

DATE

2020

Between

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

and

**LITHGOW MUSICAL SOCIETY INC.
(ABN 51 886 958 392)**

**LICENCE AGREEMENT
67 BRIDGE STREET, LITHGOW**

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

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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, Copyright Act 1968.

“Licence Fee” means \$3,000 plus GST per annum, adjusted in accordance with clause 8 on each Review Date.

“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, material, chattels, or contents brought onto the Property by the Licensee or the Licensee’s Agents.

“Licensor’s Property” means all items of equipment, furniture, material, chattels, fittings or fixtures in or on the Property belonging to the Licensor.

“Option Term” means the period of 12 months from the Option Term Commencing Date to the Option Term Expiry Date.

“Option Term Commencing Date” means 1 January 2022.

“Option Term Expiry Date” means 31 December 2022.

“Permitted Use” means meetings, rehearsals, performances and minor scene fabrication work directly associated with the Licensee’s musical productions to be performed on the Property.

“Property” means the property situate at 67 Bridge Street, Lithgow and comprised in certificate of title folio identifier 2/1077295, but excludes the gallery space and office space identified in **Annexure A**.

“Review Date” means 1 January 2022.

“Term” means twelve (12) months from the Commencing Date.

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. TERM

This Licence Agreement will continue in force for the Term, unless terminated sooner under clause 14 of this Licence Agreement.

3. LICENCE FOR DESIGNATED DAYS

3.1 The Licensor grants this licence to the Licensee to use the Property as follows during the Term:

- (a) Monday of each week, subject to clauses 3.3 and 3.4;
- (b) Thursday of each week from, subject to clauses 3.3 and 3.4;
- (c) allocated dates of up to 6 week's duration around the month of May, to be determined by mutual agreement between the parties at least six (6) months prior to 1 May each year;
- (d) allocated dates up to 6 week's duration around the month of November, to be determined by mutual agreement between the parties at least six (6) months prior to 1 November each year,

hereinafter referred to as the "**Designated Days**".

3.2 The Licensor is at liberty to make the Property available for public hire or to enter a licence arrangement with a third party for the use of the Property on any day that is not a Designated Day, and the Licensee may not make any Claim against the Licensor in respect of such hire or licence arrangement.

3.3 Notwithstanding any other provision of this Licence Agreement, if the Property is required for public hire on a day stipulated in clause 3.1(a) or 3.1(b), the Licensor may cancel the Licensee's use of the Property for the relevant day by giving the Licensee one (1) week notice in writing.

3.4 In the event of a cancellation under clause 3.3, the Licensee may request use of the Property on another day during the same week (being Monday to Sunday inclusive, subject to availability) at no additional cost, and the terms and conditions of this Licence Agreement shall apply. If the Licensee does not request another day during the same week or the Property is not available on another day during the same week, such right is waived and no compensation is payable to the Licensee.

4. LICENCE FOR STORAGE ROOM

4.1 The Licensor grants the Licensee exclusive use of the designated backstage storage room on the lower level ("**Storage Room**") during the Term to store the Licensee's Property.

4.2 The Licensee may access the Storage Room:

- (a) during the Designated Days (as may be varied from time to time under clauses 3.3 and 3.4);
 - (b) at other times, only as pre-arranged with the Licensor.
- 4.3 The Licensor will provide the Licensee's nominated key holder with a key for access to the Storage Room. The key holder must:
- (a) sign for the key and provide their contact details; and
 - (b) notify the Licensor in writing if their contact details change or there is a change of key holder.
- 4.4 The Licensor must not provide a key to the Storage Room to any third party.
- 4.5 The Licensee is at all times responsible for the key to the Storage Room and the Licensee's Property and shall bear all risk and cost associated with the key and the Licensee's Property, including any locksmith's costs should the need to engage a locksmith arise.

5. EXCLUDED AREAS AND SHARED USE OF FACILITIES

- 5.1 The Licensee acknowledges that the Excluded Areas do not form part of this Licence Agreement.
- 5.2 The Licensor may make the Excluded Areas available for public hire, enter a licence arrangement with a third party or use the Excluded Areas for its own purpose.
- 5.3 At all times while the Excluded Areas are in use by a third party or the Licensor, the Licensee agrees to share the use of the bathroom and kitchen facilities.
- 5.4 The Licensee may not make any Claim against the Licensor in respect of any matter arising out of this clause 5.

6. LICENCE FEE

- 6.1 The Licensee will pay the Licence Fee to the Licensor as follows during the Term:
- (a) \$1,500 plus GST on or before 1 May 2021; and
 - (b) \$1,500 plus GST on or before 30 November 2021.
- 6.2 If the Licensee wishes to use the Property in addition to the Designated Days, the Licensee must pay the applicable booking hire fee set by Lithgow City Council's fees and charges from time to time and the terms and conditions of this Licence Agreement will apply to the additional days.

7. GOODS AND SERVICES TAX

- 7.1 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*.
- 7.2 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.
- 7.3 The Licensor must provide the Licensee with a tax invoice in respect of such Licence Fee and GST.
- 7.4 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.

8. REVIEW OF LICENCE FEE

- 8.1 On each Review Date the Licence Fee will be adjusted by the consumer price index, in accordance with the following formula:

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

X = the Licence Fee as of the last Review Date or if none, the Licence Fee at the Commencing Date

CPI 1 = the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the last Review Date or if none, the Commencing Date

CPI 2 = the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the Review Date

Y = the new Licence Fee for the year beginning on the Review Date

- 8.2 If the index used to calculate the new Licence Fee is discontinued the Licensor may substitute another index that, as nearly as practicable, serves the same purpose and, if there is no such index, then the Licence Fee will be increased by 2.5% on the Review Date.

9. OPTION TERM

- 9.1 If the Licensee wishes to renew this Licence Agreement for the Option Term it may do so only if:

- (a) it serves notice on the Licensor 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 it provides a record, signed as true and correct by the authorised representative of the Licensee, setting out the number of performances, attendance numbers at performances, revenue received from performances, and any other relevant matter; and
- (c) 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 of breach given to the Licensee.

9.2 If the Licensee provides the Licensor with a valid notice exercising the Option Term in accordance with clause 9.1 the renewal licence will be the same as this licence except for the following changes:

- (a) the new commencing date will be 1 January 2022;
- (b) the new expiry date will be 31 December 2022;
- (c) the new licence fee will be the amount determined by clause 8.1;
- (d) the new licence fee payment dates will be 1 May 2022 and 30 November 2022;
- (e) this clause 9 will be omitted;
- (f) the Review Date will be omitted;
- (g) definitions applicable to the option term will be omitted.

10. LICENSEE'S COVENANTS AND INDEMNITY

10.1 The Licensee covenants to:

- (a) comply with all Laws applicable to the Licensee's business, including but not limited to any licensing rights required for any performance, production or publication of material;
- (b) comply with all Laws applicable to the Permitted Use for which it licences the Property.

10.2 The Licensee indemnifies and holds harmless 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 Property or a breach by the Licensee of any Laws.

11. LICENSEE'S OBLIGATIONS

11.1 The Licensee must:

- (a) only use the Property for the Permitted Use;
- (b) obtain and maintain all licences, permits, consents or approvals required for the Permitted Use;
- (c) 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;
- (d) promptly repair any damage caused to the Property or the Licensor's Property by the Licensee or the Licensee's Agents, at its cost;
- (e) comply with any evacuation and emergency procedures that apply to the Property;
- (f) complete an induction with the Licensor on the use of lighting and technical equipment, and only use the lighting and technical equipment in the manner shown;
- (g) at the conclusion of each use of the Property ensure that all seating is returned to theatre style configuration and single chairs are stacked to the side of the hall area;
- (h) at the conclusion of each use of the Property, ensure that all of the Licensee's Property is stored in the Storage Room or removed from the Property, including any scene fabrication work;
- (i) at the conclusion of each use of the Property, ensure that the Property is left in a clean and tidy state, and if necessary engage a professional cleaner at the Licensee's cost;
- (j) ensure that the Licensee's Agents comply with the Licensee's obligations under this Licence Agreement.

11.2 The Licensee must not:

- (a) use the Property for any purpose other than the Permitted Use;
- (b) undertake fabrication work in the lower level workshop or on the Property unless it is minor scene fabrication work;
- (c) cause any nuisance to any person who owns or occupies surrounding land or property;
- (d) use the Property in an unsafe, noisy, offensive or unlawful manner;

- (e) take onto the Property any inflammable or dangerous substances other than those reasonably required by the Licensee in connection with the Permitted Use, but then only in such quantities and containers as are permitted by law;
- (f) allow anything to be done that may overload the walls or floors of the Property that might cause strain or sag to the walls or floors or otherwise cause damage;
- (g) use, or allow to be used, the toilets, sinks and drainage and other plumbing facilities in the Property for any purpose other than the purpose for which they were constructed;
- (h) make any structural alterations or additions to the Property.

12. SIGNS AND ADVERTISING

- 12.1 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.
- 12.2 Notwithstanding clause 12.1, the Licensor will not object to the Licensee promoting the Property as “Home of the Lithgow Musical Society” provided the Licensee has obtained any consent or approval (if required) to use such name, and any signage is reasonable in the opinion of the Licensee.
- 12.3 The Licensee indemnifies and holds harmless the Licensor in relation to any Claim against the Licensor arising out of the Licensee’s use of the name “Home of the Lithgow Musical Society”.

13. INSURANCES AND INDEMNITIES

- 13.1 The Licensee must effect and keep current during the Term, insurance policies with a reputable insurance company 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; and
 - (b) any other insurances the Licensee is required to hold for its business or the Permitted Use by law.
- 13.2 Prior to the Commencing Date and following each policy renewal, the Licensee must provide a copy of the certificate of currency for public liability insurance to the Licensor.
- 13.3 If the Licensee requires insurance cover for the Licensee’s Property, the Licensee must arrange its own contents insurance policy.

13.4 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, omission, default or negligence of the Licensee or the Licensee's Agents; and/or
- (b) the Licensee's use of the Property.

13.5 The indemnity in clause 13.4 does not extend to any claim arising from or contributed to by any negligent act or omission of the Licensor.

14. TERMINATION

14.1 Licensee's right to terminate without reason

- (a) The Licensee may terminate this Licence Agreement without cause or reason by giving the Licensor one month notice in writing.
- (b) In the event of the Licensee's termination under clause 14.1(a), the Licence Fee must be paid until and including the termination date indicated in the notice of termination, and an adjustment will be made as follows:
 - (i) if the Licence Fee has been paid beyond the termination date, the Licensor will provide a refund to the Licensee; or
 - (ii) if the Licence Fee has not been paid up until the termination date, the Licensee must pay the Licensor a pro-rata amount, calculated daily until the termination date.

14.2 Termination due to acquisition or force majeure event

Notwithstanding any other provision of this Licence Agreement, if the Property:

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

this Licence Agreement will automatically terminate without notice.

14.3 Termination for breach

If and whenever there is a breach by a party of any of the term or condition of this Licence Agreement, other than a breach of an Essential Term:

- (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 and scale of the breach, but such period must not exceed 42 days;
- (c) if the defaulting party has not rectified the breach by the date specified in the notice, the non-defaulting party may terminate this Licence Agreement by giving fourteen (14) days' notice in writing to the defaulting party.

14.4 Termination under this clause 14 is without prejudice to any claim, which a party may have against the other party in respect of any breach under this Licence Agreement.

15. ESSENTIAL TERMS

15.1 Clauses 6, 10, 13, 16 are Essential Terms of this Licence Agreement.

15.2 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, unless otherwise stated in this Licence Agreement.

15.3 Termination under this clause 15 is without prejudice to any claim, which a party may have against the other party in respect of any breach under this Licence Agreement.

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) Licensor:

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

- (ii) Licensee:

[NAME]

[POSITION]

Lithgow Musical Society Inc.

[REGISTERED ADDRESS]

- (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.

17. DELIVERING UP

On the Expiry Date or sooner termination under clause 14, unless a new agreement is entered, the Licensee must:

- (a) remove the Licensee's Property from the Property (including the Storage Room) 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, and repair any damage caused to the Property by the Licensee or the Licensee's Agents;
- (c) return all keys and access cards (as applicable) to the Licensor.

18. NO WARRANTY AS TO SUITABILITY

18.1 The Licensor makes no warranty as to the suitability of the Property for the Permitted Use.

18.2 The Licensee covenants that it has satisfied itself as to the suitability and adequacy of the Property for the Permitted Use, and acknowledges that it uses the Property at its own risk.

19. RIGHT IS PERSONAL

19.1 This licence is personal between the Licensor and the Licensee and does not grant to the Licensee a leasehold or any other interest in the Property.

19.2 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.

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

20. OWNERSHIP OF ASSETS

20.1 The Licensee 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.

21. CAPACITY OF LICENSOR

The Licensor discloses and the Licensee acknowledges that:

- (a) the Licensor is a consent authority with statutory rights and obligations;
- (b) 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
- (c) the Licensee must obtain and maintain throughout the Term of this Licence any approval, consent, authorisation or licence required for the Permitted Use.

22. MISCELLANEOUS

22.1 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.

22.2 No assignment, novation or sub-licence

This Licence is personal to the Licensor and Licensee and the Licensee must not assign this Licence nor grant any sub-Licence.

22.3 No partnership or tenancy

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

22.4 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.

22.5 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.

22.6 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.

22.7 Entire agreement

This Licence 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 agreement.

22.8 Costs

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

22.9 Governing law

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

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

.....
Craig Butler
General Manager

.....
Witness name

.....
Witness address

EXECUTED by **LITHGOW MUSICAL SOCIETY INC. (ABN 51 886 958 392)** 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

ANNEXURE A
GALLERY SPACE AND OFFICE SPACE (EXCLUDED AREAS)