

DATE

2021

Between

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

and

**LITHGOW CITY TENNIS CLUB INC.
(INC Y0462634 / ABN 75 089 908 768)**

**LICENCE AGREEMENT
TENNIS FACILITY – GLANMIRE OVAL, LITHGOW**

Lithgow City Council
180 Mort Street
LITHGOW NSW 2790
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LICENCE AGREEMENT

This Agreement is made this day of 2021

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 CITY TENNIS CLUB INC.(INC Y0462634 / ABN 75 089 908 768)** of
[REGISTERED ADDRESS] in the State of New South Wales (“**Licensee**”)

WHEREAS:

- A. The Licensor is the owner of the Tennis Facility.
- B. The Licensee wishes to have exclusive use of the Tennis Facility for the Permitted Use.
- C. The Licensor agrees to grant, and the Licensee accepts, a licence of the Tennis Facility on the terms and conditions set out in this licence agreement.

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

1. DEFINITIONS

In this licence agreement, unless the context otherwise requires:

"Air-conditioning Equipment" means the plant and equipment owned by the Licensor for ventilating or air-conditioning the Tennis Facility (if any).

"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.

"Expiry Date" means the date which is three (3) years from the Commencing Date.

"Fire Equipment" means the fire-fighting, prevention, warning, evacuation and detection equipment in or on the Tennis Facility (if any).

“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 known as Glanmire Oval, which borders James Street and Sandford Avenue, Lithgow and is legally identified as Lot 45 in Deposited Plan 171939.

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

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

“Licence Fee” means \$510.00 per annum plus GST on the Commencing Date, subject to review on each Review Date.

“Licensee’s Invitees” 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 Tennis Facility by the Licensee or the Licensee’s Invitees.

“Permitted Use” means activities directly associated with playing and coaching tennis for the benefit of the community.

“Review Date” means each one year anniversary after the Commencing Date.

“Tennis Facility” means the tennis courts, structures and buildings within the area framed in black on Annexure A.

“Term” means a period of three (3) years from the Commencing Date.

2. GRANT OF LICENCE FOR THE TERM

- 2.1 The Licensor grants this licence to the Licensee for the Term on the terms and conditions set out in this licence agreement.
- 2.2 The Licensee acknowledges that the grant of this licence is contingent upon the Licensee operating the Tennis Facility on a not-for-profit basis, and the Licensee and the Licensee’s Invitees must not use the Tennis Facility for personal gain or profit.
- 2.3 The Licensee will, within 7 days’ of receiving a request in writing from the Licensor, provide to the Licensor such information and/or financial records as requested, to verify that the Tennis Facility is operated on a not-for-profit basis.

2.4 Holding over

- (a) If the Licensee continues to use the Tennis Facility after the Expiry Date with the Licensor's approval (other than under a new licence agreement), it does so on a monthly basis on the same terms and conditions as this licence agreement.
- (b) Either party may terminate the monthly licence by giving the other party one month's Notice in writing.

3. LICENSEE'S CAPACITY TO ENTER AGREEMENT

- 3.1 The Licensee enters this agreement in its capacity as an incorporated association.
- 3.2 The Licensee warrants that during the Term of this licence agreement it will comply with all Laws applicable to incorporated associations, including the Associations Incorporations Act 2009 and the Associations Incorporations Regulation 2016.
- 3.3 The Licensee further warrants that it will comply with any orders of directions it may receive from NSW Fair Trading, the government agency responsible for regulating incorporated associations in NSW.

4. LICENCE FEE

In consideration for the grant of this licence, the Licensee will pay the Licence Fee to the Licensor by the due date and without setoff or deduction.

5. REVIEW OF LICENCE FEE

- (a) The Licence Fee from and including the relevant Review Date is the greater of the Licence Fee payable immediately preceding that Review Date and the amount resulting from the following calculation:

$$\frac{A \times C}{B}$$

in which -

- A** is the Australian Statistician's Consumer Price Index (All Groups) figure for Sydney last published before the Review Date;
- B** is the Australian Statistician's Consumer Price Index (All Groups) figure for Sydney last published before the Commencing Date or before the most recent Review Date (whichever is the later); and
- C** is the Licence Fee payable immediately before the relevant Review Date.

- (b) If the Consumer Price Index is discontinued or suspended, within 21 days after the Review Date, the Licence Fee will be increased by 3% per annum on each Review Date.

6. GOODS AND SERVICES TAX

- 6.1 The supply of 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. COMMUNITY LAND

- 7.1 The Land, which includes the Tennis Facility, is classified as community land under the Local Government Act 1993 and any use of the Land must comply with the category assigned in a plan of management.
- 7.2 The category assigned to the Land under Lithgow City Council's generic 2013 plan of management is "sportsground".
- 7.3 The Permitted Use under this licence agreement complies with the assigned category and the Licensee warrants that it will not use the Tennis Facility for any purpose other than the Permitted Use.

8. PERMITTED USE

- 8.1 The Licensee has satisfied itself as to the suitability and adequacy of the Tennis Facility for the Permitted Use, and acknowledges that it uses and manages the Tennis Facility at its own risk.
- 8.2 The Licensee must:
 - (a) only use the Tennis Facility for the Permitted Use;
 - (b) comply on time with all Laws and requirements of any Authority in connection with the Licensee's use of the Tennis Facility;

- (c) obtain and maintain all licences, permits, consents or approvals required for the Permitted Use;
- (d) use its best endeavours to ensure that the Licensee's Invitees comply with the Licensee's obligations under this licence agreement;
- (e) promptly notify the Licensor of any circumstance involving the Tennis Facility of which the Licensee is aware which is likely to cause a danger or hazard to any person;
- (f) provide the Licensor with a full set of keys to the Tennis Facility, and in the event that the locks are changed, ensure that the Licensor receives a new set of keys.

8.3 The Licensee must not:

- (a) use the Tennis Facility for any purpose other than the Permitted Use;
- (b) cause any nuisance to any person who owns or occupies surrounding land or property;
- (c) use the Tennis Facility in an unsafe, noisy, offensive or unlawful manner;
- (d) take onto the Tennis Facility any inflammable or dangerous substances.

9. UTILITIES

The Licensee will:

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

10. MAINTENANCE, REPAIR AND SUPPLY OF SANITATION EQUIPMENT AND ITEMS

10.1 General

The Licensee will at all times:

- (a) keep the Tennis Facility, including the amenities, in good repair and condition having regard to their condition on the Commencing Date;

- (b) keep the internal surfaces in a clean and sanitary condition;
- (c) ensure the Tennis Facility is kept free of rubbish, and dispose of rubbish appropriately;
- (d) keep the Tennis Facility free of pests and vermin;
- (e) ensure that all electrical appliances brought onto the Tennis Facility are tested and tagged in accordance with AS/NZS 3760;
- (f) replace all damaged or non-operative electric light bulbs and tubes in the Tennis Facility;
- (g) immediately repair any damage to the Tennis Facility caused by an act or omission of the Licensee or the Licensee's Invitees.

10.2 Supply of sanitation equipment and items

If the Tennis Facility has toilet amenities, the Licensee is responsible for making available adequate supplies of sanitation equipment and items for use by the Licensee's Invitees, such as rubbish bins, sanitary units, toilet paper, hand towels, soap and cleaning supplies.

10.3 Licensor repairs

The Licensor is responsible for repairs required to the Tennis Facility due to:

- (a) fair wear and tear; and
- (b) structural repairs,

unless such repairs are required because of a negligent act or omission of the Licensee.

10.4 Air-conditioning and fire equipment

If the Tennis Facility contains Air-conditioning Equipment or Fire Equipment, the Licensor is responsible for maintaining, repairing and replacing same, provided that such repair or replacement is not required because of a negligent act or omission of the Licensee.

10.5 Alterations

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

11. 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 Tennis Facility 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.

12. INSURANCE

12.1 The Licensee must effect and keep current during the Term, the following insurances:

- (a) public liability cover of \$20,000,000 in respect of any single event. Prior to the Commencing Date and following each policy renewal, the Licensee must provide the Licensor with a certificate of currency of insurance noting the following details;
 - (i) Lithgow City Council as an interested party;
 - (ii) Identify the situation of risk, eg Tennis Facility at Glanmire Park, James Street, Lithgow.
- (b) any other insurances the Licensee is required to hold by law.

12.2 The Licensee bears the risk of the Licensee's Property on the Tennis Facility and the Licensee indemnifies the Licensor from any Claim in this regard.

13. INDEMNITIES

13.1 The Licensee indemnifies the Licensor against all Claims for which the Licensor may become liable in respect of, arising from or contributed to by:

- (a) any breach of this licence agreement by the Licensee;
- (b) any act or omission of the Licensee or the Licensee's Invitees; and
- (c) the Licensee's use of the Tennis Facility.

13.2 This indemnity does not extend to any Claim arising from a negligent act or omission of the Licensor.

14. LICENCE IS A PERSONAL RIGHT

14.1 The parties agree that:

- (a) this licence agreement does not confer exclusive possession on the Licensee;

(b) the Licensee may not exclude the Licensor, its officers, employees and invitees from:

- (i) entering the Tennis Facility;
- (ii) inspecting the Tennis Facility;
- (iii) the performance of any work to the Tennis Facility,

provided that such entry, inspection of and/or performance of work does not unreasonably interfere with the Licensee's use of the Tennis Facility.

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

15. OWNERSHIP OF ASSETS

The Licensee acknowledges that:

- (a) all improvements and chattels in or on the Tennis Facility, other than the Licensee's Property, vest in the Licensor absolutely;
- (b) notwithstanding any monetary or in kind contribution, government grant, donation or benefit attributed by the Licensee to the construction or improvement of the Tennis Facility (whether made prior to or during the Term), the Licensee has no legal, equitable, common law, or other right or interest in the Tennis Facility,

and warrants that it will not make any Claim against the Licensor in this regard.

16. CAPACITY OF LICENSOR

The Licensee acknowledge that:

- (a) the Licensor is a consent authority with statutory rights and obligations under Legislation;
- (b) the Licensor enters this licence agreement in its capacity as land owner and not as a consent authority, and this licence agreement does not, and is not to be construed as conferring on the Licensee any right, approval or consent required to be obtained from council in its capacity as a consent authority; and
- (a) the Licensee must obtain and maintain throughout the Term of this licence agreement any approval, consent or authorisation required for the Permitted Use.

17. TERMINATION

17.1 Termination - if Licensee defaults

- (a) If the Licensee breaches a term of this licence agreement and does not remedy that breach within 14 days of receiving a Notice from the Licensor, the Licensee will be in default.
- (b) If the Licensee is in default, the Licensor may:
 - (i) terminate this agreement by giving 7 days' notice in writing to the Licensee; and
 - (ii) recover from the Licensee any loss suffered by the Licensor as a result of the default; and
 - (iii) exercise any right available to it at law.

17.2 Termination - automatic termination

This licence agreement shall automatically terminate if:

- (a) the Tennis Facility becomes substantially inaccessible; or
- (b) the Tennis Facility is destroyed or otherwise becomes substantially unfit for the Permitted Use; or
- (c) due to unforeseen circumstances or an uncontrollable event, the Tennis Facility becomes unsafe or hazardous to use,

and neither party shall make a Claim against the other for termination under clause 17.2.

18. 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 Tennis Facility and make good any damage caused to the Tennis Facility from such removal;
- (b) ensure the Tennis Facility is left in good repair and condition having regard to the condition on the Commencing Date;
- (c) return all keys and access cards (as applicable) to the Licensor.

19. 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:

The President
Lithgow City Tennis Club Inc.
[INSERT REGISTERED ADDRESS]
Email: [INSERT EMAIL]

(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.

20. MISCELLANEOUS

20.1 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.

20.2 No Partnership

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

20.3 Governing Law

This licence agreement is governed by the laws of New South Wales.

20.4 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.

20.5 No assignment, novation or sub-licence

This licence is personal to the Licensee and the Licensee may not assign this licence agreement nor grant any sub-licence, without the prior approval in writing of the Licensor.

20.6 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.

20.7 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.

20.8 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.

20.9 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 and resolution
number **[INSERT]** , in the presence of:

.....
Witness signature

.....
Craig Butler
General Manager

.....
Witness name

.....
Witness address

EXECUTED by **LITHGOW CITY TENNIS CLUB**)
INC.(INC Y0462634 / ABN 75 089 908 768))
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"

TENNIS FACILITY

