



## **Notice of Reserve Trust Manager Meeting**

A Reserve Trust Manager Meeting will be held in the Ballina Shire Council Chambers, 40 Tamar Street, Ballina on **Thursday 23 February 2017 commencing at 12 noon.**

### **Business**

1. Apologies
2. Declarations of Interest
3. Deputations
4. Committee Reports

A handwritten signature in black ink, appearing to read 'Paul Hickey', with a long horizontal line underneath.

Paul Hickey  
**General Manager**

## Table of Contents

1.	Apologies.....	1
2.	Declarations of Interest.....	1
3.	Deputations .....	1
4.	Committee Reports.....	2
4.1	Rescission Motion - Ballina Farmers Markets	2
4.2	Lennox Head Alstonville Surf Life Saving Club - Tenure	4
4.3	Ballina Coastal Reserve Trust - Marine Rescue NSW Lease	40

1. Apologies
  2. Declarations of Interest
  3. Deputations
- 

**1. Apologies**

**2. Declarations of Interest**

**3. Deputations**

#### **4.1 Rescission Motion - Ballina Farmers Markets**

---

#### **4. Committee Reports**

#### **4.1 Rescission Motion - Ballina Farmers Markets**

**Councillor**                      Cr Meehan  
   Cr Williams  
   Cr Wright

---

We move

That Resolution RT250117/1, as follows, be rescinded:

#### **Ballina Farmers Market - Relocation to Commemoration Park**

1. *That the Trust seeks Expressions of Interest (EOI) for market management.*
2. *That a Councillor briefing be held on developing a structure for the operation of the markets and the terms and conditions for the EOI.*
3. *That the temporary licence granted to Mr and Mrs Smith be extended until the finalisation of the EOI process.*
4. *That the current market management agreement continue until the finalisation of the EOI process.*

In the event that the above rescission motion is carried, we intend to move the following alternative motion:

1. *That the Trust authorises the General Manager to negotiate with Mr Burless regarding the operation of the Ballina Farmers Market on Commemoration Park for a period of three years, consistent with the sentiments expressed in this report.*
2. *That a temporary licence be granted to Mr and Mrs Smith to operate a single market stall on Saturday mornings at the refurbished Missingham Park carpark site for a period of six months.*
3. *That no market activities or stalls, aside from those authorised under points 1 and 2 and where food or produce is to be sold as part of an approved event or festival, be authorised in the Missingham Park and Commemoration Park locality for a period of three years or the Ballina Farmers Market ceases to operate on the land.*
4. *Once negotiations are complete, that Council authorises the Council seal to be attached to the licences.*

**COUNCILLOR RECOMMENDATION**

That Resolution RT250117/1, as follows, be rescinded:

1. *That the Trust seeks Expressions of Interest (EOI) for market management.*
2. *That a Councillor briefing be held on developing a structure for the operation of the markets and the terms and conditions for the EOI.*
3. *That the temporary licence granted to Mr and Mrs Smith be extended until the finalisation of the EOI process.*
4. *That the current market management agreement continue until the finalisation of the EOI process.*

**Attachment(s)**

Nil

## **4.2 Lennox Head Alstonville Surf Life Saving Club - Tenure**

---

### **4.2 Lennox Head Alstonville Surf Life Saving Club - Tenure**

**Delivery Program** Community Facilities and Services

**Objective** To determine the Reserve Trust's preferred tenure arrangement for the Lennox Head Alstonville Surf Life Saving Club's occupation of the surf club building located on Seven Mile Beach in Lennox Head.

---

#### **Background**

The Lennox Head Alstonville Surf Life Saving Club (the club) has occupied the surf lifesaving building at Pacific Parade, Lennox Head since the mid 1970s.

The building consists of club rooms and storage, a meeting / function area and a commercial food service space.

For the past 15 years, the club's occupation of the premises has been by way of an annual temporary agreement.

New tenure documentation is now required. The purpose of this report is to determine the nature of the tenure arrangement to be put in place for the surf club.

#### **Key Issues**

- Tenure arrangements
- Commercial activity within the building
- Asset management and proposed new surf club building

#### **Information**

On 25 January 2016, the Minister for Crown Land released an information package and template for the leasing of surf clubhouses to surf clubs within New South Wales. The main feature of that template is the ability of Reserve Trusts to grant 20 year leases at statutory minimum rent to surf lifesaving clubs without the need for Minister's consent. A copy of the template is contained in Attachment One.

Following consultation with the club executive, it was agreed that tenure in accordance with the surf club template was preferable to tenure under a temporary agreement, notwithstanding the proposal currently under consideration to construct a new building to house the club.

## **4.2 Lennox Head Alstonville Surf Life Saving Club - Tenure**

---

In the event grant funding or other finance is secured for the construction of a new facility, any existing tenure agreements are able to be concluded by agreement between the parties. In this regard, it is recommended that in granting tenure to the club to occupy the existing facility, the Trust confirms that such tenure is on the understanding that the existing building would be vacated by the club upon the construction of a new facility (that is, there are not to be two surf lifesaving club facilities in Lennox Head).

Importantly, implementation of tenure for occupation of the existing surf lifesaving facility does not prejudice discussions that might occur in relation to a new building.

### Plan of Management

The surf club is situated on land the subject of the Ballina Coastal Reserve Plan of Management (PoM). The lawful occupation of the facility by the club is an objective contained within the PoM.

A food premises has operated within the surf club building for many years, originally as a kiosk which was operated by the surf club as a fundraiser, which, commencing in or around 2001 gradually increased and diversified its food production and service.

This increased food production and subsequent unauthorised use of part of the public reserve outside the surf club building has been a matter which Council has sought to address with the club over time.

Recently, in January 2017, the operator of the food premises ceased trading.

The club is in the process of attempting to secure another operator to occupy the commercial space in the building. However, any occupation by a commercial operator will need to comply with the existing regulatory framework for food premises. This may require the lodgment of a development application and/or involve seeking other regulatory approvals.

The PoM for the coastal reserve provides for the operation of a kiosk within the building. The occupation of the commercial space is enabled under the surf club lease template, on the basis that any commercial income generated from such operations will be used to meet the club's obligations under the lease in relation to maintenance and upkeep of the building.

Prior to any new commercial operator commencing trade in the premises, that section of the surf club should be separately assessed and metered in relation to water, waste water, trade waste and a commercial waste service, to ensure that expenses generated by the commercial activity are not absorbed into any rates donations granted to the club as a not for profit community group.

The kiosk matter has been discussed with surf club representatives and it is expected that there will be ongoing liaison between the surf club and Council to address the applicable considerations.

## **4.2 Lennox Head Alstonville Surf Life Saving Club - Tenure**

---

### Asset Management and Proposed New Building

The former clubhouse building is now over 40 years old and has been the subject of ongoing discussions in relation to its replacement.

The surf club lease template provides for the relevant club to “*keep the premises in good repair and condition and clean and tidy as if it were the fee simple owner of the Premises, and must bear all costs of maintaining and repairing the interior of the premises and the services*” with the Reserve Trust required “*to undertake all structural repairs that are required to keep the Premises in good repair and condition*”.

The Reserve Trust will need to ensure an appropriate maintenance budget is available in the event that structural repairs are required to the building for the duration of the lease, or until a new facility is constructed.

### **Legal / Resource / Financial Implications**

Council, on behalf of the Reserve Trust, is required to ensure lawful tenure is in place for the facility.

No additional resource or financial obligations result from entering into a 20 year lease as the existing surf club footprint is situated on a separate parcel capable of having a 20 year lease registered. The registration costs associated with this lease, if granted, are able to be met from existing budgets.

There will be a financial cost associated with separately metering the commercial area within the building. It is anticipated that this cost will be relatively small and can be met through existing budgets.

### **Consultation**

Consultation has occurred between Council’s Community Property staff, Development Services staff, surf club executive members and relevant NSW Department of Industry staff. The outcomes of these discussions have informed the contents of this report.

### **Options**

1. Enter into a 20 year lease with the club in accordance with the Surf Club Lease Template. In the event a new facility is constructed within that 20 year period, it is recommended that this lease be terminated prior to the club relocating into any new facility. To ensure lawful tenure and consistency for the club’s existing operations, this is the recommended option.
2. Enter into a temporary licence until a new facility is constructed. This approach is not recommended.



**RECOMMENDATIONS**

1. That the Ballina Coastal Reserve Trust enter into a 20 year lease with the Lennox Head Alstonville Surf Life Saving Club in accordance with the NSW Surf Club Lease Template.
2. That the lease be entered into on the understanding that in the event a new facility is constructed within the term of the lease, the lease be terminated prior to the Lennox Head Alstonville Surf Life Saving Club relocating into any new facility.
3. The Reserve Trust authorises the General Manager to affix the seal to the lease and any documents or applications as required in relation to development or other regulatory requirements with respect to the operation of the kiosk contained within the building.

**Attachment(s)**

1. Template Surf Club Lease

TABLE OF CONTENTS

RECITALS.....	1
OPERATIVE PROVISIONS.....	1
1. PART 1 - DEFINITIONS AND INTERPRETATION .....	1
1.1 Definitions .....	1
1.2 Interpretation.....	4
1.3 Minister's delegations.....	6
2. PART 2 - EXCLUSION OF STATUTORY PROVISIONS .....	6
2.1 Moratorium.....	6
2.2 Exclusion of statutory provisions .....	6
3. PART 3 - LEASE OF LAND .....	6
3.1 Lease of Land for Term .....	6
3.2 Lessor's reservations .....	6
3.3 Lessor's exercise of rights .....	7
3.4 Ownership of Lessee's Improvements.....	7
4. PART 4 - RENT .....	7
4.1 Lessee to pay Rent .....	7
4.2 Apportionment of Rent .....	7
5. PART 5 - RATES AND TAXES AND GST .....	7
5.1 Lessee to pay Rates and Taxes .....	7
5.2 Lessee to produce receipts .....	8
5.3 Pro-rata apportionment .....	8
5.4 Goods and Services Tax .....	8
5.5 Exemption .....	8
6. PART 6 - COST OF SERVICES .....	8
7. PART 7 - COSTS.....	8
7.1 Costs to be borne by each party.....	8
7.2 Costs of Lessor to be borne by Lessee .....	9
8. PART 8 - INTEREST .....	9
8.1 Payment.....	9
8.2 Calculation .....	9
8.3 No prejudice .....	9
9. PART 9 - USE OF PREMISES .....	9
9.1 Permitted Use and negative covenants .....	9
9.2 Lessee's positive covenants .....	11
9.3 No warranty as to use .....	11
9.4 Fundraising activities.....	11
9.5 Commercial operation .....	12
9.6 Uses required by Lessor for other reservation purposes .....	12
9.7 Cost incurred by Lessor .....	13
10. PART 10 - COMPLIANCE WITH LAWS AND REQUIREMENTS.....	13
10.1 Compliance with Laws.....	13
10.2 Lessor may comply with Laws if Lessee defaults .....	13
11. PART 11 - MAINTENANCE REPAIRS ALTERATIONS AND ADDITIONS.....	13
11.1 General repairing obligation .....	13
11.2 Lessor's right of entry .....	14
11.3 Enforcement of repairing obligations .....	14
11.4 Lessor may enter to repair .....	14

NSW SLSC Crown Lands Act1989 lease (#1110685045), 16.06.2015

	11.5	Alterations to Premises .....	15
	11.6	Notice to Lessor of damage, accident etc.....	15
12.		PART 12 - ASSIGNMENT AND SUBLETTING .....	16
	12.1	No disposal of Lessee's interest .....	16
	12.2	Deemed assignment on change of shareholding .....	16
	12.3	Acceptance of Rent by Lessor.....	16
13.		PART 13 - INSURANCE AND INDEMNITIES .....	17
	13.1	Insurances to be taken out by Lessee .....	17
	13.2	Lessee's insurance obligations .....	17
	13.3	Lessor's insurance obligations .....	17
	13.4	Non-vitiating of policies .....	17
	13.5	Exclusion of Lessor's liability .....	17
	13.6	Indemnities.....	18
14.		PART 14 - DAMAGE AND DESTRUCTION.....	19
	14.1	Lessee to reinstate Premises .....	19
	14.2	Obligation to reinstate is absolute .....	19
	14.3	Rent and Rates and Taxes.....	19
15.		PART 15 - LESSOR'S COVENANT .....	19
16.		PART 16 - TERMINATION AND DEFAULT .....	19
	16.1	Termination under section 109 of the Act .....	19
	16.2	Events of default .....	20
	16.3	Forfeiture of Lease .....	21
	16.4	Lessor may rectify .....	21
	16.5	Waiver.....	21
	16.6	Tender after determination .....	21
	16.7	Essential terms.....	21
	16.8	Damages for breach.....	22
	16.9	Repudiation by Lessee .....	22
	16.10	Acts by the Lessor not to constitute forfeiture .....	22
	16.11	Mitigation.....	22
17.		PART 17 - DETERMINATION OF TERM .....	23
	17.1	Lessee to yield up .....	23
	17.2	Lessee not to cause damage .....	23
	17.3	Failure by Lessee to remove the Lessee's Improvements .....	23
	17.4	Lessee to indemnify and pay Lessor's Costs.....	24
	17.5	Earlier breaches.....	24
18.		PART 18 - MISCELLANEOUS.....	24
	18.1	Notices .....	24
	18.2	Overholding.....	25
	18.3	Set-Off .....	25
	18.4	Easements.....	25
	18.5	Waiver.....	25
19.		PART 19 - FURTHER TERM .....	26
	19.1	New lease .....	26
	19.2	Terms of new lease .....	26
	19.3	Execution of extension of lease.....	27
		27	
20.		SPECIAL CONDITIONS .....	27
		SCHEDULE 1 .....	28

**THIS LEASE** is made on \_\_\_\_\_ and commences on the Commencement Date.

**BETWEEN:** **THE LESSOR** whose name, address and ABN appear in **Item 1 (Lessor)**

**AND:** **THE LESSEE** whose name, address and ABN appear in **Item 2 (Lessee)**

**RECITALS**

- A. The Land is reserved or dedicated under the Act by virtue of the Gazette notification specified in Item 11 for the purpose or purposes set out in Item 11.
- B. The Lessor is established as a reserve trust under section 92 of the Act and has been appointed under that section as Trustee of the Land. .
- C. The Council is appointed as the manager of the Lessor under section 95 of the Act.
- D. The Minister has issued an authorisation under section 102A of the Act.
- E. The Lessor has power to enter into this Lease in accordance with section 102A of the Act without the Approval of the Minister but subject to compliance with the conditions of the authorisation.
- F. The Lessor has agreed to lease the Land to the Lessee on the terms and conditions set out in this Lease.

**OPERATIVE PROVISIONS**

**1. PART 1 - DEFINITIONS AND INTERPRETATION**

---

**1.1 Definitions**

In this Lease:

**Act** means the *Crown Lands Act 1989*.

**Affiliation** means a Surf Life Saving Club which has complied with the requirements for membership of Surf Life Saving NSW

**Approval** means authorisation, approval, consent, licence, permission and the like.

**Authority** includes any government, local government, statutory, public or other Person, authority, instrumentality or body having jurisdiction over the Land, the Premises or any part of it or anything in relation to it.

**Business Day** means any day (except a Saturday, Sunday or public holiday) on which banks are open for business in Sydney, New South Wales.

**Claim** includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding and right of action.

**Clause** means a clause of this Lease, and Sub-Clause has a similar meaning.

**Commencement Date** means the date set out in Item 4.

**Commercial Parameters** means whether the proposed operation:

- (a) is a separate, standalone occupation of part of the Premises;

- (b) is conducted by a for-profit entity which is completely legally separate from the Lessee;
- (c) limits, inhibits or restricts the access or enjoyment of the Premises by the public.

**Cost** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatever.

**Council** means [INSERT COUNCIL NAME AND ADDRESS].

**Crown** means the Crown in right of the State of New South Wales.

**Default Rate** means the interest rate set by the Lessor's Bank for the time being as its benchmark rates for overdrafts of one hundred thousand dollars (\$100,000.00) or more.

**Fundraising** means means a fundraising appeal as defined by section 5 of the Charitable *Fundraising Act 1991*, which is conducted in accordance with the requirements of that Act applicable to a fundraising appeal.

**Further Obligations** means any obligations of the Lessee set out in Item 15 in Schedule 1.

**Further Term** means the further term or terms set out in Item 8.

**GST** means any consumption, goods and services or value added tax, by whatever name called, imposed, levied or collected by any Federal or State Government which operates at any time or times during the Term or any renewal or overholding of the Lease including, without limitation, GST as defined in the GST Act and any replacement tax.

**GST Act** means *A New System (Goods and Services Tax) Act 1999*.

**Hazardous Materials** includes any substance, material, thing, component or element which is hazardous, a contaminant or a pollutant to persons or property.

**Improvement** means any building, structure, fixture, fitting, plant, equipment, partition, sign or other material, or article or chattel, which is erected, installed or put in or on the Land.

**Insured Sum** means the amount set out in Item 10.

**Item** means the relevant item in Schedule 1.

**Land** means the land described in Item 3 to a depth of 15 metres below the surface and all rights, easements and appurtenances usually and normally enjoyed with that land and all Lessor's Improvements.

**Law** includes any requirement of any statute, rule, regulation, proclamation, ordinance or local law, present or future, and whether State, Federal or otherwise.

**Lessee** means the Lessee named in this Lease and includes in the case of a:

- (a) corporation the Lessee, its successors and permitted assigns;

(b) natural person the Lessee, his executors, administrators and permitted assigns.

**Lessee's Employees** means each of the Lessee's employees, agents, contractors, invitees or others (whether with or without invitation), sublessees, licensees and concessionaires or others (whether expressly or impliedly) who may at any time be in or upon the Land.

**Lessee's Improvements** means any Improvements undertaken by the Lessee in accordance with this Lease but does not include those Improvements listed in Item 14.

**Lessor** means the Lessor named in this Lease and the person for the time being entitled to the Lease reversion when the Lease ends.

**Lessor's Agents** means the employees, contractors, agents and any other Person appointed from time to time by the Lessor as agent of the Lessor.

**Lessor's Improvements** means the Improvements listed in Item 13.

**Minister** means the Minister having responsibility for the administration of the Act or such other Minister of the Crown or Authority to whom responsibility for this Lease may at any time be given.

**Minister's Agents and Officers** includes any person, committee or delegate (including any statutory authority or statutory body corporate or committee for the time being responsible for the administration, care and management of the Land) from time to time responsible for carrying out functions, including the functions of the Minister, under this Lease.

**Name and Notice Address** means the name and address in Item 9 as it may be changed from time to time.

**Notice** means any notice or other written communication.

**Party** means a party to this Lease.

**Permitted Use** means the permitted use of the Land set out in Item 7.

**Person** includes any corporation and vice versa.

**Premises** means the Land and the Lessee's Improvements.

**Proposed Work** means any renovation, demolition, construction of or to any Improvement on the Land and any activity which physically alters the structure of the Premises.

**Rates and Taxes** means all existing and future rates (including any special rates or levies) taxes (including land tax on a single holding basis), duties, charges, assessments, impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the Land or the Lessor or the Lessee or payable by the owner or occupier of the Land.

**Rent** means the amount of the minimum rent calculated in accordance with section 141A of the Act on the basis that the due date referred to in section 141A is the Commencement Date and each anniversary of that date during the term, or alternatively, the annual Rent (if any) set out in Item 6.

**Requirement** includes any lawful Notice, order or direction received from or given by any Authority or under any Law, in writing or otherwise, and notwithstanding to whom such Requirement is addressed or directed but if not addressed to the Lessee then the Lessee must be given a copy.

**Services** means all services installed or to be installed and connected to the Premises including, without limitation, gas, electricity, telephone and telecommunication, water, sewerage and drainage.

**Supply** means the supply of any good, service or thing by either Party under this Lease.

**Term** means the term of this Lease in Item 5 commencing from and including the Commencement Date.

**this Lease or the Lease** means this lease and includes all schedules, appendices, attachments, plans and specifications, annexures and exhibits to it.

### 1.2 Interpretation

- (a) The singular includes the plural and vice versa.
- (b) A gender includes all genders.
- (c) An obligation imposed by this Lease on more than one Person binds them jointly and severally.
- (d) Every covenant by the Lessee includes a covenant by the Lessee to procure compliance with the covenant by each of the Lessee's Employees.
- (e) A reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it or amendment of it and a regulation, rule or statutory instrument issued under it.
- (f) This Lease must be interpreted so that it complies with all Laws applicable in New South Wales. Any provision must be read down so as to give it as much effect as possible. If it is not possible to give a provision any effect at all, then it must be severed from the rest of the Lease. If any provision or part of it cannot be so read down, such provision or part shall be deemed to be void and severable and the remaining provisions of this Lease shall not in any way be affected or impaired.
- (g) Unless otherwise stated, no provision of this Lease limits the effect of any other provision of this Lease. "Including" and similar expressions are not and must not be treated as words of limitation.
- (h) A reference to the Land, Premises or anything includes the whole and each part of it.
- (i) The Lessor and the Lessee agree that:
  - (i) the terms contained in this Lease constitute the whole of the agreement in respect of the Land and Premises between the Lessor and the Lessee and all previous negotiations and agreements are negated;

- (ii) no further terms are to be implied or arise between the Lessor and the Lessee by way of collateral or other agreement made by or on behalf of the Lessor or by or on behalf of the Lessee on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negated;
- (iii) no information, representation or warranty by the Lessor or the Lessor's agents was supplied or made with the intention or knowledge that it would be relied on by the Lessee in entering into this Lease; and
- (iv) no information, representation or warranty has been relied on by the Lessee in entering into this Lease.
- (j) Headings and the index to this Lease are for guidance only and do not affect the interpretation of this Lease.
- (k) If a reference is made to any Person, body or Authority and that Person, body or Authority has ceased to exist, then the reference is deemed to be a reference to the Person, body or Authority that then serves substantially the same or equivalent objects as the Person, body or Authority that has ceased to exist.
- (l) Reference to the President of a Person, body or Authority must, in the absence of a President, be read as a reference to the senior officer or equivalent employee for the time being of the Person, body or Authority or such other Person fulfilling the duties of President.
- (m) A reference to "writing" or "written" and any words of similar import include printing, typing, lithography and any other means of reproducing characters in tangible and visible form, including any communication effected through any electronic medium if such communication is subsequently capable of reproduction in tangible or visible form.
- (n) A reference to "corporation" and any other words or expressions used or defined in the *Corporations Act 2001 (Cth)*, unless the context otherwise requires, has the same meaning that is given to them in the *Corporations Act 2001 (Cth)*.
- (o) This Lease is governed by New South Wales law. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them. Except as expressly agreed in writing by both Parties or for an action required at a federal level, each Party waives any right it has to object to an action being brought in any court outside New South Wales including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.
- (p) If the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day, the day or last day for doing the thing or date on which the entitlement arises for the purposes of this Lease shall be the next Business Day.
- (q) Each provision of this Lease continues to have full force and effect until it is satisfied or completed.
- (r) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.



- (s) A reference to an agreement or a document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time except to the extent prohibited by this Lease.
- (t) A reference to a Clause or Sub-Clause followed by a number refers to the relevant numbered Clause or Sub-Clause in this Lease.

**1.3 Minister's delegations**

- (a) If this Lease refers to an action, Approval or other thing to be done by, or matter to be considered by the Minister, the reference to the Minister shall be deemed to include a reference to the Minister's Agents and Officers.
- (b) The Minister may appoint any person as the Minister's delegate to exercise all powers conferred by this Lease on the Minister expressly, including without limitation, the power to give any Approval under this Lease.
- (c) The Minister may change the appointment at any time.

**2. PART 2 - EXCLUSION OF STATUTORY PROVISIONS**

---

**2.1 Moratorium**

To the extent permitted by law, the application to this Lease or to any Party of any Law or any Requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of Rent or any part of it or otherwise affecting the operation of the terms of this Lease or its application to any Party is excluded and negated.

**2.2 Exclusion of statutory provisions**

- (a) The covenants, powers and provisions implied in leases by virtue of sections 84, 84A, 132, 133, 133A and 133B of the *Conveyancing Act 1919* do not apply or are not implied in this Lease and are expressly negated except in so far as the same or some part or parts of it are included in the covenants contained in this Lease. The use in this Lease of any words in any of the forms of words contained in the first column of Part II of the Fourth Schedule to the *Conveyancing Act 1919* shall not imply any covenant under section 86 of that Act.
- (b) Part 4 of the *Civil Liability Act 2002 (NSW)* does not apply to this Lease.

**3. PART 3 - LEASE OF LAND**

---

**3.1 Lease of Land for Term**

The Lessor leases the Land to the Lessee for the Term.

**3.2 Lessor's reservations**

The Lessor reserves the right for the Lessor and the Lessor's Agents to:

- (a) enter the Land as expressly provided for in this Lease; and
- (b) create any registered or unregistered easement or other right over the Land;

as long as such entry and/or easement does not materially adversely affect the Lessee's rights under this Lease including the right to use the Premises for the Permitted Use.

**3.3 Lessor's exercise of rights**

In exercising its rights reserved under clause 3.2, the Lessor must use reasonable endeavours (including where possible providing reasonable notice to the Lessee of a proposed exercise of those rights) to minimise interference to the Lessee and to the Permitted Use.

**3.4 Ownership of Lessee's Improvements**

Despite anything else in this Lease and without affecting the Lessee's obligations under this Lease, all buildings and structures erected on the Land, including the Lessee's Improvements are and will remain the property of the Lessor.

**4. PART 4 - RENT**

---

**4.1 Lessee to pay Rent**

The Lessee covenants to pay the Rent:

- (a) at the times and in the manner set out in Item 6 without demand by the Lessor;
- (b) without any abatement, deduction or right of set-off; and
- (c) to the Lessor at the address set out in Item 12 or to any other address or in any other way the Lessor directs the Lessee by Notice.

**4.2 Apportionment of Rent**

If the Commencement Date is not the first day of a rent period, the first and last instalments of Rent will be apportioned on a pro-rata daily basis for the periods from:

- (a) the Commencement Date to the first day of the next rent period;
- (b) the first day of the last rent period of the Term until the date on which the Term expires.

**5. PART 5 - RATES AND TAXES AND GST**

---

**5.1 Lessee to pay Rates and Taxes**

If payable and subject to any exemption applied for and provided under clause 5.5, the Lessee must pay the Rates and Taxes to:

- (a) the assessing Authority on time if assessed directly against the Lessee or the Land; but otherwise;
- (b) the Lessor by the date which is 10 Business Days before the due date for payment if the Lessor must pay the Rates and Taxes and has given the Lessee a copy of the notice at least 10 Business Days before then.

### 5.2 Lessee to produce receipts

If requested by the Lessor, the Lessee must produce receipts to the Lessor evidencing payment of the Rates and Taxes by the due date for payment if the Lessee is required to pay them to the assessing Authority.

### 5.3 Pro-rata apportionment

If necessary, the Rates and Taxes will be apportioned on a pro-rata daily basis at the beginning and at the end of the Term.

### 5.4 Goods and Services Tax

- (a) If GST is or will be or is purported to be payable on any Supply the Party receiving the Supply must pay the Party making the Supply a sum equal to any GST payable by the supplier for that Supply.
- (b) To the extent that one Party is required to reimburse the other Party for costs incurred by the other Party, those costs do not include any amount in respect of GST for which the Party is entitled to claim an input tax credit.
- (c) A Party's obligation to pay an amount under this Clause is subject to a valid tax invoice being delivered to that Party. For the avoidance of any doubt, the Rent and all other payments under this Lease are exclusive of GST.

### 5.5 Exemption

The Lessee may apply for exemption from payment of Rates and Taxes under any relevant policy of the assessing Authority.

## 6. PART 6 - COST OF SERVICES

---

Unless otherwise agreed with the Lessor, the Lessee must pay Costs for all Services (including any special, additional or unusual Services separately supplied, metered, consumed or connected as appropriate in, to or on the Land or the Premises):

- (a) by direct payment on or before the due date if assessed directly against the Land or the Premises; but otherwise
- (b) by reimbursing the Lessor by the date which is 5 Business Days before the due date for payment if the Lessor has given a copy of the Notice to the Lessee at least 10 Business Days before then.

## 7. PART 7 - COSTS

---

### 7.1 Costs to be borne by each party

Each party will bear their own reasonable legal and other Costs including the costs of valuers, quantity surveyors and other consultants engaged by a party of and incidental to:

- (a) the negotiation, preparation and execution of this Lease;
- (b) any variation, extension, surrender or termination of this Lease otherwise than by effluxion of time.

**7.2 Costs of Lessor to be borne by Lessee**

Without limiting any other provision of this Lease, and unless otherwise agreed in writing between the parties, the Lessee is to bear the Lessor's reasonable costs of and incidental to:

- (a) any Approval required under this Lease;
- (b) any assignment or subletting for which the Lessor's Approval is required by this Lease; and
- (c) any default by the Lessee or the Lessee's Employees in observing or performing any covenants contained or implied in this Lease.

**8. PART 8 - INTEREST**

---

**8.1 Payment**

The Lessee must pay to the Lessor on demand as a debt due interest at the Default Rate on any Rent or other moneys which the Lessee has not paid on and from the due date for payment.

**8.2 Calculation**

Interest is to be calculated daily from the due date and is to continue until the overdue money is paid. The interest will be capitalised on the last day of each month and may be recovered in the same way as Rent in arrears.

**8.3 No prejudice**

If the Lessor requires the Lessee to pay interest, it is without prejudice to any other rights, powers and remedies which the Lessor may have under this Lease or at law.

**9. PART 9 - USE OF PREMISES**

---

**9.1 Permitted Use and negative covenants**

The Lessee must not:

- (a) use the Premises for any purpose other than the Permitted Use;
- (b) except as provided for in clause 9.5, use or allow the Premises to be used for any commercial or profit-making purpose which is not Fundraising;
- (c) do anything in or on the Premises which in the reasonable opinion of the Lessor causes or may cause nuisance, damage, disturbance or danger to the Lessor or members of the public using the Reservation referred to in Item 11 of Schedule 1;
- (d) other than as necessary for the Permitted Use, use or allow the use of any radio, television or other sound producing equipment at a volume that can be heard outside the Premises except with the prior written Approval of the Lessor which is not to be unreasonably withheld but may be given conditionally;
- (e) other than as necessary for the Permitted Use, affix any television or radio mast or antennae, satellite dish or any other communication device to any

part of the Premises except with the prior written Approval of the Lessor which is not to be unreasonably withheld but may be given conditionally;

- (f) other than for the Permitted Use, write, paint, display, hang or affix any sign, advertisement, placard, name, flagpole, flag or notice on any part of the Premises except with the prior written Approval of the Lessor which is not to be unreasonably withheld but may be given conditionally. The Lessee acknowledges that it will be reasonable for the Lessor to withhold approval for any sign, advertisement, placard, name, flagpole, flag or notice that does not directly relate to the Permitted Use;
- (g) overload the floor, walls, roof or any other part of the Premises, or, bring onto or remove from the Premises any plant or heavy equipment which by reason of its weight or vibration in its operation or in any way is likely in the reasonable opinion of the Lessor to cause damage to any part of the Premises or the Services;
- (h) except to the extent that they are necessary for the Permitted Use and then only in compliance with any Law or Requirement and in such quantities as are reasonably appropriate, store Hazardous Materials on or in the Premises;
- (i) install any equipment or system in the Premises that overloads or may overload the electrical or other Services to the Premises;
- (j) allow a person to reside on the Premises as caretaker of the Premises and retain rental paid by the caretaker unless:
  - (i) the caretaker arrangement is bona fide and related to the Permitted Use;
  - (ii) the prior written Approval of the Lessor is obtained;
  - (iii) the Lessee and the caretaker enter into an agreement that complies with all relevant Law and under which the caretaker must provide services to and for the Lessee in consideration of the licence to reside on the Premises. Such services must be related to or in support of the Permitted Use;
  - (iv) the Lessee obtains all necessary Approvals from all Authorities which are necessary to enable a caretaker to lawfully reside on the Premises, and
  - (v) the Lessee produces copies of all such Approvals to the Lessor upon demand by the Lessor;
- (k) use the Premises for an illegal purpose;
- (l) burn any rubbish or waste on the Premises other than the burning of vegetation in accordance with all necessary permits;
- (m) use the Premises in conjunction with a hotel liquor licence, general bar licence or small bar licence within the meaning of the *Liquor Act 2007*. Nothing in this Lease otherwise prevents the Lessee from selling or providing liquor (within the meaning of the *Liquor Act 2007*) in connections with the Permitted Use or Fundraising activities; or

- (n) use the Premises for any type of gambling, other than where the gambling is conducted as part of Fundraising events.

**9.2 Lessee's positive covenants**

The Lessee at its Cost must:

- (a) at all times carry out the Permitted Use in a business-like and reputable manner;
- (b) keep the Premises clean and not permit any accumulation of useless property or rubbish on them;
- (c) keep the Premises free of pests, insects and vermin;
- (d) provide the Lessor (and keep updated when it changes) with the name, postal address, e-mail address, telephone and facsimile transmission numbers of a person or persons to contact during and after business hours if an emergency arises which affects the Premises;
- (e) obtain, maintain and comply with all Approvals from all Authorities which from time to time are necessary or appropriate for the Lessee's occupation and use of the Premises;
- (f) maintain documented risk management identification and treatment programs for the Premises and the Services, which must be produced to the Lessor upon demand;
- (g) arrange for the regular and efficient removal from the Premises of its refuse and rubbish;
- (h) if a notifiable infectious illness occurs in the Premises, promptly give Notice to the Lessor and all relevant Authorities and thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and all relevant Authorities;
- (i) undertake all fire protection works on the Land required by Law to the satisfaction of the Lessor and all relevant Authorities;
- (j) permit the Lessor or the Lessor's servants or agents with or without vehicles and equipment, workmen or others at all times to enter the Land for fire protection and suppression purposes; and
- (k) comply with the Further Obligations.

**9.3 No warranty as to use**

- (a) The Lessor gives no warranty (either present or future) that the Land or the Premises are fit for the Permitted Use.
- (b) The Lessee has entered into this Lease with full knowledge of and subject to any prohibitions or restrictions contained in any Law or any Requirement on how the Land or the Premises may be used.

**9.4 Fundraising activities**

The Lessee may conduct Fundraising activities as part of and relating to the Permitted Use.

**9.5 Commercial operation**

- (a) Where:
- (i) the Lessor and the Minister have provided prior consent in writing to the use of the Premises for a profit making purpose which is not part of the Permitted Use or Fundraising (**Commercial Operation**); and
  - (ii) the profit making purpose of the Commercial Operation falls within the Commercial Parameters;

the parties may enter into a separate written agreement in respect to that Commercial Operation to allow that Commercial Operation to be undertaken from the Premises. The Parties agree:

- (1) that the agreement must provide that all revenue raised from the Commercial Operation must be used by the Lessee to fund its obligations under this Lease; and
  - (2) to negotiate such agreement in good faith.
- (b) Despite anything else in this Lease, the Lessee must not use the Premises or any part of them for a Commercial Operation unless the parties have entered into an agreement of the type contemplated in clause 9.5(a).
- (c) A proposed Commercial Operation must not:
- (i) be the most substantial or significant use of the Premises;
  - (ii) conflict with the Permitted Use; and/or
  - (iii) materially adversely affect the carrying out of the Permitted Use on the remainder of the Premises by the Lessee.
- (d) If the parties enter into an agreement of the type contemplated in clause 9.5(a), then the Lessee must, whenever reasonably requested by the Lessor, demonstrate to the Lessor's reasonable satisfaction that all revenue raised from the Commercial Operation is being used to fund the Lessee's obligations under this Lease. Without limiting the preceding sentence, the Lessor may audit the Lessee to ensure compliance in this regards and the Lessee must produce all relevant documents and items to enable the Lessor to do so.
- (e) Nothing in this clause 9.5 affects the Lessee's obligation to comply with clause 17.1.

**9.6 Uses required by Lessor for other reservation purposes**

- (a) The Lessee must, if requested to do so by the Lessor, consider granting a short-term licence to a third party community user specified by the Lessor (which may but need not be the Lessor) for any purpose that is consistent with the reservation or dedication of the Land under the Act.
- (b) The Lessee is not obliged to grant a licence under clause 9.6(a) but must reasonably consider any such request.

- (c) Despite clause 9.6(b), the Lessee and the Lessor acknowledge that the Lessee need only grant a licence under clause 9.6(a) if the licence does not, in the reasonable opinion of both the Lessor and the Lessee having consulted with each other in good faith, materially adversely affect the reasonable use of the Premises by the Lessee for the Permitted Use.

**9.7 Cost incurred by Lessor**

Without limiting clause 10.2, unless otherwise agreed with the Lessor, the Lessee must pay to the Lessor on demand as a debt due the Cost incurred by the Lessor of doing any work or other thing to the Premises which may become necessary because of the non-compliance of the Lessee or of the Lessee's Employees with any Law or Requirement or any provision of this Lease.

**10. PART 10 - COMPLIANCE WITH LAWS AND REQUIREMENTS**

---

**10.1 Compliance with Laws**

- (a) The Lessee at its Cost must comply with all Laws and Requirements relating to the Land, the Premises, the Services, the Permitted Use, and the Lessee's occupation and use of the Premises. If the Lessee receives any Notice from an Authority, the Lessee must immediately provide a complete copy of it to the Lessor.
- (b) Before complying with any Law or Requirement, the Lessee must (if required by that Law or Requirement):
  - (i) obtain the written Approval of the Lessor which is not to be unreasonably withheld; and
  - (ii) observe the provisions of this Lease.

**10.2 Lessor may comply with Laws if Lessee defaults**

If the Lessee fails to do so, the Lessor may comply with any Law or Requirement referred to in this clause 10 either in part or whole. If the Lessor does this:

- (a) any Costs incurred by the Lessor must be paid or reimbursed to the Lessor by the Lessee as a debt due;
- (b) it is without prejudice to any of the Lessor's other rights in respect of non-compliance by the Lessee with its obligations under this Lease.

**11. PART 11 - MAINTENANCE REPAIRS ALTERATIONS AND ADDITIONS**

---

**11.1 General repairing obligation**

- (a) Unless otherwise agreed in writing between the parties and subject to clause 11.1(b), the Lessee must at its Cost during the Term, any extension of the Term, and any holding over period, keep the Premises in good repair and condition and clean and tidy as if it were the fee simple owner of the Premises, and must bear all costs of maintaining and repairing the interior of the Premises and the Services.
- (b) Unless otherwise agreed in writing between the parties, the Lessor must at its Cost during the Term, any extension of the Term, and any holding over period



undertake all structural repairs that are required to keep the Premises in good repair and condition.

- (c) Before carrying out any repairs or maintenance to the Premises of a structural nature, the Lessee must obtain the written Approval of the Lessor and all relevant Authorities.

### 11.2 Lessor's right of entry

The Lessor or the Lessor's Agents may enter the Premises in the following circumstances:

- (a) at reasonable times on giving to the Lessee reasonable prior notice in writing, and in the presence of the Authorised Officer of the Lessee if required by the Lessee:
  - (i) to view the state of repair and condition of the Premises and Services
  - (ii) to determine compliance with this Lease by the Lessee; or
  - (iii) in accordance with clause 11.4, to carry out works and repairs; and
- (b) at any time and for any purpose if the Lessor reasonably considers entry is required in the case of an emergency.

### 11.3 Enforcement of repairing obligations

The Lessor may serve on the Lessee a Notice:

- (a) specifying any failure by the Lessee to carry out any repair, replacement or cleaning of the Premises or the Services which the Lessee is required to do under this Lease; and
- (b) requiring the Lessee to carry out the repair, replacement or cleaning within a reasonable time specified in the Notice.

If the Lessee does not comply with the Notice, the Lessor may elect to carry out such repair, replacement or cleaning and any Costs incurred must be paid by the Lessee when demanded by the Lessor.

### 11.4 Lessor may enter to repair

- (a) The Lessor, the Lessor's Agents and others authorised by the Lessor may at all reasonable times after giving the Lessee reasonable written notice enter the Land and the Premises to carry out any works and repairs in the circumstances set out below. In doing so, the Lessor must endeavour not to cause undue inconvenience to the Lessee.
- (b) The circumstances for entry are any one or more of the following:
  - (i) to carry out any repairs on or to the Premises or the Services, which the Lessor considers necessary or desirable or which relate to anything which the Lessor is obliged or entitled to do under this Lease;
  - (ii) if an Authority requires any repair or work to be undertaken on or to the Premises or the Services which the Lessor is either required or in

the Lessor's discretion elects to do and for which the Lessee is not liable under this Lease; or

- (iii) if the Lessor elects to carry out any repair work which the Lessee is required or liable to do under this Lease by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done.

**11.5 Alterations to Premises**

- (a) Subject to this Lease, the Lessee must not and must not permit any other person to carry out any Proposed Work without the Lessor's prior written Approval which must not be unreasonably withheld or delayed.
- (b) In seeking the Lessor's Approval the Lessee must submit plans and specifications of the Proposed Work for the Approval of the Lessor and such other information relating to the Proposed Work as is reasonably required by the Lessor.
- (c) Any Approval given by the Lessor to the Lessee for the Proposed Work is subject to the Lessee satisfying conditions of the Approval and the following requirements:
  - (i) any Proposed Work must be supervised by a Person approved by the Lessor;
  - (ii) any Proposed Work must be executed promptly and continuously in a proper and workmanlike manner, using the materials and by contractors or tradesmen approved by the Lessor, in accordance with all Laws and Requirements;
  - (iii) the Lessee must pay on demand all reasonable Costs incurred by the Lessor in considering or inspecting the Proposed Work and its supervision, including the reasonable fees of architects, engineers or other building consultants reasonably engaged by or on behalf of the Lessor;
  - (iv) the Lessee must obtain and keep current and comply with all necessary Approvals from all Authorities necessary to enable any Proposed Work to be lawfully effected, and must on request by the Lessor produce for inspection by the Lessor copies of all such Approvals; and
  - (v) on completion of the Proposed Work the Lessee must immediately obtain and produce to the Lessor, any unconditional certificates of compliance or of satisfactory completion issued by relevant Authorities and, a certificate by a consultant approved by the Lessor that the Proposed Work has been carried out in accordance with the plans and specifications approved by the Lessor.

**11.6 Notice to Lessor of damage, accident etc**

The Lessee must immediately give Notice to the Lessor of any:

- (a) of the following of which the Lessee has actual or constructive notice:
  - (i) damage however caused;

- (ii) accident to or defects in the Premises or the Services; or
- (iii) circumstances likely to cause any damage or injury occurring within the Premises;
- (b) fault in the Services; or
- (c) Notice from any Authority.

**12. PART 12 - ASSIGNMENT AND SUBLETTING**

---

**12.1 No disposal of Lessee's interest**

- (a) The Lessee may not assign, transfer, sub-let, grant any licence, mortgage, encumber, charge or part with or share the possession of or otherwise deal with or dispose of the Lessee's estate or interest in the Land, or any part of the Land or the Premises, otherwise than in accordance with this clause 12.1 or as otherwise expressly permitted by this Lease.
- (b) Clause 12.1(a) does not prevent an assignment or transfer to another surf lifesaving club with the Approval of the Lessor, which Approval may not be withheld if:
  - (i) the Lessee can reasonably satisfy the Lessor that the proposed assignee or transferee is responsible, solvent, and can carry out the obligations of the Lessee under this Lease, and
  - (ii) the Lessor's reasonable costs relating to the assignment or transfer are met.
- (c) Clause 12(1)(a) does not prevent the granting of a sublease or licence, or the sharing of possession of the Premises, by the Lessee with a person or body involved in assisting the Lessee in relation to conducting the Permitted Use.

**12.2 Deemed assignment on change of shareholding**

For the purposes of clause 12.1, there is a deemed assignment if the Lessee is a Corporation (other than an incorporated association) and there is any change in any of the following which results in a change in the effective control of the Lessee:

- (a) the membership of the Corporation or any holding Company of the Corporation;
- (b) the beneficial ownership of any shares in the capital of the Corporation or any holding Company of the Corporation; or
- (c) the beneficial ownership of the business or assets in the Corporation or part of it.

**12.3 Acceptance of Rent by Lessor**

The acceptance by the Lessor of any Rent or other payment from any Person other than the Lessee does not constitute an acknowledgment by the Lessor that it recognises that person as the authorised assignee or sub-lessee.

**13. PART 13 - INSURANCE AND INDEMNITIES**

---

**13.1 Insurances to be taken out by Lessee**

The Lessee must effect and maintain at the Lessee's Cost:

- (a) a standard public liability insurance policy endorsed to extend the indemnity under the policy to include the Lessee's liability under Clause 13.5. The policy must:
  - (i) be for an amount of not less than the Insured Sum or such higher amount as the Lessor may reasonably require in respect of any single occurrence; and
  - (ii) be on terms that the insurer waives all rights of subrogation against the Lessor;
- (b) insurance for all Lessee's property and Lessee's Improvements; and
- (c) any other insurance reasonably required by the Lessor or as set out in Schedule 2.

**13.2 Lessee's insurance obligations**

The Lessee must:

- (a) ensure that all policies of insurance effected by the Lessee under this clause 13 are taken out with an insurance office or company authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia including policies underwritten by Lloyd's of London or otherwise approved by the Lessor;
- (b) on the Commencement Date and on request from the Lessor, produce to the Lessor a certificate of currency; and
- (c) pay all premiums and other money payable in respect of the insurance policies when they become due and payable.

**13.3 Lessor's insurance obligations**

The Lessor must effect and maintain at the Lessor's Cost building insurance for the Premises and the Lessor's Improvements.

**13.4 Non-vitiating of policies**

The Lessee must not do anything, in, to or on the Premises and must use its best endeavours not to allow anything to be done, which may vitiate or render void or voidable any Lessee's insurances or any condition of any insurance taken out by the Lessor of which the Lessee has been made aware in respect of the Premises or any property in or on it.

**13.5 Exclusion of Lessor's liability**

- (a) The Lessee acknowledges that all property which may be in or on the Premises will be at the sole risk of the Lessee and the Lessor will not be liable for any Claim that the Lessee or the Lessee's Employees or any Person

claiming by, through or under the Lessee may incur or make or any which arises from:

- (i) any fault in the construction or state of repair of the Premises or any part of it; or
  - (ii) the collapse of the Premises irrespective of the cause; or
  - (iii) any defect in any Services; or
  - (iv) the flow, overflow, leakage, condensation or breakdown of any water, air-conditioning, gas, oil or other sources of energy or fuel, whether from the roof, walls, gutter, downpipes or other parts of the Premises.
- (b) The Lessee agrees that the Lessor will not be responsible for and releases the Lessor, the Crown and the Lessor's Agents from liability in respect of any:
- (i) Claim relating to any property of the Lessee or any other Person in or on the Premises or any part of it however occurring; or
  - (ii) death, damage or injury to any Person or property in on or under the Premises or on any land near it suffered as a direct consequence of the construction, operation, presence or maintenance of the Premises and including, without limitation, damage or injury to any person or property resulting from any collision with or the collapse of the Premises.

#### 13.6 Indemnities

Despite:

- (a) any Claims having resulted from anything which the Lessee may be authorised or obliged to do under this Lease; and/or
- (b) at any time any waiver or other indulgence having been given to the Lessee in respect of any obligation of the Lessee under this clause 13,

the Lessee will indemnify and keep indemnified the Lessor, the Lessor's Agents, the Minister and the Crown from and against all Claims for which any of them will or may be or become liable, during or after the Term, in respect of or arising from:

- (c) any breach of this Lease by the Lessee;
- (d) any cause whatever in respect of damage or injury to the Premises, to any property or to any Person or the death of any Person inside or outside the Premises caused or contributed to by any neglect or default of the Lessee or the Lessee's Employees under this Lease or by the use of the Premises by the Lessee or by the Lessee's Employees including, without limitation, injury or death to any Person or property resulting from any collision with or collapse of the Premises;
- (e) the negligent or careless use or neglect of the Services and facilities of the Premises by the Lessee or the Lessee's Employees or any other Person claiming through or under the Lessee or of any trespasser while such trespasser is in or on the Premises caused or contributed to by any default or negligent act or omission of the Lessee;

- (f) overflow or leakage of water (including rain water) or from any Services whether originating inside or outside the Premises caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees or other Person claiming through or under the Lessee;
- (g) failure of the Lessee to give Notice to the Lessor of any defect in any of the mechanical or any other Services in the Premises within a reasonable time of the Lessee becoming aware of it; and
- (h) damage to plate, float and other glass caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees.

**14. PART 14 - DAMAGE AND DESTRUCTION**

---

**14.1 Lessee to reinstate Premises**

If the Premises or any part of them are at any time damaged or destroyed by any disabling cause then the Lessee must subject to this Lease expeditiously re-instate the Premises and make them fit for the occupation and use by the Lessee as if it was Proposed Work.

**14.2 Obligation to reinstate is absolute**

The Lessee's obligation under clause 14.1 to reinstate the Premises applies irrespective of how the damage and destruction occurred and irrespective of whether any policy of insurance required or effected for the Premises not taken out or is avoided or payment refused or reduced.

**14.3 Rent and Rates and Taxes**

Unless otherwise agreed between the parties in writing the Lessee must continue to pay the Rent and the Rates and Taxes even if the Premises are destroyed or damaged.

**15. PART 15 - LESSOR'S COVENANT**

---

If the Lessee pays the Rent and observes and performs in a timely fashion the covenants and conditions on its part contained in this Lease, the Lessee may occupy and enjoy the Land during the Term without any interruption by the Lessor or by any Person claiming through the Lessor except as provided in this Lease.

**16. PART 16 - TERMINATION AND DEFAULT**

---

**16.1 Termination under section 109 of the Act**

- (a) The Lessor and Lessee acknowledge that, subject to clause 16.1(b), this Lease will terminate under section 109 of the Act if the Reserve is revoked or that part of the Reserve is revoked that comprises the whole or part of the Premises unless the revocation notification otherwise provides.
- (b) Where only part of Premises is affected by a revocation or proposed revocation the parties undertakes to consult with each other to determine if an agreement under section 109(3) can be reached for the continuation of this Lease in respect to that part of the Premises not affected by the revocation.

- (c) The Lessee expressly acknowledges that as provided by section 109(5) of the Act no compensation is payable in respect of the termination of this Lease by the operation of section 109 and no compensation shall be payable.

**16.2 Events of default**

The following are events of default:

- (a) if the Rent or any other money payable under this Lease is not paid within 30 days of the due date for payment whether legally demanded or not;
- (b) if the Lessee at any time fails to perform or observe any of its obligations under this Lease;
- (c) if the Lessee is a company then if the Lessee:
  - (i) enter into any compromise or arrangement with any of its creditors or if an application is made to any court for an order summoning a meeting of creditors;
  - (ii) has a receiver or receiver and manager or administrator or controller appointed of any of its assets;
  - (iii) is wound up or dissolved or notice is given of intention to propose a resolution for winding up or an order is made or resolution passed or an application is made for winding up or dissolution;
  - (iv) has a resolution passed by the directors that in their opinion the company can no longer continue its business;
  - (v) calls a meeting of its creditors under the *Corporations Act 2001*;
  - (vi) is placed under official management or if the members determine to convene a meeting of creditors for the purpose of placing the company under official management;
  - (vii) has an inspector appointed under the *Australian Securities and Investments Commission Act 1989*;
  - (viii) is unable to pay its debts as and when they fall due;
  - (ix) makes an assignment for the benefit of or enters into an arrangement or composition or a moratorium whether formal or informal with its creditors or financiers; or
  - (x) has a provisional liquidator or a liquidator by any means appointed;
- (d) if any execution exceeding ten thousand dollars is issued, levied or enforced against the Lessee or on any of the assets of the Lessee unless such execution is fully paid or satisfied within seven days from the date of the issue, levy or enforcement, or appropriate legal proceedings to invalidate the execution are taken within seven days of the issue, levy or enforcement; and
- (e) if the Lessee is a natural person and becomes or is made bankrupt or makes any assignment of his estate or any part of it for the benefit of creditors or otherwise seeks relief under or takes advantage of any Law for the time being

in force relating to bankruptcy or insolvent debtors or causes or permits his goods to be levied on or under any execution or other legal process.

**16.3 Forfeiture of Lease**

If an Event of Default occurs the Lessor may, without prejudice to any other Claim which the Lessor has or may have against the Lessee or any other Person at any time re-enter into and upon the Land or any part of it in the name of the whole and thereupon this Lease will be absolutely determined.

**16.4 Lessor may rectify**

If the Lessee is in default under this Lease and fails to commence to rectify that default within 7 days of the Lessor notifying the Lessee in writing of that default and requiring its rectification or, having commenced, fails to expeditiously complete that rectification within a reasonable time, the Lessor may, but will not be obliged to, remedy at any time without further notice any default by the Lessee under this Lease. If the Lessor so elects all reasonable Costs incurred by the Lessor (including legal costs and expenses) in remedying the default will constitute a liquidated debt and must be paid by the Lessee to the Lessor on demand.

**16.5 Waiver**

- (a) The Lessor's failure to take advantage of any default or breach of covenant by the Lessee will not be or be construed as a waiver of it, nor will any custom or practice which may grow up between any of the Parties in the course of administering this Lease be construed to waive or to lessen the right of the Lessor to insist upon the timely performance or observance by the Lessee of any covenant or condition of this Lease or to exercise any rights given to the Lessor in respect of any such default.
- (b) A waiver by the Lessor of a particular breach is not deemed to be a waiver of the same or any other subsequent breach or default.
- (c) The demand by the Lessor for, or subsequent acceptance by or on behalf of the Lessor of, Rent or any other money payable under this Lease will not constitute a waiver of any earlier breach by the Lessee of any covenant or condition of this Lease, other than the failure of the Lessee to make the particular payment or payments of Rent or other moneys so accepted, regardless of the Lessor's knowledge of any earlier breach at the time of acceptance of such Rent or other moneys.

**16.6 Tender after determination**

If the Lessor accepts money from the Lessee after the Lessor ends this Lease the Lessor may (in the absence of any express election of the Lessor) apply it:

- (a) firstly, on account of any Rent and other moneys accrued and due under this Lease but unpaid at the date the Lease is ended; and
- (b) secondly, on account of the Lessor's Costs of re-entry.

**16.7 Essential terms**

The Lessor and the Lessee agree that each of the following covenants by the Lessee are essential terms of this Lease:



- (a) pay the Rent;
- (b) keep the Premises open for use;
- (c) carry on the Permitted Use;
- (d) comply with Laws and Requirements;
- (e) subject to this Lease, repair and maintain and, if necessary, reinstate or demolish the Lessee's Improvements;
- (f) not assign this Lease or sub-let the Land or any part of it;
- (g) take out and keep current those insurances required to be taken out by the Lessee;
- (h) hold affiliation with Surf Life Saving NSW;
- (i) pay or reimburse Rates and Taxes, and
- (j) remove the Lessee's Improvements at the end of this Lease unless the Lessor specifically requires otherwise by notice in writing to the Lessee.

**16.8 Damages for breach**

The Lessee covenants to compensate the Lessor for any breach of this Lease and the Lessor may recover damages from the Lessee for any breach. The Lessor's entitlement under this Clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including the right to terminate this Lease).

**16.9 Repudiation by Lessee**

Without limiting clause 16.8 or any other provision of this Lease, the Lessee covenants to compensate the Lessor for any loss or damage suffered by the Lessor by reason of the Lessee's conduct (whether acts or omissions) constituting a repudiation of this Lease or of the Lessee's obligations under this Lease.

**16.10 Acts by the Lessor not to constitute forfeiture**

The Lessor's entitlement to recover damages shall not be affected or limited if any of the following events occur:

- (a) the Lessee abandons or vacates the Land;
- (b) the Lessor elects to re-enter the Land or to terminate the Lease;
- (c) the Lessor accepts the Lessee's repudiation; or
- (d) the Parties' conduct (or that of any of their servants or agents) constitutes a surrender by operation of law.

**16.11 Mitigation**

Nothing in this Clause will operate to relieve the Lessor of any obligation which would otherwise apply to mitigate any loss or damage suffered by the Lessor.

**17. PART 17 - DETERMINATION OF TERM**

---

**17.1 Lessee to yield up**

- (a) When this Lease ends, the Lessee, at its Cost, must:
  - (i) unless otherwise required by the Lessor, remove the Lessee's Improvements in a proper and workmanlike manner in compliance with the requirements of all Authorities and to the satisfaction of the Lessor; and
  - (ii) remove all loose items from the Premises.
- (b) If the Lessor does not require the Lessee to remove the Lessee's Improvements or particular Improvements specified by the Lessor, those improvements that have not vested in the Lessor by operation of Law will revert to and become the absolute property of the Crown (except for the Lessee's trade fixtures, fittings and chattels) without any payment or compensation.

**17.2 Lessee not to cause damage**

- (a) The Lessee must not cause or contribute to any damage to the Land in the demolition and removal of the Lessee's Improvements.
- (b) If the Lessee causes any such damage in the demolition and removal of the Lessee's Improvements, the Lessee must make good any such damage and must leave the Land in a condition that is acceptable to the Lessor and all Authorities.
- (c) If the Lessee fails to do so within a reasonable time, the Lessor may make good any such damage at the Cost of and as agent for the Lessee and recover from the Lessee the reasonable cost to the Lessor of doing so as a debt due payable on demand.

**17.3 Failure by Lessee to remove the Lessee's Improvements**

If the Lessee fails to remove the Lessee's Improvements and loose items in accordance with this clause 17 or if the Lessor re-enters the Land, the Lessor at the Lessor's option (without prejudice to any action or other remedy which the Lessor has) may do any one or more of the following:

- (a) demolish and remove the Lessee's Improvements and remove the Lessee's loose items;
- (b) without being guilty of any manner of trespass, cause any of the Lessee's property to be removed and stored in such manner as is reasonable at the risk and at the Cost of Lessee and/or at the option of the Lessor sell it as the attorney of the Lessee and appropriate the proceeds of sale in payment of any Rent or other money owing by the Lessee to the Lessor and pay any residue without interest to the Lessee;
- (c) treat the Lessee's property as if the Lessee had abandoned its interest in it and it had become the property of the Lessor, and deal with it in such manner as the Lessor thinks fit without being liable in any way to account to the Lessee for them;

- (d) recover its costs from the Lessee on demand as a debt due.

**17.4 Lessee to indemnify and pay Lessor's Costs**

Without limiting clause 13.5, the Lessee must indemnify and keep indemnified the Lessor in respect of any reasonable Costs incurred by the Lessor under **clause 17.3** and also in respect of all Claims which the Lessor may suffer or incur at the suit of any Person (other than the Lessee) claiming an interest in the Premises or the Lessee's property by reason of the Lessor acting in any manner permitted in this clause 17.

**17.5 Earlier breaches**

The ending of this Lease does not prejudice or affect any rights or remedies of the Lessor against the Lessee in respect of any earlier breach by the Lessee of any Lease covenants and conditions.

**18. PART 18 - MISCELLANEOUS**

---

**18.1 Notices**

- (a) Any Notice served or given by either Party under this Lease will be valid and effectual if signed by either Party or by any director, alternate director, secretary, executive officer, attorney, managing agent, Authorised Officer or solicitors for the time being of that Party or any other Person nominated from time to time by that Party.
- (b) Each Party must immediately provide the other Party with a Notice containing full particulars of the address and facsimile information of the Party giving the Notice and must update such notice in the event of any change.
- (c) Any Notice required to be served or which the Lessor may elect to serve on the Lessee shall be sufficiently served if:
- (i) served personally;
  - (ii) sent by facsimile transmission; or
  - (iii) forwarded by prepaid security post to the Lessee at its address in this Lease.
- (d) Any Notice required to be served on the Lessor shall be sufficiently served if:
- (i) served personally;
  - (ii) sent by facsimile transmission; or
  - (iii) forwarded by prepaid security post addressed to the Lessor to the Name and Notice Address.
- All such Notices must be addressed to the Lessor at that address or at such other address as the Lessor from time to time nominates.
- (e) Any Notice is deemed to have been duly served if given:
- (i) by post, two Business Days after the day it was posted;

- (ii) by facsimile, at the time of transmission to the Party's facsimile number unless the time of dispatch is later than 5.00 p.m. at the place to which the facsimile transmission is sent in which case it shall be deemed to have been received at the commencement of business on the next Business Day in that place. A copy of any Notice sent by facsimile transmission must also on the date of dispatch be sent by mail to the Party to whom it was sent by facsimile transmission;
- (iii) personally, on the date of service.

**18.2 Overholding**

If the Lessee continues in occupation of the Land after the Term has expired without objection by the Lessor:

- (a) the Lessee will be deemed a Lessee on the terms of this Lease from month to month for a period not exceeding the period permitted by the Act (if any) at a rent to be agreed and failing agreement at a rent to be determined by a qualified valuer acting as an expert and not as an arbitrator and his costs must be paid equally by the Parties;
- (b) either Party may end the Lease by giving to the other Party at any time one month's Notice.

**18.3 Set-Off**

If the Lessee defaults in the payment of the Rent, the Rates and Taxes or any other money payable under this Lease to the Lessor or any Authority, the Lessor may set-off that amount against any moneys which may from time to time be payable by the Lessor to the Lessee on any account whatsoever but any set-off will not relieve the Lessee from its default for any non-payment of the Rent, the Rates and Taxes or other moneys under this Lease.

**18.4 Easements**

The Lessor may grant rights of support and enter into any arrangement or agreement with any party with an interest in any adjacent land or with any Authority as the Lessor thinks fit for the purpose of:

- (a) public or private access to the Land;
- (b) support structures erected on adjoining land; or
- (c) the provision of Services.

The Lessor must not exercise any rights under this Clause if it substantially and permanently derogates from the enjoyment of the rights of the Lessee under this Lease.

**18.5 Waiver**

No waiver by one Party of a breach by or on behalf of the other Party of any obligation, provision or condition of this Lease expressed or implied shall operate as a waiver to or of any other breach of the same or any other obligation, provision or condition of this Lease expressed or implied.

18.6

**19. PART 19 - FURTHER TERM**

---

**19.1 New lease**

The Lessor must grant the Lessee and the Lessee must take a new lease for the next Further Term if:

- (a) the Lessee gives the Lessor a renewal Notice not more than six months or less than three months before the Term expires;
- (b) there is no unremedied default of which the Lessor has given the Lessee written notice;
- (c) the Lessee has not persistently defaulted under this Lease throughout its Term and the Lessor has not given the Lessee Notices of the defaults; and
- (d) the Lessee does not default under this Lease after giving the Lessor the renewal Notice.

**19.2 Terms of new lease**

The new lease will:

- (a) commence on the day after the Term expires;
- (b) if the Rent is greater than the minimum required under the Act, specify in Item 6 in Schedule 1 an initial annual Rent from the commencement of the Further Term that is agreed between the parties or, failing agreement, determined by expert determination by a suitably qualified expert appointed by the President of the Real Estate Institute of New South Wales whose expert determination is final and binding on the Parties;
- (c) specify in Item 10 in Schedule 1 an Insured Sum which is an amount greater than the Insured Sum specified for the initial term of this Lease and which, in the reasonable opinion of the Lessor, reflects the industry standard at the time of the commencement of the Further Term;
- (d) specify in Item 13 in Schedule 1 any Lessor's Improvements added during the Term of this Lease;
- (e) otherwise be on the terms and conditions contained in this Lease including any provision for the review of Rent but not including any provision for renewal if there is no Further Term.

**19.3 Execution of extension of lease**

The Lessor and the Lessee must execute a new lease for the next Further Term at the Lessee's Cost.

**20. Special Conditions**

---

The Special Conditions set out in **Item 15** only form part of this Lease to the extent to which they are additional to and are not inconsistent with the other provisions of this Lease, and may include but are not limited to Further Obligations.

**21. EARLY TERMINATION RIGHT**

---

- (a) Despite anything else in this Lease, if the Lessor after consultation with the Lessee reasonably and in good faith considers the location of the Premises represents a danger to persons or property, then the Lessor may by written notice to the Lessee terminate this Lease on a date specified in the notice, which date must not be less than 6 months after the date of the notice.
- (b) No compensation is payable from the Lessor to the Lessee as the result of termination of this Lease under clause 21(a).
- (c) For the avoidance of doubt:
  - (i) if the Lessor issues a notice in compliance with clause 21(a), this Lease terminates on the date specified in the notice; and
  - (ii) the issue of the notice and the termination of this Lease under clause 21(a) does not affect any of the rights or obligations of the parties under this Lease that arise prior to the termination.

**SCHEDULE 1**

- |    |                                      |   |
|----|--------------------------------------|---|
| 1  | <b>LESSOR:</b>                       | <b>[Completion Note. Insert Appropriate Details]</b><br>Address<br>ABN  |
| 2  | <b>LESSEE:</b>                       | <b>[Completion Note. Insert Appropriate Details]</b><br>Surf Life Saving Club Inc.<br>Address<br>ABN  |
| 3  | <b>LAND:</b>                         | The area shown hatched on the plan attached to this Lease in Appendix 1 and known as the <b>[Completion Note. Insert Appropriate Details]</b> Surf Life Saving Club Inc.                            |
| 4  | <b>COMMENCEMENT DATE:</b>            | <b>[Completion Note. Insert Appropriate Details]</b>  |
| 5  | <b>TERM:</b>                         | 20 years  |
| 6  | <b>RENT:</b>                         | <b>[\$[Completion Note. insert the minimum statutory rent pursuant to section 141A of the Act or any greater number agreed between the parties] per annum plus GST payable annually in advance.</b> |
| 7  | <b>PERMITTED USE:</b>                | Surf Life Saving Club and associated activities including Fundraising and any Commercial Operations that are the subject of a written agreement as contemplated by clause 9.5(a).                   |
| 8  | <b>FURTHER TERM:</b>                 | One further term of 20 years commencing on <b>[Completion Note. Insert Date]</b>  |
| 9  | <b>NAME AND NOTICE ADDRESS:</b>      | <b>Lessor:</b><br><b>[Completion Note. Insert Appropriate Details]</b><br><br><b>Lessee:</b><br><b>[Completion Note. Insert Appropriate Details]</b><br>Surf Lifesaving Club Inc.                   |
| 10 | <b>INSURED SUM &amp; INSURANCES:</b> | \$20 million<br><b>[Completion Note. Specify insurances required to be taken out by the Lessee additional to those required by Clause 13.1(a) and (b).]</b>   |

- 11 **RESERVATION/DEDICATION:** [Completion Note: insert title details of the reserve/dedicated land] being the land the subject of [Completion Note. Refer to the Gazette notice under the Act reserving or dedicating the Land, and specify the purpose of the reservation/dedication as described in the Gazette notice].
- 12 **PAYMENT ADDRESS:** [Completion Note. Specify address].
- 13 **LESSOR'S IMPROVEMENTS:** [Completion Note. Specify any Improvements that are not Lessee's Improvements on the Commencement Date].
- 14 **EXCLUDED LESSEE'S IMPROVEMENTS:**
- 15 **SPECIAL CONDITIONS:** [Completion Note. The special conditions may include but are not limited to Further Obligations of the Lessee and must be additional to and not inconsistent with the other provisions of this Lease.]
- :



**APPENDIX 1  
(PLAN OF LAND)**

[Completion Note. Insert plan here]

Template

NSW SLSC Crown Lands Act1989 lease (#1110685045),21.01.2016

#### **4.3 Ballina Coastal Reserve Trust - Marine Rescue NSW Lease**

---

#### **4.3 Ballina Coastal Reserve Trust - Marine Rescue NSW Lease**

**Delivery Program** Community Facilities and Services

**Objective** To seek direction from the Reserve Trust in relation to tenure negotiations with Marine Rescue NSW for the use and occupation of the new Marine Rescue Tower located adjacent to Lighthouse Beach in East Ballina.

---

#### **Background**

The Reserve Trust previously considered the granting of tenure for the new Marine Rescue tower to Marine Rescue NSW at the Reserve Trust Meeting held in January 2016.

At that meeting, the Reserve Trust resolved as follows (Minute No: RT280116/3):

- 1. The Ballina Coastal Reserve Trust grant a three year lease to Marine Rescue NSW in accordance with the usual lease conditions provided by Department of Primary Industries – Lands at the statutory minimum rental.*
- 2. If a longer tenure is required by Marine Rescue NSW, a lease up to 10 years be offered, with the additional costs for subdivision for lease purposes and registration being met by Marine Rescue NSW.*
- 3. The General Manager on behalf of the Reserve Trust is authorised to negotiate the term of the lease up to 10 years if required.*
- 4. The General Manager on behalf of the Reserve Trust is authorised to establish a maintenance budget from the rental income and any other income sources identified from the Coastal Reserve for inspection and repair of the facility, with this allowance to be incorporated into Council's long term financial plan.*
- 5. That Council, on behalf of the Reserve Trust be authorised to affix the seal to the lease document and any other documents as required to register the lease (if needed).*

Tenure discussions with the Commissioner for Marine Rescue NSW have been progressing since this resolution, with the result that Marine Rescue NSW has requested a 20 year tenure, rather than the 10 year maximum previously offered.

#### **Key Issues**

- Length of tenure for community buildings.

#### **Information**

Marine Rescue NSW has requested a 20 year tenure in recognition of the money provided by Marine Rescue NSW and Marine Rescue Ballina to the establishment of the facility, as well as security of tenure for operational accommodation into the future.

### **4.3 Ballina Coastal Reserve Trust - Marine Rescue NSW Lease**

---

Specific information has not been provided in relation to the expenditure by Marine Rescue NSW in association with the lease term request, however, Council records indicate the following sums have been contributed towards the construction:

NSW State Government	\$615,000
PRMFP Grant	\$350,000
Federal Government	\$850,000
Ballina Shire Council	\$400,000

Marine Rescue NSW has verbally indicated that a contribution of approximately \$300,000 was made by the organisation to the project and this was towards the building's fit out and operational equipment, as opposed to construction costs.

Council's adopted policy in relation to leases and licences for community properties provides for leases of three years as a standard, with an option for longer tenure where circumstances are demonstrated to warrant longer tenure.

It is a matter for the Reserve Trust to consider whether it is appropriate to grant tenure for 20 years in this particular circumstance.

#### **Legal / Resource / Financial Implications**

The Reserve Trust is required to enter into tenure arrangements for all exclusive occupations of land.

To comply with the relevant provisions of the Crown Lands Act a public competitive process may be required to be conducted prior to receiving Minister's consent for a lease exceeding five years in duration. If this is to occur, the public process will be conducted by the Department of Industry – Land. Given the significant funding provided by the State Government towards this special use building, it is unclear whether the Department will require this process. In any event, a lease proposal exceeding five years in duration will require statutory advertising, and this will also be conducted by the Department.

There are no significant additional financial or resource implications generated by granting a 20 year lease.

The previous resolution of the Reserve Trust was that any subdivision and registration costs of a lease exceeding three years in duration should be borne by Marine Rescue NSW.

#### **Consultation**

Initial consultation has occurred with Department of Industry – Lands and the Marine Rescue NSW Commander.

#### **Options**

1. Grant a 20 year lease to Marine Rescue NSW.

#### **4.3 Ballina Coastal Reserve Trust - Marine Rescue NSW Lease**

---

No information has been identified that indicates that any funding provided by either the State or Federal Government contained a requirement for a long lease to be granted. However, as the building has been custom built for Marine Rescue purposes, and there does not appear to be another similar community-based entity which may require accommodation of this type into the future, it is considered reasonable to grant of a 20 year lease. However, an alternative approach is recommended as outlined below.

2. Grant a ten year lease with a ten year option to Marine Rescue NSW (with the option to renew in the Trust's favour).

This is the preferred option as it allows for security of tenure to Marine Rescue NSW while providing an ability for the Reserve Trust to review the use of the building and the Ballina community's needs prior to exercising the option for an additional ten years. Given care taker arrangements currently in place for Ballina Marine Rescue's operations and the flexibility provided to the Trust under this arrangement, this is the preferred option.

3. Grant a three year lease to Marine Rescue NSW.

Given the prior resolution of the Reserve Trust and the nature of the building and the services provided by Marine Rescue NSW, this is not the recommended option.

#### **RECOMMENDATIONS**

1. The Ballina Coastal Reserve Trust grant a ten year lease with a ten year option (in favour of the Trust) to Marine Rescue NSW in accordance with the usual lease conditions provided by Department of Industry – Lands at the statutory minimum rental.
2. That the costs associated with subdivision for the purposes of the lease and lease registration be met by Marine Rescue NSW.
3. That Council, on behalf of the Reserve Trust, be authorised to affix the seal to the lease document and any other documents as required to prepare a subdivision of the land to enable registration of the lease.

#### **Attachment(s)**

Nil