSED EXTENSION AREA
 LOCALITY: YOUNG STREET, LITHGOW.
 R.B. (044) - 1:400
 LEVEL DATUM: AHD (GDA 94) CORRS

DRAWING No:
**CROQUET CLUB
 DETAIL**
 JOB & DWG:
 creg@ahj - SITE DETAIL