

DEED OF AGREEMENT FOR LEASE

THIS DEED made the day of 2012

BETWEEN **BALLINA SHIRE COUNCIL (ABN 53 929 887 369)** of Council Chambers Cnr Tamar & Cherry Streets, BALLINA NSW 2478 (called "Lessor") of the first part,

AND The Crown in right of the State of New South Wales acting through its **DEPARTMENT OF FAMILY AND COMMUNITY SERVICES NSW (ABN 87503966787)** of 4-6 Cavill Avenue, ASHFIELD NSW 2131 (called "Lessee") of the second part.

RECITALS

- A The Lessor is the registered proprietor of the land contained in Certificate of Title Folio Identifier 30/260335 upon part of which the parties have agreed that the Lessee will erect a building for the purposes of an Aboriginal Child & Family Centre on the terms and conditions of this agreement.
- B The Lessor has agreed to grant to the Lessee and the Lessee has agreed to accept a lease of an area of approximately 3,580m² highlighted in grey in the attached proposed plan of subdivision of Lot 30 DP 260335 upon occupation of the Land and on the terms and conditions of this Agreement.

OPERATIVE PART

Definition and interpretations

Definitions

1.1 In this Agreement the following expressions have the following meanings:

- (a) "Agreement" or "this Agreement" means this deed and includes its attachments;
- (b) "Approval" means any relevant and legally required approval including consents, certificates, permits and authorities;
- (c) "Business day" means any day which is not Saturday, Sunday or a public holiday in New South Wales;
- (d) "Centre" means the Aboriginal Child and Family Centre substantially as described in the plans and drawings attached as Schedule 3 or as may otherwise be agreed by the parties;
- (e) "Conditions Precedent" means the conditions precedent to the execution of the Lease, identified as such in this Agreement;
- (f) "Land" means that the land comprised in certificate of title Folio Identifier 30/260335;
- (g) "Lease" means the form of lease attached to this Agreement in Schedule 1;
- (h) "Lease Commencement Date" means the date that is 5 Business days after the date on which the last of the Conditions Precedent is met in accordance with this Agreement, as notified by the Lessee;
- (i) "Lease Subdivision Plan " means the proposed plan of subdivision attached to this Agreement as Schedule 2;

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- (j) "Lessee" includes:
 - (i) when an individual, the Lessee's legal personal representatives;
 - (ii) when several individuals, the Lessees jointly and their respective legal personal representatives;
 - (iii) when a company or corporation, its successors and assigns;
 - (iv) when the NSW Crown acting through a non-corporatised NSW public sector entity that has no separate legal identity to the Crown in right of the state of New South Wales, eg the Department of Family and Community Services, any other non-corporatised NSW public sector successor entity that also has no separate legal identity to the Crown in right of the state of New South Wales including where such an entity assumes administrative responsibility for this Agreement and Lease as a result of an administrative re-structure within the NSW public sector.
- (k) "Lessor" includes:
 - (i) when an individual, the Lessor's legal personal representatives;
 - (ii) when several individuals, the Lessors jointly and their respective legal personal representatives;
 - (iii) when a company or corporation, its successors and assigns;
- (l) "Premises" means that part of Folio Identifier 30/260335 as shown highlighted in green on the Lease Subdivision Plan comprising approximately 3,580 m²;
- (m) "Project" means the construction of an Aboriginal Child and Family Centre substantially as described in the plans and drawings attached as Schedule 3 or as may otherwise be agreed by the parties;
- (n) "Sunset Date" means 1 March 2013 or such later date up to and including 1 March 2014 as may be nominated or agreed in accordance with this Agreement

Interpretation

Terms

- 1.2 (a) Words expressed in the singular include the plural and vice versa.
- (b) Words expressed in one gender include the other genders, as is appropriate in the context.
- (c) A reference to "person": includes a corporation.

Governing law

- (d) This Agreement is governed and construed in accordance with the law of New South Wales.

Severance

- (e) If any provision contained in this Agreement is or becomes legally ineffective, under the general law or by force of legislation, the ineffective provision shall be severed from this Agreement which otherwise continues to be valid and operative.

Joint and several liability

- (f) Two or more parties to this Agreement who represent the same interest, as Lessor or Lessee, assume the liability to comply with their

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obligations under this Agreement jointly, and in addition each of them assumes those obligations severally.

Compliance with notices on Business day

- (g) If under the provisions of this Agreement or under any notice or demand anything is required to be done on a day which is not a Business day, the day or the last day for compliance is deemed to be the immediately following Business day.

Commencement of this Agreement

Effective on execution

- 2.1 This Agreement becomes legally effective when executed by both the Lessor & Lessee.

Conditions precedent to execution of Lease

- 3.1 The parties have no obligation to enter the Lease unless all of the Conditions Precedent are satisfied in accordance with this Agreement.
- 3.2 The Conditions Precedent are as follows:
- (a) The Lessee, acting reasonably, is satisfied that it has received all Approvals necessary to carry out the Project and acting reasonably is satisfied as to the scope of and the conditions imposed on each such Approval;
 - (b) The Lease Subdivision Plan is duly registered.
- 3.3 The Lessee must, within five Business days of satisfaction of all Conditions Precedent, notify the Lessor in writing of the satisfaction of all Conditions Precedent and the date on which this occurred.
- 3.4 The parties may by written agreement vary the Sunset Date to a date later than 1 March 2013 but no later than 1 March 2014.

Obtaining approvals

- 4.1 The parties acknowledge that, before the execution of this Agreement, the Lessee has prepared and, with the Lessor's consent, submitted an application for development approval in respect of the Project as required by the Environmental Planning and Assessment Act 1979.
- 4.2 It is the responsibility of the Lessee to identify and obtain any other approvals that are necessary to undertake and complete the Project and the Lessor must provide all reasonable assistance to the Lessee in obtaining any required approvals from third parties (but not, to avoid doubt, from the Lessor) including signing any application as land owner provided the Lessee shall indemnify the Lessor in respect of any costs and expenses incurred in providing such assistance.

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Registration of Plan of Subdivision

- 5.1 The parties acknowledge that, before the execution of this Agreement, the Lessee has prepared and, with the Lessor's consent, submitted for registration with the Registrar-General, the Lease Plan of Subdivision.

Construction of Building

- 6.1 Upon notification of satisfaction of all Conditions Precedent in accordance with cl.3.4 of this Agreement, including receipt of a development approval in respect of the Project that it is satisfied, acting reasonably:

- (a) does not significantly vary the scope of the Project as submitted for development approval; and
- (b) does not impose conditions that are commercially unacceptable to the Lessee,

the Lessee will at its own cost undertake and complete the Project in accordance with the development approval and any other required Approvals by the Sunset Date, subject to such minor variations to the approved Project as may be agreed by both parties and approved by the relevant approvals authority.

- 6.2 If the Project is delayed for any reason beyond the reasonable control of the Lessee, the Lessee may, by written notice to the Lessor, request the Lessor to agree to extend the Sunset Date provided that in no event shall the Sunset Date be extended beyond 1 March 2014.

Non-fulfilment of Conditions Precedent

- 7.1 If any Condition Precedent has not been satisfied by the Sunset Date, either party may terminate this Agreement on fourteen days' notice, by written notice to the other party.

- 7.2 If this Agreement is terminated for non-fulfilment of a Condition Precedent:

- (a) The Lessee must make good the Premises to the condition it was in at the commencement of this Agreement within 12 weeks of such termination; and
- (b) Subject to the above obligation to make good, neither party will be liable to the other for any loss or damage arising from or in connection with such termination provided that nothing in this paragraph affects the right of either party to recover loss or damage suffered in connection with a breach of this Agreement by the other party before such termination.

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Grant of Lease

Agreement to grant

8.1 Subject to this Agreement, the Lessor agrees to grant and the Lessee agrees to accept a Lease of the Premises for a term of 21 years from the Lease Commencement Date.

Completion of particulars

8.2 The parties authorise the Lessor's solicitors to complete the following details in the Lease, in accordance with the parties' agreement:

- (a) the date of the Lease;
- (b) the Lease Commencement Date and date of expiration of the Lease term;
- (c) such other particulars, title details, and minor alterations or additions as are required to complete any blanks in the reference schedule to the Lease or that are necessary to comply with any Approvals or to satisfy the reasonable requirements of the Land Property Information Division (LPI) for registration.

8.3 The Lessor must, within five Business days of receipt of notice from the Lessee of the satisfaction of all Conditions Precedent in accordance with this Agreement, submit the duly completed Lease to the Lessee for execution by the Lessee.

8.4 The Lessee must return the Lease duly executed by the Lessee to the Lessor no later than five Business days after receipt of the duly completed Lease from the Lessor.

Execution by Lessor

8.5 The Lessor must duly execute the Lease not more than 14 Business days after it has been received by the Lessor.

Mortgagees' consent and registration

8.6 The Lessor will ensure that the Lease is lodged for registration not later than 10 Business days after the date of execution of the Lease and will act promptly and reasonably in ensuring that the Lease is registered without undue delay.

Warranty

9.1 The Lessor warrants that it:

- (a) is the registered proprietor of the Land; and
- (b) has the power to enter and perform this Agreement.

9.2 The Lessee warrants that it has the power to enter and perform this Agreement.

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Costs

Liability for costs

10.1 The Lessee agrees to pay the Lessor's solicitors reasonable costs of acting for the Lessor in the preparation and negotiation of this Agreement and any stamp duty payable on this Agreement.

Payment of costs

10.2 The Lessee shall pay those costs and stamp duty if applicable to the Lessor's Solicitors within 14 days of execution of this Agreement and presentation of the relevant tax invoice.

No caveat by Lessee

11. The Lessee shall not lodge or authorise any person to lodge a caveat in respect of the Lessee's interest in the Land or the Premises under this Agreement.

Assignment

Assignment by Lessor

12.1 In the event of the Lessor disposing of the Land on which the Premises are situated before the Lease Commencement Date, the Lessor must assign to the purchaser the Lessor's rights under this Agreement and procure the execution of a deed in which the purchaser assumes the Lessor's obligations under this Agreement. On completion of the sale to the purchaser the Lessor's obligations under this Agreement to the Lessee shall be discharged and the purchaser as successor in title shall assume those obligations.

Assignment by Lessee

12.2 The Lessee's rights under this Agreement are personal to the Lessee and cannot be assigned without the Lessor's consent.

Default

13.1 In any of the following situations either party may terminate this Agreement for default, before the Lease Commencement Date:

- (a) if the defaulting party fails to observe and to perform any of the express provisions of this Agreement within the time specified in or in accordance with this Agreement, or if no time is specified within a reasonable time, and the breach or default continues for a period of 14 days after the terminating party serves written notice on the defaulting party specifying the breach or default and requiring the defaulting party to comply with this Agreement, without the defaulting party having remedied the breach or default before the terminating party shall have terminated this Agreement.

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- (b) if the defaulting party is a corporation, and
 - (i) a resolution is passed or order is made for the defaulting party's winding up;
 - (ii) a liquidator, provisional liquidator, administrator, receiver or receiver and manager, is appointed in respect of the defaulting party or over its business or assets;
- (c) if the defaulting party makes an assignment for the benefit of its creditors or enters into an arrangement or composition with its creditors.

Mode of termination for default

13.2 The terminating party may terminate this Agreement for default by serving written notice on the defaulting party.

Consequences of termination

13.3 When the terminating party has validly terminated this Agreement for default:

- (a) the Lessee's entitlement to a Lease over the Premises is terminated and the lease documents, although executed by one or both parties, cease to have legal effect;
- (b) the terminating party is entitled to recover from the defaulting party damages for breach and for repudiation of this Agreement, including for loss of rent and for failure to enter into the Lease;
- (c) The defaulting party is liable for the terminating party's legal and professional costs and disbursements properly and reasonably incurred as a consequence of the default, including for termination of this Agreement and for enforcing the terminating party's entitlements on termination.

Dispute resolution

Prerequisites to litigation

14.1 If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of the Agreement or as to any claim in tort, in equity or pursuant to any statute) (called "Dispute") the Lessor or the Lessee may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause except where the party seeks urgent interlocutory relief.

Notice of dispute

14.2 The Lessor or the Lessee claiming that a Dispute has arisen under or in relation to this Agreement must give written notice to the other party to this Agreement specifying the nature of the Dispute.

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Endeavour to resolve dispute

14.3 On receipt of that notice by that other party, the parties must within 14 days of receipt endeavour in good faith to resolve the Dispute.

Mediation

14.4 If the parties do not agree within seven (7) days of receipt of the notice (or such further period as agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

If mediation fails

14.5 If the Dispute is not settled within 28 days (or such other period as agreed to in writing between the parties) after appointment of the mediator, or if no mediator is appointed within 28 days of the referral of the Dispute to mediation, the parties may pursue any other procedure available at law for the resolution of the dispute.

Service of notices

Service in accordance with this clause

15.1 Any notice, document or demand (called "notice") under this Agreement may be served in accordance with this clause.

Written notice

15.2 The notice shall be in writing, signed by the party giving it or by that party's solicitor.

Service of notice

15.3 The notice shall be served on the other party or on that party's solicitor.

Particulars for service

15.4 Particulars for the service of notices are:

Lessor- Ballina Shire Council

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Address: Council Chambers, Cnr Cherry & Tamar Streets, Ballina NSW
2478

Lessor's solicitor- W J Grace & Co

Address: Suite 4, 160 River Street, Ballina NSW 2478

Facsimile: (02) 860 165

Lessee- Department of Family & Community Services NSW

Address: 4-6 Cavill Avenue, Locked Bag 4028, Ashfield NSW 2131

Lessee's solicitor- Mr I V Knight, Crown Solicitor

Address: Crown Solicitor's Office, 60-70 Elizabeth Street, Sydney NSW
2000

Facsimile: (02) 9224 5011

Additional or altered address

15.5 Either party may advise the other party of an additional or an altered address for the service of notices, within is within the State of NSW and is not a post office box or poste restante.

Modes of service

15.6 A notice may be served:

- (a) by delivering it to the party or to the party's solicitor at the address shown in clause 9.4 or notified under clause 9.5 (called "the party's address") and leaving it with the party, the solicitor or some other person accepting the notice on behalf of either of them;
- (b) by sending it by pre-paid post, correctly addressed, to the party's address;
- (c) by transmitting in on a Business day by facsimile to the party's solicitor's facsimile receiving facility indicated in this clause (Service of Notices).

Time of service

15.7 A notice is considered to have been served:

- (a) at the time of delivery;
- (b) on the third Business day after the day on which it is posted, the first Business day being the day of posting;
- (c) on the Business day on which the notice is received by the recipient's facsimile receiving facility.

Occupation of Premises before Lease registration

16.1 If requested by the Lessee, the Lessor will permit the Lessee to occupy the Premises during the period between Lease Commencement Date (or such other date as may be agreed)

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and registration of the Lease on the basis of an equitable lease on the terms specified below:

Term of lease: From the Lease Commencement Date (or such other date as may be agreed) to the date of registration of the Lease.

Lease Fee: \$1 (GST excl.), if demanded.

Lease terms: The covenants in the Lease.

EXECUTED AS A DEED

THE COMMON SEAL of)
BALLINA SHIRE COUNCIL)
was hereunto affixed pursuant)
to a resolution of the Council:)

.....
Paul Hickey
General Manager

.....
Phillip Silver
Mayor

Signed sealed and delivered for and on)
behalf of the Crown in right of the)
State of New South Wales by the Minister)(signature of Minister)
for Family & Community Services, and)
Minister for Women)

In the presence of:)

.....) (signature of witness)
(insert name of witness)

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SCHEDULE 1

Lease

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10.3 **Lease - Proposed Aboriginal Child & Family Care Centre.DOC**

Form: 07L
Release: 4-0

LEASE
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) **TORRENS TITLE**

Property leased
Polio Identifier /

(B) **LOGGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE
	Reference:	L

(C) **LESSOR**

BALLINA SHIRE COUNCIL (ABN 53 929 87 369)

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) **LESSEE**

THE CROWN IN RIGHT OF THE STATE OF NEW SOUTH WALES ACTING THROUGH ITS DEPARTMENT OF FAMILY AND COMMUNITY SERVICES (ABN 87 503 966 787)
TENANCY:

- (G) 1. **TERM** Twenty one (21) years
2. **COMMENCING DATE**
3. **TERMINATING DATE**
4. With an **OPTION TO RENEW** for a period of N/A set out in clause N/A of N/A
5. With an **OPTION TO PURCHASE** set out in clause N/A of N/A
6. Together with and reserving the **RIGHTS** set out in clause N/A of N/A
7. Incorporates the provisions or additional material set out in **ANNEXURE(S) "A"** hereto.
8. Incorporates the provisions set out in N/A No. N/A
9. The **RENT** is set out in clause No. 6 of Reference Schedule

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.

DATE

(H) Certified correct for the purposes of the Real Property Act 1900 by the corporation named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below.
Corporation: BALLINA SHIRE COUNCIL (ABN 53 929 867 369)
Authority: Resolution of the Council

Signature of authorised person:

Name of authorised person: Paul Rickey
Office held: General Manager

Signature of authorised person:

Name of authorised person: Phillip Silver
Office held: Mayor

I certify I am an eligible witness and that the lessee signed this dealing in my presence.
[See note* below].

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of witness:

Name of witness: See Annexure
Address of witness:

Signature of lessee:

(I) STATUTORY DECLARATION*

I solemnly and sincerely declare that---

- 1. The time for the exercise of option to in expired lease No. has ended; and
- 2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at in the State of New South Wales on
in the presence of of

Justice of the Peace Practising Solicitor Other qualified witness [specify]

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person / I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
- 2. I have known the person for at least 12 months / I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was

Signature of witness: Signature of applicant:

* As the services of a justice of the peace, practising solicitor or other qualified witness cannot be provided at lodgment, the statutory declaration should be signed and witnessed prior to lodgment of the form.

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.
ALL HANDWRITING MUST BE IN BLOCK CAPITALS Page 2 of 37 1203

(H) EXECUTION PAGE

This is the second execution page of the Lease

dated

between BALLINA SHIRE COUNCIL (ABN 53 929 87 369)

and THE CROWN IN RIGHT OF THE STATE OF NEW SOUTH WALES ACTING THROUGH
ITS DEPARTMENT OF FAMILY AND COMMUNITY SERVICES (ABN 87 503 996
787)

Signed sealed and delivered for and on)
behalf of the Crown in right of the)
State of New South Wales by the Minister)(signature of Minister)
for Family & Community Services, and)
Minister for Women)

In the presence of:)

.....) (signature of witness)
(insert name of witness)

ANNEXURE "A"

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10.3 Lease - Proposed Aboriginal Child & Family Care Centre.DOC

- (ii) pipes and connections to water, sewerage, electricity, gas, telecommunications, air conditioning and other services and supplies, situated within above or under the Land which connect those services to the Building.

(g) "Lessee" includes

- (i) when an individual, the Lessee's legal personal representatives;
- (ii) when several individuals, the Lessees jointly and their respective legal personal representatives;
- (iii) the Lessees assigns;
- (iv) when a company or corporation, its successors and assigns;
- (v) when the Crown in right of the State of New South Wales acting through a non-corporatised NSW public sector entity that has no separate legal identity to the Crown in right of the state of New South Wales, any other non-corporatised NSW public sector successor entity that also has no separate legal identity to the Crown in right of the state of New South Wales, including where such an entity assumes administrative responsibility for this Agreement and Lease as a result of an administrative re-structure within the NSW public sector.

(h) "Lessor" includes

- (i) when an individual, the Lessor's legal personal representatives;
- (ii) when several individuals, the Lessors jointly and their respective legal personal representatives;
- (iii) the Lessor's assigns;
- (iv) when a company or corporation, its successors and assigns.

(i) "Lessee's Fixtures" means all fixtures, fittings, plant, machinery, utensils, shelving, counters, safes or other articles in the nature of trade or tenant's fixtures constructed or installed on the Leased Premises by the Lessee or brought onto the Leased Premises by the Lessee and which can be removed without damaging the Building (but to avoid doubt excludes the Building).

(j) "Reference Schedule" means the Reference Schedule in this Lease.

(k) "Services" means electricity, gas, water, sewerage, telephone, telecommunication, and any other services provided or available to the

Leased Premises by public or local or statutory authorities and the pipes, wires, ducting and other means of providing those services to the Leased Premises.

2. Interpretation

Terms

- 2.1 (a) Words expressed in the singular include the plural and vice versa.
- (b) Words expressed in one gender include the other genders, as is appropriate in the context.
- (c) The reference to "person" includes a corporation.

Statutes

- 2.2 References to statutes, regulations, ordinances and by-laws when contained in this Lease include amendments, re-enactments or consolidations of any of them.

Covenants implied by statute

- 2.3 Covenants and powers implied by statute are excluded from this Lease, unless any such covenant or power cannot be excluded by force of statute or is expressly incorporated in this Lease.

Joint and several liability

- 2.4 (a) In the event of there being two or more lessors or two or more lessees under this Lease (including whilst the Lease or the reversion is held by legal personal representatives, successors or assigns) each of them is jointly and severally liable to perform covenants and obligations under this Lease.
- (b) When there are two or more lessors or lessees, any conduct under or in respect of this Lease, including the exercise of any entitlement or taking any action under this Lease or a provision of this Lease, shall be undertaken by all of the lessors or all of the lessees jointly, unless this Lease expressly provides otherwise.

Severance

- 2.5 If any provision contained in this Lease is or becomes legally ineffective, under the general law or by force of legislation, the ineffective provision shall be severed from this Lease which otherwise continues to be valid and operative.

Governing law

- 2.6 This Lease is governed and construed in accordance with the law of the State in Item 4 in the Reference Schedule.

Lease comprises entire agreement

- 2.7 It is agreed that this Lease contains the whole of the agreement between the Lessor and the Lessee relating to the Leased Premises.

PART 2- THE SUBJECT MATTER AND TERM OF THIS LEASE

3 Rights and entitlements granted to Lessee

3 The Lessor grants to the Lessee for the duration of this Lease

- (a) exclusive possession of the Leased Premises;
- (b) the free and uninterrupted passage of Services to the Leased Premises;

4 The term of this Lease

- 4 The Lessor leases the Leased Premises to the Lessee for the term specified in Item 5 in the Reference Schedule.

5 Holding over after expiry of Lease

- 5.1 After the expiry of the term of this Lease, when the Lessee remains in occupation of the Leased Premises with the consent of the Lessor this Lease continues as a monthly tenancy
- (a) commencing on the day immediately following the last day of the term of this Lease;
 - (b) the rent being payable monthly in advance, comprising the rent payable immediately before the end of this Lease and the Lessees contributions to operating expenses, calculated and payable from time to time in accordance with this Lease;
 - (c) on the terms contained in this Lease, except those terms which are inapplicable to a monthly tenancy;
 - (d) the tenancy being terminable by either party on one months written notice expiring at any time.

PART 3 - LESSEE'S FINANCIAL OBLIGATIONS

6 Rent payments

- 6.1 The Lessee covenants to pay rent as specified in Item 6 in the Reference Schedule

7 Goods and services tax (GST)

Interpretation

- 7.1 In this clause:

"GST" refers to goods and services tax under A New Tax System (Goods and Services) Act 1999 ("GST Act) and the terms used have the meanings as defined in the GST Act.

Rent and other amounts exclusive of GST

- 7.2 It is agreed that rent and all other amounts agreed to be paid by the Lessee to the Lessor, being the consideration for the supply expressed in this Lease, are exclusive of GST.

Lessee's obligation to reimburse lessor

- 7.3 In respect of any liability of the Lessor for GST under this Lease, and the renewal or extension of this lease including for rent, rates, outgoings, or any consideration for any other taxable supply:

the Lessee covenants to pay to the Lessor, at the same time as any payment is made involving the Lessor in GST liability, the additional amount of GST, together with the payment to which it relates.

Lessor's input tax credits

- 7.4 (a) The Lessee's liability under 7.3 is to reimburse the full amount of GST, disregarding and excluding the Lessor's entitlement to input tax credits or other credits or reimbursements for GST.
- 7.4. (b) Notwithstanding 7.4(a), if the Lessor is entitled to an input tax credit in relation to any amount recoverable from the Lessee under 7.3, the amount payable by the Lessee shall be reduced by the amount of the input tax credit which the Lessor has received or claims and is entitled to receive.

Tax invoice

- 7.5 In respect of each payment by the Lessee under 7.3, the Lessor agrees to deliver to the Lessee, as required under the GST Act, tax invoices in a form

which complies with the GST Act and the regulations, to enable the Lessee to claim input tax credits in respect of the taxable supply.

8 Rates and taxes

Lessee's contributions to rates and taxes

- 8.1 (a) The Lessee shall pay or reimburse the Lessor for rates and taxes (called "outgoings") specified in Item 7 in the Reference Schedule for the term of this Lease.
- (b) The amount of outgoings shall be calculated by the Lessor for each annual period ending on the day in Item 7 in the Reference Schedule (called "annual period").

Rates and taxes

- 8.2 (a) In this clause "rates and taxes" means all rates, taxes, charges and impositions, currently and in the future, payable to any Federal, State, local government, statutory or public authority or corporation, in respect of the Leased Premises including:-
- (i) municipal, local and other rates and charges payable to a local authority;
 - (ii) rates and charges for the supply, reticulation or discharge of water (including water usage), sewerage, drainage and removal of waste;
 - (iii) land tax or any similar tax, at the rate payable if the Land was the only land owned by the Lessor; but not including any income tax, capital gains tax or similar tax payable by the Lessor.

Payment of Lessee's contribution

- 8.3 (a) Within the number of days in Item 7 in the Reference Schedule after the end of an annual period the Lessor shall provide to the Lessee an itemised statement of the total outgoings paid by the Lessor during or attributed to that annual period.
- (b) The Lessor's itemised statement is prima facie evidence of the outgoings during an annual period.
- (c) Within thirty (30) days after the receipt by the Lessee of an itemised statement, the Lessee shall pay or reimburse the Lessor the total amount stipulated in the statement.

9 Services

Lessee's liability for services and utilities

- 9.1 The Lessee will pay throughout this Lease for any electricity, power, fuel, gas, oil, water, telephone, garbage removal, waste disposal, and other services or utilities provided by public local or other authorities or suppliers to the Leased Premises to the supplier of the service or utility.

Installation of meters

- 9.2 The Lessee will, if required by the Lessor or by an authority supplying any such service or utility, permit the installation of meters required to measure the quantity of the service supplied to the Leased Premises.

10 Costs

Costs of preparation of Lease

- 10.1 (a) The Lessee shall pay on execution of this Lease the stamp duties if any and registration fees, and subsequently the costs and stamp duty when upstamping this Lease.
- (b) The Lessee shall pay on execution of this Lease the Lessor's reasonable legal costs of the negotiation, preparation, execution and registration of this Lease.

Renewal or extension of lease

- 10.2 The costs and disbursements of any renewal or extension of this Lease shall be paid by the parties as is indicated in clause 10(1).

Consents, transactions and default

- 10.3 The Lessee agrees to pay the Lessor's costs, charges, and expenses which are incurred reasonably, properly and in good faith in its capacity as Lessor (but not, to avoid doubt, in its capacity as a regulatory authority), in connection with
- (a) the obtaining of any consent from the Lessor (as lessor), and from any headlessor, mortgagee or other person, which is required by the Lessee under this Lease;
 - (b) the negotiation and preparation of all documents relating to any consent required by the Lessee under this Lease, and all costs incurred by the Lessor, and by any other party whose consent is required, whether a consent is given, refused, or the application for consent is withdrawn;
 - (c) any breach or default by the Lessee under this Lease;

10.3 Lease - Proposed Aboriginal Child & Family Care Centre.DOC

- (d) the exercise or attempted exercise by the Lessor of any right, power, privilege, authority or remedy, against the Lessee to enforce the Lessee's obligations under this Lease, or to terminate this Lease for the Lessee's breach or default.

Costs on common fund basis

10.4 The Lessor's legal and professional costs and disbursements under clause 10.3 shall be charged and allowed on a common fund basis, to provide full indemnity to the Lessor for costs charges and expenses, but the Lessee may challenge the propriety or amount of any item and may require the assessment of a bill of costs.

Lessor's internal costs

10.5 The Lessor's costs under clause 10.3 include

- (a) the Lessor's reasonable administrative costs and expenses of considering any application for consent, of considering and managing any breach or default under this Lease and attendances by the Lessor's officers, employees or agents, including attendances on the Lessor's legal advisers and in court;
- (b) the fees of professional consultants reasonably and properly incurred by the Lessor.

Lessee's obligation to pay costs

- 10.6
- (a) The Lessor is entitled to render to the Lessee an itemised statement of any costs charges and expenses for which the Lessee is liable in accordance with clause 10.3 at any time after they have been incurred. In respect of any such statement, the Lessee shall pay the amount claimed, subject to clause 10.4
 - (i) when the Lessor's consent is provided to the Lessee;
 - (ii) in any other case, within thirty (30) days after service of the statement on the Lessee.
 - (b) The Lessee's liability shall incur interest on the basis specified in clause 12 from the thirty first day after the date of service of the statement until the day of payment, calculated on a daily rate.

11 Precluding deduction for set-off or counterclaim

The Lessee expressly agrees to make all payments due under this Lease, including for rent and outgoings, punctually on the date when each payment is due and shall not withhold or be entitled to withhold the whole or part of any

such payment by way of deduction, set-off or counterclaim, in respect of any claim for damages or for compensation which the Lessee shall make or has made against the Lessor, until after the Lessor's liability for damages or compensation is determined and the amount due to the Lessee is determined or agreed.

12 Lessee's liability for interest on overdue payments

Interest on overdue payments

12.1 In the event of the Lessee being in default for a period of more than fourteen (14) days with the payment of rent, rates, outgoings, costs or any other liability to or on behalf of the Lessor under this Lease, the Lessee is liable to pay additional interest to the Lessor in accordance with this clause.

Computation of interest

12.2 Interest is computed

- (a) from the day immediately following the day on which each liability is due for payment, at a daily rate, until the liability is discharged by payment;
- (b) at the rate of interest equivalent to the prescribed rate of interest payable under s.101 of the *Civil Procedure Act 2005* (being the rate of interest prescribed by rule 36.7 of the *Uniform Civil Procedure Rules 2005*), as amended from time to time.
- ;
- (c) in respect of amounts remaining unpaid, the Lessor at its option may capitalise interest calculated up to the end of each calendar month whilst there are outstanding liabilities in accordance with clause 12.1 from the Lessee.

Recovery of interest

12.3 The Lessor may demand the payment of interest and take legal action to recover the amount due at any time after not less than fourteen (14) days notice is given to the Lessee indicating the amount due and its calculation.

PART 4 - USE OF LEASED PREMISES

13 Use of Leased Premises

13.1 The Lessee will not use or permit the Leased Premises to be used for any other purpose than that stated in Item 9 in the Reference Schedule without the Lessor's prior consent.

14 Warranties and representations

No warranty of suitability or adequacy

14.1 Regarding the present or future suitability or adequacy, for the Lessee's intended use of the Land.

- (a) the Lessee acknowledges that no promise, representation or warranty was given by or on behalf of the Lessor to or on behalf of the Lessee;
- (b) the Lessor makes no warranty;
- (c) any warranties implied under the general law or by statute are excluded under this Lease and negated to the extent permitted by law.

Lessee's responsibility for approvals

- 14.2
- (a) The Lessee has satisfied itself, before entering into this Lease, regarding the need for, the availability, and existence of all approvals, consents and licences required for use of the Leased Premises by the Lessee and for the intended and permitted use of the Leased Premises.
 - (b) The Lessee has full responsibility, at its expense, to ensure that all approvals, consents and licences required by the Lessee generally and specifically from any Government Agency for the use of the Leased Premises are obtained and maintained throughout the term of this Lease and that all their conditions are observed.

15 Signs

Sign on exterior of Leased Premises

- 15.1
- (a) The Lessee may install a sign upon the Leased Premises
 - (i) limited to the Lessee's name, the description of its business and the Lessee's trade mark or insignia;
 - (ii) in accordance with chapter 14 of the Ballina Shire Combined Development Control Plan;
 - (iii) in accordance with any condition of development consent attaching to the Leased Premises;
 - (iv) with painted or plastic characters which are not moving, flashing or animated.

- (b) Any signs or notices installed by the Lessee shall be maintained by the Lessee in good repair and condition throughout the term of this Lease.

16 Compliance with regulations

Lessee's obligation

- 16.1 The Lessee shall at its expense observe and comply with all laws and requirements relating to
- (a) the Lessee's use and occupation of the Leased Premises and for the use permitted in this Lease;
 - (b) the Leased Premises by reason of the number and the sex of the Lessee's employees and other persons working in or entering the Leased Premises;
 - (c) the fixtures, fittings, machinery, plant and equipment used upon the Leased Premises;
 - (d) occupational health, safety and environmental matters;
 - (e) any development consent including the conditions of consent attaching to the Leased Premises.

Compliance with notices

- 16.2 The Lessee shall comply with the notices or requirements of the relevant Government Agency regarding the matters in clause 16.1, whether given to the Lessor or the Lessee.

17 Lessee's obligations regarding use of Leased Premises

Prohibitions with reference to use of Leased Premises

- 17.1 The Lessee shall not, during the term of this Lease:
- (a) Allow the Leased Premises to be used for any illegal, immoral, noxious, dangerous or offensive purpose, activity or occupation.
 - (b) Use or permit any part of the Leased Premises to be used as sleeping quarters or for residence.
 - (c) Keep any animals on the Leased Premises.
 - (d) Hold or permit any auction or public meeting on the Leased Premises.

10.3 Lease - Proposed Aboriginal Child & Family Care Centre.DOC

- (e) Use or permit the use of any sound producing equipment in the Leased Premises at a volume which may be heard outside the curtilage of the Leased Premises.
- (f) Use the Leased Premises in a noisy or in any other manner which would cause damage, nuisance or disturbance to the Lessor, or to the owners or occupiers of adjoining properties.
- (g) Use the Leased Premises in an excessively noisy or noxious or offensive manner.
- (h) Use any plant or machinery on the Leased Premises so as to constitute a nuisance or disturbance to the Lessor or to the owners or occupancies of adjoining properties due to noise, vibration, odours or otherwise.

Mode of conducting Lessee's business

17.2 The Lessee agrees, regarding the conduct of its business on the Leased Premises, throughout the term of this Lease, to conduct its business in an orderly, efficient and reputable manner, consistent with the standard and quality of the permitted use.

Inflammable substances

17.3 The Lessee shall not bring into, store or use on the Leased Premises any inflammable, dangerous or explosive substances

- (a) such as acetylene, industrial alcohol, burning fluids and chemicals, including in heating or lighting the Leased Premises;
- (b) unless the use of such substances constitutes proper conduct of the Lessee's business for the permitted use of the Leased Premises and the particular substances are stored and used only whilst taking all necessary safety precautions and in compliance with all fire and safety regulations relating to such substances.

Cleaning and hygiene

17.4 The Lessee agrees to keep the Leased Premises clean and

- (a) to have the floor and the interior of the Building cleaned regularly;
- (b) to have the surfaces of windows cleaned regularly;
- (c) to have any fittings, equipment and furnishings cleaned as frequently as required to maintain them in a clean condition;

- (d) not allow the accumulation of useless property or rubbish on the Leased Premises.

Disposal of rubbish

- 17.5
- (a) The Lessee shall cause all rubbish accumulated on the Leased Premises to be placed daily in suitable containers and situated in an area designated by any relevant development consent.
 - (b) The Lessee will ensure that trade waste or wet refuse is removed from the Leased Premises at least once daily as directed by the Lessor or any relevant development consent.

Use of toilets and drainage

17.6 The Lessee shall

- (a) not use the toilets, sinks, drainage and plumbing in the Building for purposes other than those for which they were designed;
- (b) not place in any of those facilities rubbish, chemicals, contaminated and other substances, which they are not designed to receive or which would infringe health or environmental regulations;
- (c) repair any damage caused to any of those facilities by breach of paragraph (a) or (b).

PART 5 - REPAIRS, MAINTENANCE AND ALTERATIONS

18 Lessee's repair obligations

Lessee's general obligation

18.1 The Lessee shall keep the Leased Premises, Services and the Lessee's fixtures and chattels situated in the Building in good repair and working condition throughout this Lease and shall on expiry or termination of this Lease yield up the Leased Premises to the Lessor in the state of repair and condition as is specified in this clause.

Lessee's specific obligations

- 18.2
- (a) The Lessee shall:
 - (i) take reasonable action to prevent the entry of water into the Building and to keep it watertight and weatherproof;

(ii) comply with the requirements of Government Agencies relating to the Leased Premises which are imposed as a result of the Lessee's use of the Leased Premises.

(b) The Lessee is responsible, in respect of the Building for

(i) structural repair;

(ii) latent defects; and

(iii) fair wear and tear; and

(iv) repair of any damage howsoever caused (other than damage caused by the Lessor).

18.3 The Lessee shall throughout the term of this Lease, carry out the following repairs and maintenance

(a) promptly repair or replace all broken, cracked or damaged glass in the Building with glass of the same or similar gauge and quality;

(b) promptly repair or replace all damaged, broken or faulty light globes, fluorescent lights, power points, light switches, heating, lighting and electrical appliances, services and wiring in the Building;

(c) promptly repair and keep in proper working order and free from blockage plumbing fittings, drains, water pipes, sewerage pipes, toilets and sinks, to the extent to which they are situated in or under the Building and provide Services or facilities to the Building or the Land;

(d) maintain and repair all door and window locks and fittings in the Building;

(e) repair any damage or breakage to the Building to the Lessee's fixtures and property therein, and to Services and facilities therein;

(f) properly maintain gardens, lawns and landscaped areas in and outside the Building and on the Land;

(g) promptly, appropriately, and effectively remove any graffiti appearing upon the Building, external signage, pathway or other structure on the Land;

(h) promptly repair any damage to the exterior cladding and finishes to the exterior of the Building.

Carrying out repairs

- 18.4 When carrying out any repair or maintenance in accordance with this clause, the Lessee shall ensure that
- (a) the work is carried out by appropriately licensed and qualified tradespersons;
 - (b) the work is carried out promptly;
 - (c) the work is completed in high class workmanship and with good quality materials;
 - (d) fittings and materials of similar style and quality are used to the items being repaired or replaced;
 - (e) the work is completed in accordance with the specifications stipulated by the manufacturer of any building product or material used;
 - (f) the required consent or approval of any Government Agency is obtained to carry out the work and the conditions of approval are observed;
 - (g) the work is carried out without creating undue noise, nuisance or interference with the use and enjoyment of adjoining or nearby properties.

19 Lessors right to inspect the Leased Premises

Right of inspection

- 19.1 The Lessor, or persons authorised by the Lessor, may enter the Leased Premises
- (a) to inspect its condition and state of repair and Services and facilities;
 - (b) to ascertain that the Lessee complies with the Lessee's obligations under this Lease.

Prior notice

- 19.2 The Lessor shall exercise its entitlement under clause 19.1
- (a) not more frequently than once annually during the lease term;
 - (b) at reasonable times during business hours on a Business day;

- (c) after giving not less than seven (7) days prior written notice to the Lessee of the intended time of the inspection, except in an emergency when the Lessor has an additional right to enter the Leased Premises and prior notice is not required before entry.

20 Lessor's right to enter/repair the Leased Premises

Lessor's right of entry

- 20.1 The Lessor and persons authorised by the Lessor, including consultants and contractors, may enter the Leased Premises, together with tools, equipment and materials, and remain on the Leased Premises, at and for such reasonable times as is necessary for the purpose of carrying out repairs and other work, in accordance with this clause.

Notice before entry

- 20.2 Before entering the Leased Premises the Lessor shall give to the Lessee not less than seven (7) days prior written notice of the intended date and time of entry, its purpose and the likely duration of the intended work, except in an emergency, when prior notice before entry is not required.

Nature of repairs

- 20.3 The Lessor may carry out repairs, including maintenance, installations, alterations, replacement or renewal, in respect of the Leased Premises, Services and facilities to or situated in/or on the Leased Premises in order:

- (a) to undertake work which the Lessor is required or desires to carry out in accordance with this Lease;
- (b) to comply with the requirements of any Government Agency;
- (c) to carry out work in conjunction with or to adjoining properties which cannot be reasonably undertaken without access from or through the Leased Premises;
- (d) to undertake work which the Lessee
 - (i) failed to carry out, in breach of its obligations under this Lease, or following notice from the Lessor;
 - (ii) failed to complete in a workmanlike manner;
- (e) to remove unauthorised work, alterations or signs, undertaken or installed by the Lessee in breach of its obligations under this Lease;

Lessor to cause minimum inconvenience

20.4 When carrying out work in accordance with this clause, the Lessor:

- (a) shall endeavour not to cause undue interference with the Lessee's use and enjoyment of the Leased Premises, or the conduct of the Lessee's business;
- (b) shall avoid causing damage to the Lessee's fixtures, fittings and merchandise;
- (c) shall rectify any damage caused to the Leased Premises or Services, whilst carrying out work;
- (d) shall leave the Leased Premises, on completion of the work, in a condition and state of cleanliness not inferior to those existing before the work was undertaken.

21 Lessee's Fixtures

21.1 The Lessee may at any time install in or on the Leased Premises such Lessee's Fixtures as may be reasonably necessary for the Permitted Use of the Leased Premises.

21.2 Upon the expiry or earlier determination of the Lease the Lessee may (and if required to do so by the Lessor by notice in writing must) remove from the Leased Premises all Lessee's Fixtures within fourteen (14) days after having ceased to occupy the Leased Premises or as otherwise agreed.

21.4 The Lessee shall in such removal do no damage to the Leased Premises or shall forthwith make good any such damage occasioned thereto.

PART 6 - INSURANCE, INDEMNITIES, DAMAGE AND DESTRUCTION

22 Lessee's insurances

Lessee's obligation to insure

22.1 The Lessee shall effect and maintain throughout the term of this Lease a comprehensive insurance policy

- (a) for the full insurable and replacement value of the Building and all plant, equipment, facilities and property in the Building;
- (b) including for the costs of demolition, site clearance, removal of debris, professional and other costs of planning and other approvals and for reinstating or replacing the Building and Services and facilities to the Building;
- (c) against loss or damage by fire, storm, tempest, earthquake, lightning, explosion, and other risks usually covered under a comprehensive insurance policy for fire and related risks.

- (d) A public risk insurance policy
 - (i) in the form of a standard public risk policy or in the form commonly used by the Lessee's insurer and by some other reputable insurers;
 - (ii) (A) in the sum in Item 10 in the Reference Schedule in respect of any single event or accident;

(B) or for such higher amount as the Lessor, acting reasonably and prudently, may require, during any year of the term of this Lease after the first year of the term of this Lease;
 - (iii) relating to the Lessee's liability for death, personal injuries and property damage arising from the Lessee's occupancy of the Land and use of the Building whilst entering, leaving, using and being on the Land or any portion of the Land or in any portion of the Building in circumstances in which the Lessee may incur liability for the injury, loss or damage;
 - (iv) and extended to include claims, risks and events covered under indemnities provided by the Lessee to the Lessor under this Lease.

Plate glass

- (e) For the full replacement value, through breakage or damage from any cause
 - (i) of all plate and other glass in windows, doors and other fixed glass in the Building; and
 - (ii) of any doors, windows or other frames containing the glass;
 - (iii) within or forming part of the Building.

Lessee's property

- (f) A comprehensive insurance policy
 - (i) for the full insurable and replacement value of the Lessee's fixtures, fittings, plant, equipment and stock in trade in the Building;
 - (ii) against loss or damage by fire, storm, tempest, earthquake, lightning, explosion, burglary and other risks

usually covered under a comprehensive insurance policy for fire and related risks.

Workers' compensation

- (g) A workers' compensation insurance policy, providing unlimited cover in respect of the Lessee's employees for workers' compensation, as required by law.

Insurer

- 22.2 The Lessee shall effect the insurance under clause 21.1 with an insurer which is respectable, reputable and financially sound.

Premium

- 22.3 The Lessee shall pay punctually the insurance premium to effect and maintain insurance throughout the term of this Lease.

Insurer and conditions

Lessor's approval

- 22.4 (a) The Lessee's insurances shall be effected with one or more insurance companies which are
- (i) respectable, reputable and financially sound;
 - (ii) approved by the Lessor, and the Lessor's approval shall not be unreasonably withheld.

Payment of premium

- 22.5 (a) The Lessee shall pay punctually when due the insurance premiums and other moneys payable to effect and maintain the insurances required under this clause.
- (b) If the Lessee fails to pay an insurance premium when due, the Lessor may make such payment, which shall become due and payable by the Lessee to the Lessor, together with interest, within seven (7) days after service of written notice by the Lessor on the Lessee requiring payment.

Replacement of property

- 22.6 (a) In the event of loss or damage to Lessee's property which is covered by insurance effected by the Lessee, the Lessee will promptly replace, repair or reinstate the damaged or destroyed property, utilising the proceeds from the insurance.

- (b) The Lessee shall pay any additional costs of replacement, repair or reinstatement not covered by the proceeds from the insurance,

Evidence of Insurance

- 22.7 The Lessee will in respect of any policy of insurance effected by the Lessee under this Lease upon the Commencement Date and each anniversary thereof and upon each policy renewal date and otherwise as and when required by the Lessor produce to the Lessor the policy of insurance the receipt for the last premium and a certificate of currency.

Crown as self-insurer

- 22.8 Despite anything contained in this clause (Lessee's Insurances), it is agreed between the parties that, for so long as the Lessee is a NSW public sector entity that self-insures through the Treasury Managed Fund (or any successor self-insurance fund operated by the Crown in right of the State of New South Wales), the Lessee shall have the right to rely on the Crown as its own insurer and the Lessor shall not require the Lessee to take out a policy of insurance for any purpose.

23 Lessee's conduct relevant to insurance

Compliance with fire safety regulations

- 23.1 The Lessee agrees to prudently insure the Building and comply with all fire safety regulations, in respect of the authorised use by the Lessee of the Building with regard to the installation, repair and maintenance of fire alarms, sprinklers, and fire prevention equipment in the Building.
- 23.2 The Lessee shall provide evidence to the Lessor that it has completed, submitted, and paid any relevant fees in respect of the annual Fire Safety Statement and Certificate of Maintenance pertaining to the Building and any other structure on the Land each year of the Lease Term.

24 Lessees indemnities to Lessor

Indemnities

- 24.1 The Lessee agrees to indemnify the Lessor from and against any liability, loss, damage, expense or claim, which the Lessor may incur, including to a third party, during or after the term of this Lease, in respect of or arising from:

Breach of lease obligations

- (a) Loss, damage or injury to property or person occurring within the Building or upon the Land caused or contributed to by the Lessees failure (including through the Lessees agents or

employees) to comply with the obligations imposed under this Lease.

Misuse of Services or Facilities

- (b) The negligent use or misuse by the Lessee (and by its agents or employees) of any Services or facilities in the Building or upon the Land.

Escape of substances

- (c) The overflow, leakage or escape of water, gas, electricity, fire, or other materials or substances in or from the Building or the Land, caused or contributed to by the Lessee's (and its agents' or employees') negligence.

Use of the Building and Land

- (d) Loss, damage or injury to property or person, caused or contributed to by the Lessee's negligence, arising out of use of the Building or the Land.

Faulty installations

- (e) Loss, damage or injury to property or persons, caused or contributed to by the defective installation of plant, fixtures and equipment in the Building or otherwise upon the Land by or on behalf of the Lessee.

Failure to notify

- (f) The Lessee's failure to notify the Lessor regarding any defect in the facilities or Services in the Building or upon the Land.

Conditions and limitations

24.2 The indemnities under this clause

- (a) include penalties, fines, legal and other costs incurred by the Lessor;
- (b) do not apply when the loss, damage or injury was caused or substantially contributed to by the wilful or negligent act or omission of the Lessor, its employees or agents;
- (c) do not apply when the Lessor is indemnified for the loss or damage from moneys paid or recovered from insurances effected by the Lessor.

PART 7 - ASSIGNMENT AND SUBLETTING

25 Prohibition against assignment, subletting and mortgage over lease

Prohibition of dealings

- 25.1 During the continuance of this Lease, in respect of whole or part of this Lease or the Land or Building the Lessee shall not, without the Lessor's prior consent
- (a) assign, transfer, sublet, deal with, hold on trust, or grant any interest in, this Lease;
 - (b) mortgage, charge or encumber this Lease;
 - (c) part with possession of whole or any part of the Leased Premises;
 - (d) grant any licence, or share the right of occupation or possession, in respect of whole or part of the Leased Premises;
 - (e) grant any franchise or concession over the Lessee's business conducted upon the Land which would entitle any other person to use, occupy or trade from whole or part of the Leased Premises.

Consent to assignment, sublease or licence

- 25.2 The Lessee may apply to the Lessor for consent to the assignment of this Lease or to the sublease or licence of the whole or any part of the Leased Premises, which assignment, sublease or licence will not be unreasonably refused by the Lessor if:
- (a) the Lessee is not in default under the Lease;
 - (b) the proposed assignee, sublessee or licensee is a public sector entity not forming part of the NSW Crown or a non-for-profit entity of sound financial status;
 - (c) the Leased Premises will continue to be used for the Permitted Use or, with the Lessor's consent, a similar use.
- 25.3 (a) Should any proposed assignee sublessee or licensee be a government entity that has a separate legal identity to the Crown in right of the state of New South Wales or not be a not for profit entity a condition of consent to such assignment shall be that the Rent will be reviewed to market and such market rent shall be payable from the date of assignment.
- (b) "market rent" in this clause 24 means the current market rental for the Leased Premises assessed on the basis that the Leased Premises can or could be used for commercial purposes irrespective of the zoning of the Land or any other planning law or requirement.

- 25.4 It is acknowledged that administrative responsibility for this Lease may be transferred between NSW government departments and other non-corporatised NSW public sector entities with no separate legal identity from the Crown in right of the state of New South Wales such that, provided the Lessee remains the Crown in right of the state of New South Wales, no assignment of the Lease is necessary.
- 25.5 Notwithstanding any other clause in this Lease should the Lessee receive any rent pursuant to any assignment or sub-lease or licence fee pursuant to any licence or any payment in the nature of rent or a licence fee or other remuneration from the use of the Leased Premises and such rent, licence fee, payment, or remuneration exceeds the rent as specified in Item 6 of the Reference Schedule the Lessor shall be immediately entitled without demand to 50% of any such rent, licence fee, payment or remuneration payable to the Lessee.

PART 8- LESSORS COVENANTS, OBLIGATIONS AND RESERVATION OF ENTITLEMENTS

26 Lessor's covenant for quiet enjoyment

The Lessor covenants with the Lessee that whilst the Lessee complies with the financial and other obligations under this Lease, the Lessee may occupy and have the use and enjoyment of the Land for the term of this Lease without interruption or disturbance from the Lessor and other persons lawfully claiming through or under the Lessor.

27 Miscellaneous reservations

Services

- 27.1 The Lessee may use the Services, if any, available to the Leased Premises with the approval and subject to such conditions as shall be determined by the Lessor. If there are no Services available to the Leased Premises the Lessee may provide such services as the Lessee may reasonably require subject to the approval of the Lessor.
- 27.2 The Lessor reserves the right to maintain Services to the Land and to adjoining properties by having those Services pass through or under the Land or Building and to have access to those Services for the purpose of maintenance, repair or replacement, or to provide additional Services for the Land or adjoining properties through or under the Land provided that the Lessor shall pay reasonable compensation to the Lessee for any damage caused to the Leased Premises by the Lessor (including by its employees and contractors) in the exercise of the Lessor's rights under this clause.

PART 9- DEFAULT AND TERMINATION

28 Lessee's obligation to yield up Land and Building

28.1 Subject to the clause (Lessee's Fixtures), the Lessee agrees, immediately on the expiry or legally effective termination of this Lease, to yield up possession ownership and control over the Leased Premises and all improvements on the Land to the Lessor, in the condition and state of repair as required under this Lease.

Ownership of Building

28.2 Subject to the clause (Lessee's Fixtures), upon the termination or expiry of this Lease for any reason all right title and interest in the Building and any improvements to the Land are transferred to the Lessor and become the property of the Lessor free of any fee, charge, payment, obligation, interest or encumbrance.

29 Essential terms of lease

It is agreed that the following obligations by the Lessee are essential terms of this Lease:

- (a) the covenant to pay rent throughout the lease term at a date not later than fourteen (14) days after the due date for the payment of rent (clause 6);
- (b) the covenant to pay outgoings throughout the lease term at a date not later than fourteen (14) days after the due date for the payment of instalments (clause 8);
- (c) the covenant dealing with the use of the Leased Premises (clause 13);
- (d) the covenant dealing with approvals related to use of the Leased Premises (clause 14.2);
- (e) the covenant dealing with compliance with regulations and notices (clause 16);
- (f) the covenant prohibiting specified activities or uses (clause 17.1);
- (g) the covenant to repair (clause 18);
- (h) the covenant to insure (clause 22.1);
- (i) the covenant dealing with assignment and subletting (clause 25);

- (j) the covenant regarding ownership of the Building upon expiry or termination (clause 28); and
- (k) the covenants to rebuild, repair, pay compensation, and hand over possession (clauses 33, 34, & 34A).

30 Lessor's entitlements after Lessee vacates during lease term

Lessor's entitlements

If the Lessee vacates or abandons the Leased Premises during the lease term in breach of the Lessee's obligations under this Lease, the Lessor may

- (a) re-enter and terminate this Lease; or
- (b) accept the Lessee's conduct as a surrender of this Lease.

31 Power of attorney by Lessee to Lessor

Appointment

31.1 The Lessee appoints the Lessor (and its successors and assigns, being the owner of the property for the time being) the Lessee's attorney with the powers contained in this clause.

Irrevocable power

31.2 This power of attorney is

- (a) irrevocable by the Lessee,
- (b) granted by the Lessee for valuable consideration (the grant of this Lease by the Lessor), to secure the performance of the Lessee's obligations and the Lessors proprietary interest over the Land and following termination or expiry of this Lease in the Building.

Extent of power

31.3 The Lessor as the Lessee's attorney and in the name and on behalf of the Lessee may

- (a) remove from the Land, store and sell, any plant, equipment, chattels and other property left on the Land by the Lessee, after the Lessee has vacated the Building and the Land and this Lease is terminated or has expired;
- (b) surrender this Lease, after

10.3 Lease - Proposed Aboriginal Child & Family Care Centre.DOC

- (i) the Lessor has become entitled to terminate this Lease; and
 - (ii) the Lessee vacates or abandons the Leased Premises; or
 - (iii) the Lessor terminates this Lease by serving notice of termination;
- (c) withdraw any caveat lodged by the Lessee in respect of this Lease, after the Lessor effectively terminates this Lease.

31.4 The Lessor may

- (a) act as attorney under this clause during the continuance of this Lease and during the period of the number of months in Item 11 in the Reference Schedule after the termination of this Lease;
- (b) register this Lease (or lease provision) as a power of attorney, at any time including after the termination of this Lease, if that is required for the exercise of any power;
- (c) ratify and confirm any power when exercised under this clause, as attorney and agent for the Lessee.

32 Waiver

Demand and acceptance of rent and other financial obligations

After the Lessee is in default or breach under this Lease, including in breach of an essential term of this Lease, the demand or acceptance from the Lessee by the Lessor of arrears or of any late payment of rent, rates, taxes, outgoings, operating expenses, or other financial obligations does not

- (a) preclude the Lessor from exercising any rights or remedies under this Lease, including enforcing or terminating this Lease;
- (b) constitute a waiver of the essentiality of the Lessee's obligation to make those payments;
- (c) waive the Lessee's continuing obligation to make those payments during the lease term.

33 Lessee's entitlement to terminate Lease for damage to or destruction of Leased Premises

Destruction or substantial damage to the Building before practical completion

33.1 If, before its practical completion, the Building is destroyed or substantially damaged so as to render it unfit for use by the Lessee the Lessee must, by written notice to the Lessor within four weeks of the date of such destruction or damage, elect to either:

- (a) terminate this Agreement and make good the Leased Premises to the condition it was in at the commencement of this Lease; or
- (b) rebuild and reinstate the Building at the Lessee's cost,

in each case, within a reasonable time from the date of such destruction.

Destruction or substantial damage to the Building after practical completion

33.2 Unless the parties otherwise agree, if after its practical completion the Building is destroyed or substantially damaged so as to render it unfit for use by the Lessee, the Lessee must, by written notice to the Lessor within four weeks of the date of such destruction or damage, elect to either:

- (a) terminate this Lease and pay compensation to the Lessor for the destruction or damage, such compensation being the cost of rebuilding or repair of the Building to its original design, that is determined by a quantity surveyor jointly engaged by the parties and whose costs are to be paid by the Lessee, or
- (b) rebuild or repair the Building at the Lessee's cost,

in each case, within six (6) months from the date of such destruction or damage.

34 Termination of Lease if construction does not begin or is incomplete by 30 June 2014

34.1 If construction of the Building has not begun or is incomplete by 30 June 2014 by reason of the Commonwealth government ceasing to fund its construction, the Lessee may immediately terminate this Lease provided that:

- (a) the Lessee gives written notice of such termination to the Lessor by 31 July 2014; and
- (b) the Lessee promptly removes any structures that it has caused to be erected on the site and any debris and restores the site to the reasonable satisfaction of the Lessor.

34A Termination of Lease after construction of the Building

34A.1 In addition to any other rights of termination, the Lessee may terminate the Lease at any time after the construction of the Building and on three months' written notice provided that, on termination, the Lessee must pass possession, ownership and control of the Building to the Lessor in the condition and state of repair required by this Lease.

34B Destruction or damage caused by Lessor

Notwithstanding any other clause of this Lease, but without affecting the parties' rights and obligations thereunder except as expressly provided by this clause, the Lessee shall have no liability to rebuild or reinstate the Building, or to compensate the Lessor for the cost of rebuilding or repair of the Building, to the extent that the destruction of or damage to the Building is caused by the Lessor, including its personnel.

35 Termination of Lease for default

Default

35.1 Each of the following constitutes a default by the Lessee under this Lease

- (a) the failure to pay to the Lessor rent or comply with any other financial obligation under this Lease, including the payment of outgoings, for a period in excess of thirty (30) days after the due date for payment, whether a formal demand for payment has or has not been made;
- (b) the failure to comply with an essential term of this Lease;
- (c) any serious, persistent and continuing breach by the Lessee of its covenants and obligations under this Lease.

Termination after default

35.2 The Lessor may terminate this Lease, after a default by the Lessee in accordance with clause 35 and continuance of the default, after the Lessor shall have served a legally effective notice of breach of covenant (if required) by

- (a) re-entering and taking possession of the Building and Land, using reasonable force to secure possession;
- (b) serving on the Lessee written notice terminating this Lease;
- (c) instituting proceedings for possession against the Lessee;

- (d) taking the actions in both (a) and (b) or in (b) and (c).

36 Lessor's entitlement to damages

Damages for breach or for repudiation

36.1

- (a) In the event that the Lessee's conduct (whether acts or omissions) constitutes
- (i) a repudiation of this Lease (or of the Lessee's obligations under this Lease);
 - (ii) a breach of any Lease covenants;
 - (iii) a breach of an essential term of this Lease; the Lessee covenants to compensate the Lessor for the loss or damage suffered by the Lessor as a consequence of the repudiation or breach, whether this Lease is or is not terminated for the repudiation, breach or on any other ground.
- (b) The Lessor's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Lease.
- (c) The Lessor is entitled to recover damages against the Lessee in respect of the repudiation or breach of covenant or essential term for the loss suffered by the Lessor during the term of this Lease, including the periods before and after termination of this Lease.
- (d) The Lessor's entitlement to recover damages is not affected or limited by any of the following:
- (i) if the Lessee abandons or vacates the Building or Land;
 - (ii) if the Lessor elects to re-enter or to terminate the Lease;
 - (iii) if the Lessor accepts the Lessee's repudiation;
 - (iv) if the parties' conduct constitutes a surrender by operation of law.

Additional entitlements of Lessor

36.2 The Lessor's entitlement to damages is in addition to

10.3 Lease - Proposed Aboriginal Child & Family Care Centre.DOC

- (a) the entitlement to recover rent, rates, taxes, outgoings and operating expenses until the date of expiry or termination of this Lease;
- (b) interest on late payments in accordance with this Lease;
- (c) costs of any breach or default, including the costs of termination.

37 Removal of Lessee's property excepting Building and improvements to the Land

Lessee's obligation to remove property

- 37.1
- (a) With the exception of the Building and any improvements to the Land the Lessee shall remove all its property, including Lessee's Fixtures, furniture, plant, equipment and stock in trade from the Leased Premises before the expiry or termination of this Lease or, if it is terminated by the Lessor, within fourteen (14) days after this Lease is terminated or as otherwise agreed.
 - (b) After the Lessor terminates this Lease, the Lessee and its employees and agents may have access to the Leased Premises whilst the Lessor has possession and control over those premises for the next fourteen (14) days (excluding Sundays and public holidays), between 8am and 5pm, for the purposes of removing the Lessee's property and cleaning, repairing or restoring the Leased Premises.
 - (c) The Lessee shall not cause any damage to the Leased Premises whilst removing its property, shall leave the Land and Building clean and tidy after the removal and shall be liable for the cost of repair of the damage caused by or during the removal.

Lessee's failure to remove property

- 37.2
- (a) If the Lessee fails to remove any of its property from the Leased Premises, the Lessor may
 - (i) have that property removed from the Leased Premises and stored, using reasonable care in removing and storing the property, but being exempted from any liability to the Lessee for loss or damage to any of its property through the negligence of the Lessor, its employees or agents;
 - (ii) sell or otherwise dispose of all or any of the Lessee's property, with or without removing them from the Leased Premises, in the name of and as agent for the Lessee.

- (b) (i) In respect of all or any of the Lessee's property which the Lessee has failed to remove from the Leased Premises, the Lessee is deemed to have abandoned the property and title to it and the Lessor at its option acquires title to that property through abandonment.
- (ii) The Lessor is not obliged to account to the Lessee for the value of any property whose title vests in the Lessor by abandonment.

Lessee's responsibility for damages and costs

37.3 The Lessee is responsible for and indemnifies the Lessor in respect of

- (a) any loss or damage caused by the Lessee, its employees or agents during the removal of the Lessee's property from the Leased Premises;
- (b) the costs of removal, storage and sale of any of the Lessee's property.

PART 10- MISCELLANEOUS

38 Service of notices

Notice

38.1 Any notice, document or demand (called "notice") under this Lease shall be served in accordance with this clause.

Signature of notice

38.2 The notice shall be in writing, signed by the party giving it, or by the party's duly authorised officer (if a corporation), agent or solicitor.

Service of notice

38.3 A notice may be served on a party to this Lease, including their successors, and assigns,

- (a) by personal delivery to that party or if more persons than one are lessors or lessees to any one of them at their address for service as stated in Item 12 of the Reference Schedule;
- (b) by delivering the notice to the Lessor's business address and leaving it with an employee of the Lessor;

- (c) by sending it, addressed to the party at that party's address stated in Item 12 in the Reference Schedule, by prepaid security post or certified post;

Additional or altered address

38.4 Either party may advise the other party of an additional or an altered address for the service of notices, which is within the State of New South Wales and is not a post office box or poste restante.

Time of service

38.5 A notice is considered to have been served

- (a) at the time of delivery;
- (b) on the third Business day after the day on which it is posted, the first Business day being the day of posting.

REFERENCE SCHEDULE

Item 1 (introduction)	Lessor: Ballina Shire Council ABN 53 929 887 369 of Council Chambers, Cnr. Cherry and Tamar Streets, Ballina NSW 2478
Item 2 (introduction)	Lessee: Crown in right of the State of New South Wales acting through its Department of Family and Community Services ABN 87503966787 of 4-6 Cavill Avenue, Ashfield NSW 2131
Item 3 (cl 1)	Description of Land: Proposed Lot [TBA] in plan of subdivision of Lot 30 DP 260335
Item 4 (cl 2.6)	Law of State governing this Lease: New South Wales
Item 5 (cl 4)	Lease term: Twenty One (21) years Commencement date: [TBA] Last day of lease term: [TBA]
Item 6 (cl 6)	Rent: Dollars per annum: \$1.00 per annum Payable annually First payment on commencement date
Item 7 (cl 8)	Percentage of outgoings (cl 8.1): 100 per cent (%) Annual period, for operating expenses, ending on [TBA] (cl 8.1(b)); Lessor's itemised statement of total outgoings, to be given number of days after end of annual period (cl 8.3(a)): 30 days
Item 8 (cl 12)	Not used
Item 9 (cl 13)	Use of Land & Building for the following purposes (cl 13.1): Aboriginal Child and Family Centre
Item 10 (cl 21)	Lessees insurances – Amount of initial public risk cover (cl 21.1(a)(ii)(A)): \$20 Million Dollars
Item 11 (cl 30)	Duration of power of attorney after termination of Lease (cl 30.4)(a): Six (6) months
Item 12 (cl 35)	Address for service of notices (cl 35.3(d)) – Lessor: Council Chambers, Cnr. Cherry & Tamar Streets, Ballina NSW 2478 Tel: (02) 6686 4444

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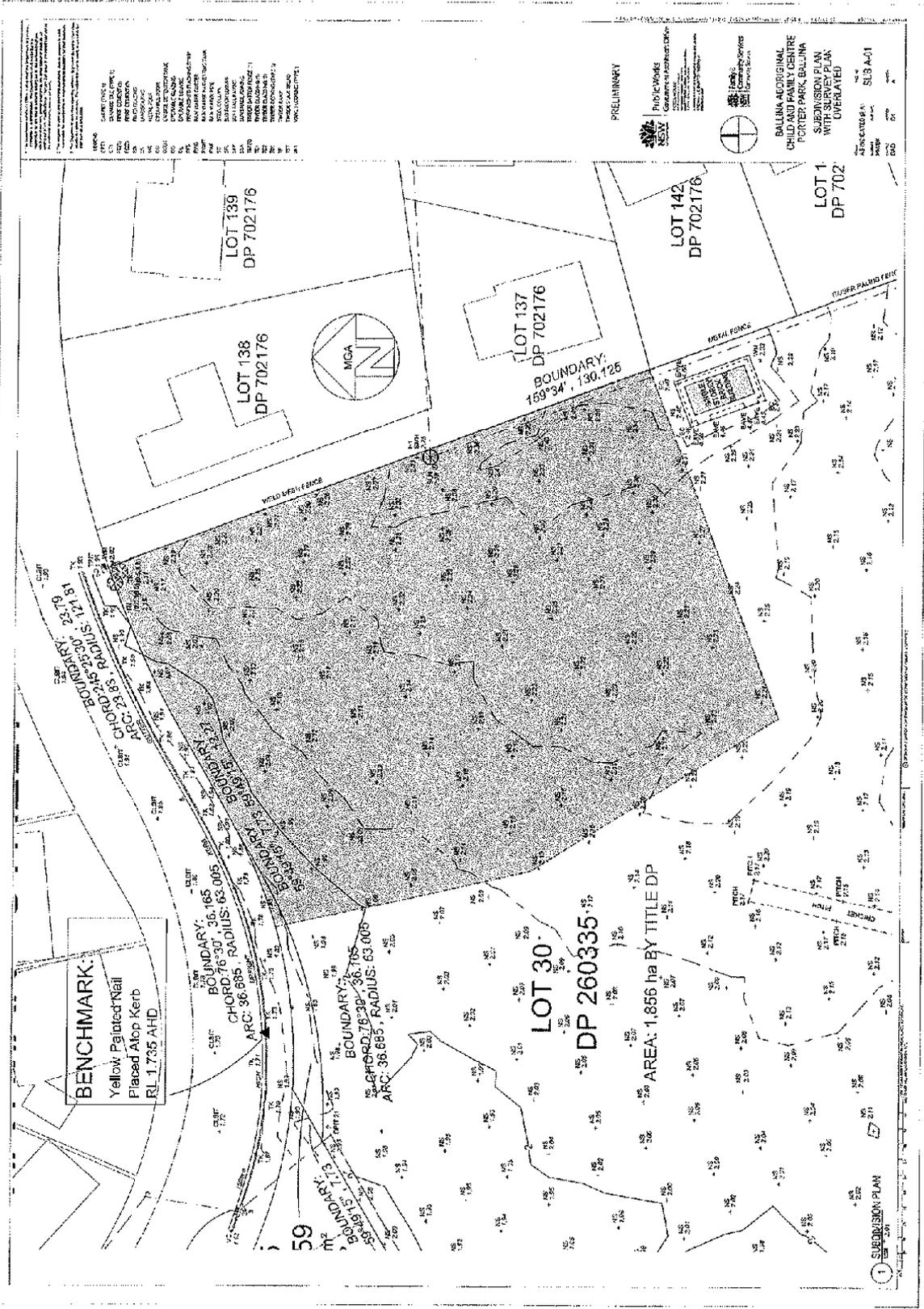
Fax: (02) 6686 7035
Email: council@ballina.nsw.gov.au

Lessee: 4-6 Cavill Avenue, Ashfield NSW 2131, Locked Bag 4028,
Ashfield NSW 2131 – Attention Divisional Director, Communities and
Early Years Division
Tel: (02) 9716 2222
Fax: (02) 9716 2997
Email: info@dhs.nsw.gov.au
Additional or altered address may be notified within (cl 35.4): State of
New South Wales.

SCHEDULE 2

Lease Subdivision Plan

201002114 D2012/082294



SCHEDULE 3

Plans and Drawings

201002114 D2012/082294

VOLUME 3
DRAWING LIST

ARCHITECTURAL

- A-00 COVER SHEET NTS
- A-01 SITE PLAN 1:200
- A-02 FLOOR PLAN 1:100
- A-03 SECTION 1:100
- A-04 SELECTED CEILING PLAN NTS
- A-05 NOT INFER 1:100
- A-06 SECTIONS 1:100
- A-07 WALL SECTIONS 1:20
- A-08 WALL SECTIONS 1:20
- A-09 WALL SECTIONS 1:20
- A-10 JOINERY & WET AREA DETAILS 1:20
- A-11

STRUCTURAL

- S-00 GENERAL NOTES NTS
- S-01 CONCRETE SECTIONS AND DETAILS 1:20
- S-02 ROOF WARRING PLAN 1:100
- S-03 SILLING SECTIONS AND ELEVATIONS SHEET 1 1:100
- S-04 SILLING SECTIONS AND ELEVATIONS SHEET 2 1:100
- S-05 STEEL AND TIMBER SECTIONS AND DETAILS 1:10
- S-07

CIVIL

- C-00 CIVIL GENERAL NOTES NTS
- C-01 CIVIL WORKS PLAN AS SHOWN

HYDRAULIC

- H-00 HYDRAULIC SERVICES LEGEND, NOTES, DETAILS DRAWING SCHEDULE NTS
- H-01 HYDRAULIC SERVICES LEGEND 1:200
- H-02 HYDRAULIC SERVICES LEGEND 1:100
- H-03 SANITARY DRAINAGE - SANITARY DRAIN AND FLOOR PLAN 1:100
- H-04 WATER AND GAS SERVICES - DETAILS AND NOTES NTS
- H-05 HYDRAULIC SERVICES - DETAILS AND NOTES NTS

ELECTRICAL

- E-00 ELECTRICAL SERVICES SITE PLAN & SCHEDULE 1:200
- E-01 ELECTRICAL SERVICES LIGHTING & ELECTRICAL LAYOUT 1:100
- E-02 ELECTRICAL SERVICES LIGHTING & COMMUNICATIONS LAYOUT 1:100
- E-03 ELECTRICAL SERVICES DETAILS NTS

MECHANICAL

- M-01 MECHANICAL SERVICES LEGEND, GENERAL NOTES, EQUIPMENT SCHEDULES & POWER DIAGRAM 1:100, 1:50
- M-02 MECHANICAL SERVICES AIR CONDITIONING & MECHANICAL REFRIGERATION SYSTEMS 1:100, 1:50

LANDSCAPE

- L-01 SITE PLAN FINISHES & LEVELS 1:200
- L-02 EXTERIOR PLAY AREA DETAIL 1:100
- L-03 PLAYING PLAN 1:100
- L-04 PLANTING PLAN AS SHOWN
- L-05 LANDSCAPE WORKS DETAILS AS SHOWN
- L-06 LANDSCAPE WORKS DETAILS AS SHOWN

KITCHEN

- K-00 KITCHEN EQUIPMENT AND SERVICES LAYOUT 1:50
- K-01 KITCHEN EQUIPMENT ELEVATIONS AND DETAILS 1:20

FOR INFORMATION ONLY

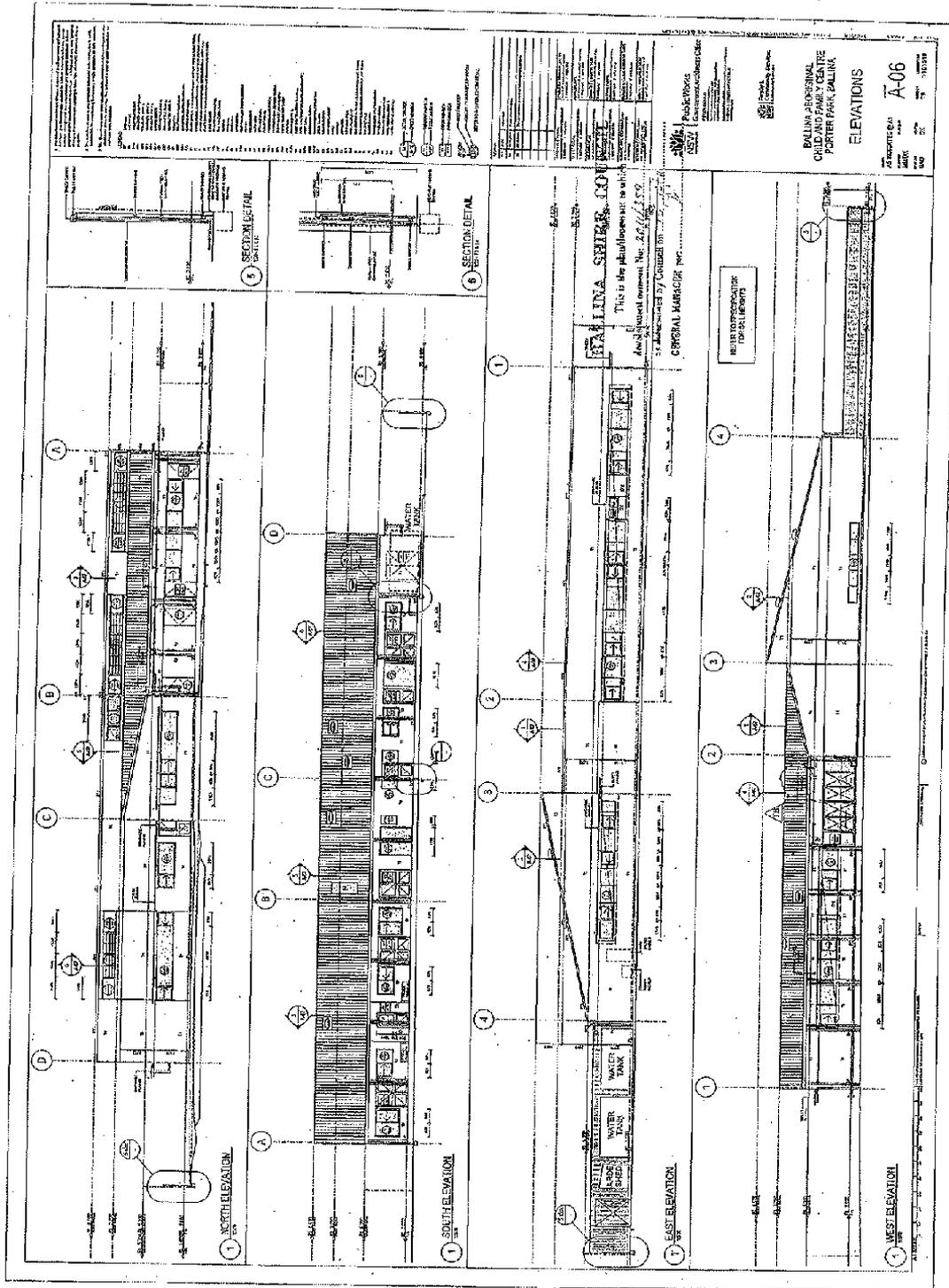
- FIN-00 FINISHES PLAN 1:100
- FIN-01 FINISHES PLAN REVISION 1:100
- FIN-02 FINISHES PLAN REVISION 1:100

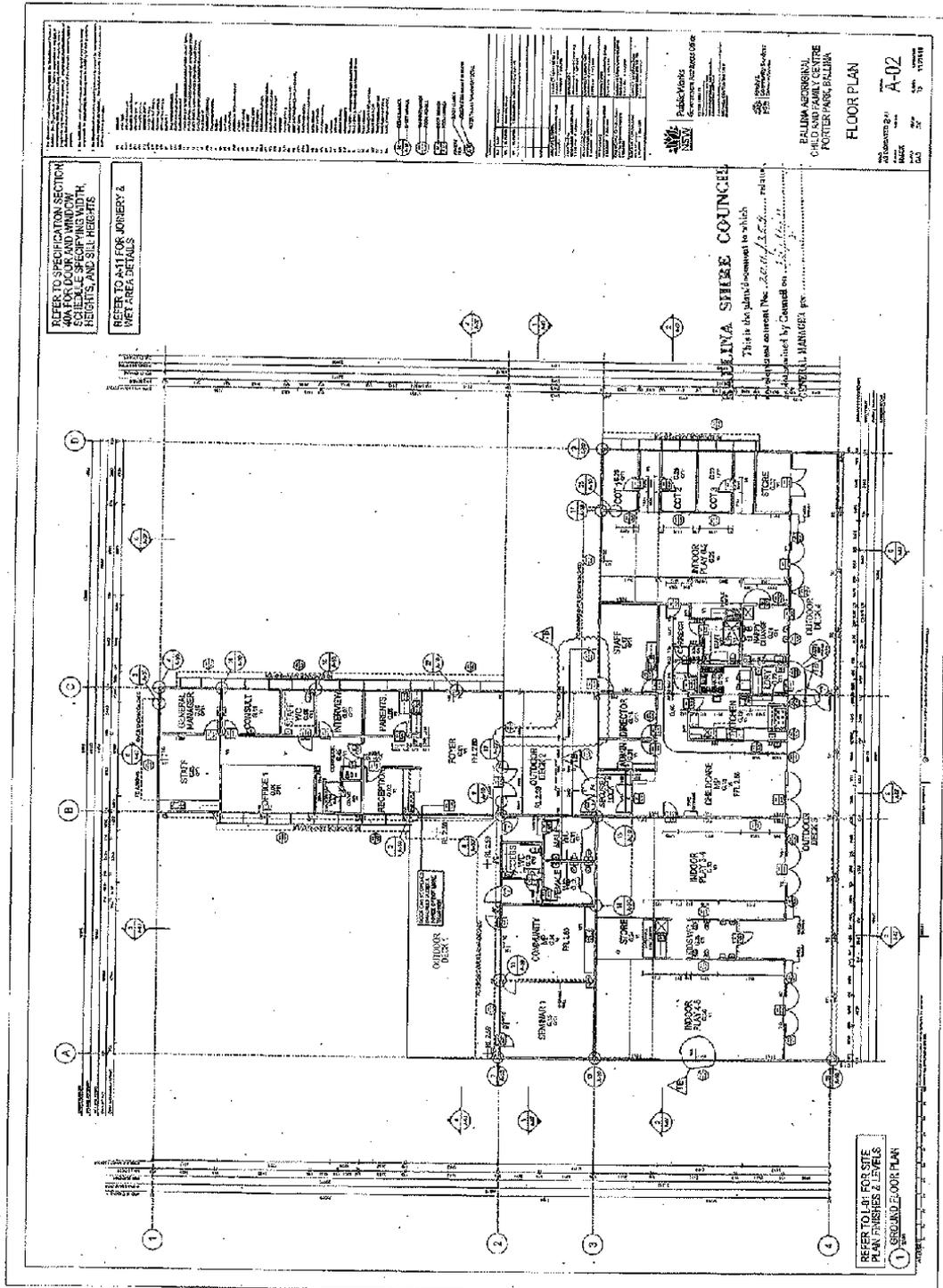
FURNITURE

- F-01 FURNITURE PLAN 1:100

BALLINA SHIRE COUNCIL
The Shire of Ballina
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BALLINA SHIRE COUNCIL
The Shire of Ballina
100/102/104/106/108/110/112/114/116/118/120/122/124/126/128/130/132/134/136/138/140/142/144/146/148/150/152/154/156/158/160/162/164/166/168/170/172/174/176/178/180/182/184/186/188/190/192/194/196/198/200/202/204/206/208/210/212/214/216/218/220/222/224/226/228/230/232/234/236/238/240/242/244/246/248/250/252/254/256/258/260/262/264/266/268/270/272/274/276/278/280/282/284/286/288/290/292/294/296/298/300/302/304/306/308/310/312/314/316/318/320/322/324/326/328/330/332/334/336/338/340/342/344/346/348/350/352/354/356/358/360/362/364/366/368/370/372/374/376/378/380/382/384/386/388/390/392/394/396/398/400/402/404/406/408/410/412/414/416/418/420/422/424/426/428/430/432/434/436/438/440/442/444/446/448/450/452/454/456/458/460/462/464/466/468/470/472/474/476/478/480/482/484/486/488/490/492/494/496/498/500/502/504/506/508/510/512/514/516/518/520/522/524/526/528/530/532/534/536/538/540/542/544/546/548/550/552/554/556/558/560/562/564/566/568/570/572/574/576/578/580/582/584/586/588/590/592/594/596/598/600/602/604/606/608/610/612/614/616/618/620/622/624/626/628/630/632/634/636/638/640/642/644/646/648/650/652/654/656/658/660/662/664/666/668/670/672/674/676/678/680/682/684/686/688/690/692/694/696/698/700/702/704/706/708/710/712/714/716/718/720/722/724/726/728/730/732/734/736/738/740/742/744/746/748/750/752/754/756/758/760/762/764/766/768/770/772/774/776/778/780/782/784/786/788/790/792/794/796/798/800/802/804/806/808/810/812/814/816/818/820/822/824/826/828/830/832/834/836/838/840/842/844/846/848/850/852/854/856/858/860/862/864/866/868/870/872/874/876/878/880/882/884/886/888/890/892/894/896/898/900/902/904/906/908/910/912/914/916/918/920/922/924/926/928/930/932/934/936/938/940/942/944/946/948/950/952/954/956/958/960/962/964/966/968/970/972/974/976/978/980/982/984/986/988/990/992/994/996/998/1000







Whole title | Regulations | Historical versions | Historical notes | Search title | PDF

Local Government Act 1993 No 30

Current version for 11 April 2012 to date (accessed 16 May 2012 at 14:45)

[Chapter 6](#) > [Part 2](#) > [Division 2](#) > Section 47

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47 Leases, licences and other estates in respect of community land—terms greater than 5 years

- (1) If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must:
 - (a) give public notice of the proposal, and
 - (b) exhibit notice of the proposal on the land to which the proposal relates, and
 - (c) give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and
 - (d) give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the land the subject of the proposal is likely to form the primary focus of the person's enjoyment of community land.
- (2) A notice of the proposal must include:
 - information sufficient to identify the community land concerned
 - the purpose for which the land will be used under the proposed lease, licence or other estate
 - the term of the proposed lease, licence or other estate (including particulars of any options for renewal)
 - the name of the person to whom it is proposed to grant the lease, licence or other estate (if known)
 - a statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice.
- (3) Any person may make a submission in writing to the council during the period specified for the purpose in the notice.
- (4) Before granting the lease, licence or other estate, the council must consider all submissions duly made to it.
- (5) The council must not grant the lease, licence or other estate except with the Minister's consent, if:
 - (a) a person makes a submission by way of objection to the proposal, or

<http://www.legislation.nsw.gov.au/fragview/inforce/act+30+1993+ch.6-pt.2-div.2-sec....> 16/05/2012

- (b) in the case of a lease or licence, the period (including any period for which the lease or licence could be renewed by the exercise of an option) of the lease or licence exceeds 21 years.
- (6) If the council applies for the Minister's consent, it must forward with its application:
- a copy of the plan of management for the land
 - details of all objections received and a statement setting out, for each objection, the council's decision and the reasons for its decision
 - a statement setting out all the facts concerning the proposal to grant the lease, licence or other estate
 - a copy of the newspaper notice of the proposal
 - a statement setting out the terms, conditions, restrictions and covenants proposed to be included in the lease, licence or other estate
 - if the application relates to a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years, a statement outlining the special circumstances that justify the period of the lease or licence exceeding 21 years
 - a statement setting out the manner in which and the extent to which the public interest would, in the council's opinion, be affected by the granting of the proposed lease, licence or other estate, including the manner in which and the extent to which the needs of the area with respect to community land would, in the council's opinion, be adversely affected by the granting of the proposed lease, licence or other estate.
- (7) On receipt of the application, the Minister must request the Director of Planning to furnish a report concerning the application within such period as the Minister specifies.
- (8) After considering the application and any report of the Director of Planning, the Minister, if satisfied that:
- (a) subsections (1), (2) and (6) have been complied with, and
 - (b) such consent would not contravene section 46, and
 - (c) in all the circumstances, it is desirable to grant consent,
- may consent to the granting of a lease, licence or other estate in respect of the whole or part of the land to which the application relates, subject to such terms and conditions as the Minister specifies.
- (8AA) The Minister may consent to a lease or licence referred to in subsection (5) (b) only if the Minister is satisfied that there are special circumstances that justify the period of the lease or licence exceeding 21 years.
- (8A) On request by any person, the Minister must provide that person, within 14 days of that request, with a written statement of reasons for consenting to, or refusing to consent to, the granting of a lease, licence or other estate in accordance with subsection (8).
- (9) The Minister's consent is conclusive evidence that the council has complied with subsections (1), (2) and (6).

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- (10) For the purposes of this section, any provision made by a lease or licence, or by an instrument granting any other estate, in respect of community land, according to which the council:
- (a) would suffer a disadvantage or penalty if the same or a similar lease, licence or estate were not to be granted, for a further term, after the expiry of the current lease, licence or other estate, or
 - (b) would enjoy an advantage or benefit if the same or a similar lease, licence or estate were to be so granted,
- is taken to confer an option for renewal for a term equal to the further term.

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