

# Agreement for Licence



**Premises:** Part of Boronia Park Community and Sports Facility,  
Boronia Park, Hunters Hill, New South Wales 2110

## **PARTIES**

Hunter's Hill Municipal Council trading as Hunter's Hill Council  
(Licensor)

**AND**

Hunters Hill Rugby Union Football Club Inc ACN 640 536 890  
(Licensee)



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## AGREEMENT FOR LICENCE

**THIS Agreement** is made on:

### BETWEEN

Hunter's Hill Municipal Council trading as Hunter's Hill Council of Town Hall, 22  
Alexandra Street, Hunters Hill, NSW 2110

**(Licensor)**

And

Hunters Hill Rugby Union Football Club Inc ACN 640 536 890 of

**(Licensee)**

### RECITALS:

- A.** The Licensor is the Crown Land Manager of the Land (Folio Identifier 7352/1156319) on which it proposes to construct the Boronia Park Community and Sports Facility (the **Building**).
- B.** The Licensor intends to lodge a development application for the construction of the Building on the Land.
- C.** Following Construction of the Building and provision of Funding, the Licensor has agreed at the request of the Licensee to grant and the Licensee will accept a Licence of the Premises subject to the terms of this Agreement for Licence.
- D.** As part of its obligations under the Licence and this Agreement for Licence the Licensee must make a payment of a Capital Contribution which is to be utilised by the Licensor to fund the construction of the Building.

## OPERATIVE PROVISIONS

### IT IS AGREED

#### 1. DEFINITIONS AND INTERPRETATIONS

1.1. In this Agreement, unless otherwise indicated by the context:

- (a) **Agreement** means this Agreement for Licence.
- (b) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney;
- (c) **Building** means the building constructed on the Land of which the Premises form a known as Boronia Park Community and Sports Facility, situated on the Land.
- (d) **Capital Contribution** means the capital contribution to be paid by the Licensee to the Licensor pursuant to clause 5.1 and 5.3 of this Agreement for Licence, being the amount required to fund the Cost of Constructing the Building (estimated at \$1,500,000) being an amount calculated as the cost of constructing the Building and associated project management fees less the amount of the Council Contribution and otherwise as specified in clause 4.3 of the Licence
- (e) **CLM Act 2016** means the Crown Land Management Act 2016;
- (f) **Council** means Hunter's Hill Council, a body politic as defined in the *Local Government Act 1993* and include its successors and assigns and shall include its servants, officers, employees and agents.
- (g) **Council Contribution** means the amount of the Council's total contribution towards the cost of constructing the Building fixed in the amount of \$1,100,000 comprising a fixed amount of \$1,000,000 in grant funding obtained from the NSW Stronger Communities Grant and a fixed Council payment of \$100,000 toward the cost of project management.
- (h) **Conditions Precedent** means the conditions precedent to the granting of the Licence specified in **Clause 2**.
- (i) **Consent Authority** means the consent authority for the Development Application pursuant to the EPA Act.

- (j) **Development Application** means an application for the development of the Land lodged by or on behalf of the Licensor to allow for the construction of the Building.
- (k) **Development Approval** means an approval of the Development Application by the Consent Authority.
- (l) **Effective Date** means the date of the Commencement Date of the Licence specified as the date falling 14 days after the latter of the date that the Licensor's Notice and the Licensee's Notice is issued.
- (m) **EPA Act** means the *Environmental Planning and Assessment Act 1979*.
- (n) **GST** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth and includes notional GST of the kind for which payments may be made under section 5 of the Intergovernmental Agreement Implementation (GST) Act 2000 by a person who is a State entity within the meaning of that Act;
- (o) **Land** means the land in Certificate of Title Folio Identifier 7352/1156319 which includes the Premises and the Building.
- (p) **LG Act** means the *Local Government Act 1993*.
- (q) **Licence** means the Licence of the Premises **annexed** to this Agreement as the annexure marked with the letter "A".
- (r) **Licensor's Notice** means the date that the Licensor gives written notice to the Licensee that the conditions precedent specified in **clause 2.1 (a) and (b)** have been satisfied;
- (s) **Licensee's Notice** means the date that the Licensee gives written notice to the Licensor that the condition precedent **in clause 2.1(c)** has been satisfied.
- (t) **Month** means calendar month;
- (u) **Permitted Use** means the permitted use of the Premises by the Licensee as specified in the Licence.
- (v) **Person** includes natural persons and incorporated and unincorporated associations;

- (w) **Plan** means the plan of the Premises annexed to the Licence Agreement as the Annexure marked with the letter “A”.
- (x) **Premises** means the area licensed to the Licensee in accordance with this Agreement identified as that part of the Land comprising the Playing Fields and part of the Building identified in the Plan as the Storage Room Meeting Room and Canteen; including the Licensor's Property, fixtures, goods, plant and Equipment in, on or affixed thereto.
- (y) **Sunset Date** means the date falling 24 Months after the date of this Agreement.

1.2. In this Agreement, unless otherwise indicated by the context:

- (a) words importing the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation of this Agreement;
- (c) a reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Agreement;
- (d) where any word or phrase is given a definite meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (e) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
- (f) a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;
- (g) a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns;
- (h) a covenant or agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally; and
- (i) a reference to a body, whether statutory or not;
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body;is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

## 2. CONDITIONS PRECEDENT TO GRANT OF LICENCE

- 2.1. The grant of the Licence is conditional upon the following conditions precedent being satisfied by the Sunset Date:
- (a) The Licensor securing Development Approval on terms acceptable to the Licensor;
  - (b) The completion of the construction of the Building demonstrated by the issuing of an occupation certificate issued pursuant to the provisions of the EPA Act.;
  - (c) The Licensee obtaining sufficient funding to secure its obligations to make the Capital Contribution under the Licence and clause 5.1 of this Agreement for Licence;
  - (d) The Licensee paying the Capital Contribution to Council in accordance with clause 5.1 and 5.3.

## 3. NOTIFICATION

- 3.1. The Licensor must issue the Licensor's Notice to the Licensee no later than 14 days after the date that the last condition precedent specified in **clauses 2.1(a) and (b)** has been satisfied.
- 3.2. The Licensee must issue the Licensee's Notice no later than 14 days after the date that the condition precedent **in clause 2.1(c)** has been satisfied.

## 4. LICENCE

- 4.1. In consideration of the covenants and rights set out in this Agreement the Licensor will grant and the Licensee will accept the Licence of the Premises from the Effective Date.
- 4.2. The Licence will be completed by the Licensor or the Licensor's solicitors who are authorised to insert where appropriate any other information necessary to complete any blanks.
- 4.3. The Licensor and the Licensee will be bound by the covenants and conditions contained in the Licence on and from the Effective Date which shall be the Commencing Date under the Licence.

## 5. FUNDING ARRANGEMNT

- 5.1. The Licensee must pay the Capital Contribution to the Council within fourteen (14) days of securing sufficient funding to enable it to make the Capital Contribution payment and in any event no later than fourteen (14) days after giving the Licensee's

Notice and payable prior to commencement of the construction of the Building with such amount released to the Council to be applied towards the cost of constructing the Building.

- 5.2. The Council acknowledged receipt of \$400,000 from the Licensee as part payment of the Capital Contribution being an amount held in trust by the Council as at the date of this Agreement for Licence to be applied towards the cost of constructing the Building.
- 5.3. The Licensee acknowledges that the total amount of the Capital Contribution payable by the Licensee may vary following completion of the construction of the Building and warrants that it will pay any additional amount required to fund the cost of constructing the Building to the intent that the Council's Contribution shall remain fixed and the Licensee shall be responsible for the total cost of constructing the Building calculated as the total cost of construction of the Building less the amount of the Council Contribution which shall be payable within fourteen (14) days of the Licensee being requested to make such further payment, if required.

## 6. **DEFAULT AND TERMINATION**

- 6.1. The Licensor may terminate this Agreement by giving written notice to the Licensee if the Licensee:
- (a) repudiates its obligations under this Agreement; or
  - (b) enters into a scheme, makes an assignment for the benefit of its creditors or enters into an arrangement with its creditors, an order is made to wind up the Licensee or a liquidator, receiver, receiver and manager, administrator or official manager is appointed in respect of the Licensee; or
  - (c) fails to issue the Licensee's Notice prior to 5pm on the Sunset Date.

and where time is of the essence for the purposes of this clause.

- 6.2. The Licensee may terminate this Agreement by giving written notice to the Licensor if the Licensor:
- (a) repudiates its obligations under this Agreement; or
  - (b) fails issue the Licensor's Notice prior to 5pm on the Sunset Date.



## 7. **INDEMNITIES BY THE LICENSEE**

- 7.1. The Licensee indemnifies the Licensor in respect of any liability or loss arising out of and any costs incurred at any time whatsoever as a result (directly or indirectly) of a breach of any term or condition of this Agreement by the Licensee; and
- 7.2. The provisions of this clause will continue to apply notwithstanding the expiry or earlier termination of this Agreement.

## 8. **ASSIGNMENT**

- 8.1. The rights, duties and obligations of the Licensee under this Agreement are personal to the Licensee and must not be assigned.

## 9. **GST**

- 9.1. Unless otherwise provided in this Agreement, any moneys payable under this Agreement have been calculated without regard to GST.
- 9.2. Any amount which is payable on account of GST as a consequence of any supply made under this Agreement is to be paid to the party making the supply at the same time as payment is made for the relevant supply.

## 10. **COSTS**

- 10.1. Each party to this Agreement must pay its own costs and disbursements of and incidental to or the preparation and negotiation of this Agreement and the Licence.
- 10.2. A defaulting party must pay the non-defaulting party their legal costs and any other costs reasonably incurred, incidental to and arising from the defaulting party's default of any of its obligations under this Agreement.

## 11. **NO PARTNERSHIP**

- 11.1. Nothing in this Agreement is deemed or construed by the parties or any other person as creating the relationship of partnership, principal and agent or joint venturer between the parties.

## 12. **NO CAVEATS**

- 12.1. The Licensee must not lodge or authorise any Person to lodge a caveat for the Licensee's interest in the Land or the Premises under this Agreement.

### 13. **NOTICES**

13.1. A notice or other communication required or permitted to be given by one party to another must be in writing and:

- (a) delivered personally;
- (b) sent by pre-paid mail to the address of the addressee specified in this Agreement; or
- (c) sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee.

13.2. A notice or other communication is taken to have been given (unless otherwise proved):

- (a) if mailed, on the second Business Day after posting; or
- (b) if sent by facsimile before 4 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

13.3. A party may change its address for service by giving notice of that change in writing to the other parties.

### 14. **WAIVER OR VARIATION**

14.1. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

14.2. The exercise of a power or right does not preclude:

- (a) its future exercise; or
- (b) the exercise of any other power or right.

14.3. The variation or waiver of a provision of this Agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

### 15. **GOVERNING LAW AND JURISDICTION**

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

15.2. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

## 16. FURTHER ASSURANCE

16.1. Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

## 17. COUNTERPARTS

17.1. This Agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the Agreement will be the date on which it is executed by the last party.

## 18. WHOLE AGREEMENT

18.1. In relation to the subject matter of this Agreement:

- (a) this Agreement is the whole agreement between the parties; and
- (b) this Agreement supersedes all oral and written communications by or on behalf of any of the parties.

## 19. NO RELIANCE ON WARRANTIES AND REPRESENTATIONS

19.1. In entering into this Agreement, each party:

- (a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Agreement made by any Person; and
- (b) has relied entirely on its own enquiries in relation to the subject matter of this Agreement.

19.2. This clause does not apply to warranties and representations that this Agreement expressly sets out.

## 20. SEVERANCE

20.1. If any part of this Agreement is invalid or unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

## 21. NO MERGER

21.1. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other Person at any time.

## 22. **CONSENTS AND APPROVALS**

22.1. Where this Agreement gives any party a right or power to consent or approve in relation to a matter under this Agreement, that party may withhold any consent or approval or give consent or approval conditionally or unconditionally. The party seeking consent or approval must comply with any conditions the other party imposes on its consent or approval.

## 23. **DISPUTE RESOLUTION**

23.1. All disputes or differences arising out of this Licence will be resolved in accordance with this **clause 22**, unless:

- (a) a party is seeking urgent interlocutory relief or a remedy where a delay in commencing proceedings in Court could prejudice the party's entitlement to seek that remedy;
- (b) an incident has arisen that requires urgent resolution which mediation might not resolve; or
- (c) the process in the remainder of this clause 22 has been exhausted.

### 23.2. **Notice of Dispute**

Either party, may at any time, notify the other party in writing that there is a dispute or difference concerning any matter in this Licence. That Notice must:

- (a) identify the subject matter of the dispute;
- (b) identify the relevant provisions of this Licence;
- (c) annex copies of any correspondence, or background material and information relevant to that dispute; and
- (d) contain any particulars of quantification of the dispute.

### 23.3. **Parties to Confer**

The parties must, within twenty-one (21) days of the service of the Notice, meet in an attempt to discuss, and to reach a mutually acceptable decision, on the matter of the dispute.

### 23.4. **Referral to Mediation**

If:

- (a) the matter in dispute is not settled within ten (10) business days of the meeting referred to in the preceding paragraph, or such later date as the parties may agree; or
- (b) either party refuses to attend a meeting in accordance with clause 22.3; then
- (c) the difference or dispute must be the subject of a mediation administered by the Australian Dispute Centre (**ADC**) conducted and held in accordance with the mediation rules of the ADC in force at the time of the appointment of a mediator.

23.5. The mediator will be appointed:

- (a) by the parties, from a panel suggested by the ADC within twenty-eight (28) days of the referral of the difference or dispute for mediation; or
- (b) if a mediator is not appointed by agreement within that period, by the Secretary-General of the ADC at the request of either party.

23.6. The costs of and associated with formal mediation before a mediator under this clause are to be paid by the parties to the mediation in such proportions as they may agree among themselves or, failing agreement, as directed by the mediator, or otherwise in equal shares.

## 24. **LOCAL GOVERNMENT ACT**

24.1. The provisions of this Agreement shall at all times be read and construed subject to the provisions of the LG Act and nothing contained in this Agreement shall be interpreted or construed so as to fetter the discretion of the Licensor acting in its capacity as a local government authority whether as a regulatory or consent authority and the Licensor specifically reserves its rights acting in those capacities to make such decisions and take such action as authorised at law (**Decisions**) and where those Decisions shall override any countervailing provision(s) in this Agreement and the Licence and the Licensee will not be entitled to raise any objection, requisition, claim or demand in connection with any such Decision.

## 25. **CONFIDENTIALITY**

25.1. The Licensor and the Licensee agree that the terms of this Agreement are and must remain confidential. Neither party may disclose the terms of this Agreement or the contents of this Agreement or any associated documents or negotiations other than as otherwise discoverable by public inquiry to any third party without the prior written

consent of the other party or being compelled by law to do so and the Licensee undertakes not to make any public announcements about its interest under this Agreement, the Licence or in relation to the Premises without the prior written consent and authority of the Licensor.

26. **NO OBLIGATIONS PURSUANT TO FUNDING COMMITMENT**

- 26.1. The parties acknowledge that the Licensor will not have any role in respect of the Licensee's fund-raising activities undertaken by the Licensee of its own accord and in order to raise funds to meet its obligation to make the Capital Contribution.
- 26.2. The Licensee warrants that it will ensure sound governance practices are adopted with respect to any fundraising activities that it engages in in connection with its obligations to make the Capital Contribution and that it will ensure that any promotion of its fund raising activities clearly articulates the purpose for which funds are being raised and that the fund raising activities are being undertaken solely by the Licensee and that the Council does not have any involvement in those fund raising activities.
- 26.3. The Payment of the Capital Contribution to the Council pursuant to the terms of the Licence represents consideration for the granting of the Licence only.

## Executed as an Agreement

### For the Licensor:

Signed for **Hunter's Hill Municipal Council**  
**trading as Hunter's Hill Council ABN 75 570**  
**316 011** by its authorised officer  
in the presence of:

.....  
Signature of Witness

.....  
Signature of Authorised Officer

.....  
Name of Witness

.....  
Name of Authorised Officer

### For the Licensee:

Signed by **Hunters Hill Rugby Union**  
**Football Club Inc ACN 640 536 890** in  
accordance with Section 127 of the  
Corporations Act 2001 in the presence of:

.....  
Signature of Witness

.....  
Signature of Sole Director / Secretary

.....  
Name and Address of Witness

.....  
Name of Director [BLOCK LETTERS]