



**CORPORATE & GOVERNANCE
DIRECTORATE**

APPENDICES

ITEMS: 12.4.1 – 12.4.6

ORDINARY COUNCIL MEETING

To Be Held

Wednesday, 25th of August 2021

Commencing at 5.00pm

At

**Shire of Dardanup
Administration Centre Eaton
1 Council Drive - EATON**

This document is available in alternative formats such as:
~ Large Print
~ Electronic Format [disk or emailed]
Upon request.

**MEMORANDUM
OF
UNDERSTANDING**

BETWEEN THE FOLLOWING PARTIES

EATON BOWLING & SOCIAL CLUB INC
PRATT ROAD, EATON 6232
ABN 65 634 667 792

AND

EATON SENIOR CITIZENS ASSOCIATION INC
2 SANFORD WAY, EATON WA 6232
ABN 94 463 966 573

(Appendix ORD: 12.4.1A)

MEMORANDUM OF UNDERSTANDING – EATON BOWLING & SOCIAL CLUB INC AND EATON SENIOR CITIZENS ASSOCIATION INC

(Appendix ORD: 12.4.1A)

This **MEMORANDUM OF UNDERSTANDING (MOU)** is made

on the day of 2019

BETWEEN

EATON BOWLING & SOCIAL CLUB INC of Pratt Road, Eaton, Western Australia

AND

EATON SENIOR CITIZENS ASSOCIATION INC of 2 Sanford Way, Eaton, Western Australia

RECITALS

1. TERMS USED

ABN – means Australian Business Number.

CEO – means the Chief Executive Officer of the Shire of Dardanup.

Club Facilities – means the Eaton Bowling Club located at Lot 510, (R 27516) Pratt Road, Eaton

MoU – means this Memorandum of Understanding

Parties – means the Eaton Bowling & Social Club Inc and the Eaton Senior Citizens Association Inc

Council – means the Shire of Dardanup

Executive Group – means the Executive members of each respective Association, that being:

- President;
- Vice President;
- Secretary; and
- Treasurer.

2. TERMS OF MOU

2.1 This Memorandum of Understanding (MoU) commences on the date it is signed by both Parties and continues until either party terminates this MoU by the giving of notice in writing.

(Appendix ORD: 12.4.1A)

3. LEGAL EFFECT OF MOU

- 3.1 This MoU is a non-exclusive arrangement and is not intended to create legally binding obligations on any of the parties, but is intended to outline the agreed objectives of both parties.

4. OBJECTIVES

- 4.1 The objectives of this MoU are:

- to establish the framework, the commitment, communication and collaboration between the Parties;
- to enable the Parties to permanently share access and use the Club Facilities which are owned by the Shire of Dardanup and leased to the Eaton Bowling Club Inc for various activities; and
- to recognise and abide by the terms and conditions that are consistent with the principles as set out in this MoU.

5. PRINCIPLES

- 5.1 The parties agree to give effect to this MoU in accordance with the following principles:

- a) Their collaborative relationship is based on mutual respect, trust, accountability and a commitment to cooperating to achieve the objectives of this MoU;
- b) Abide by any relevant legislation together with any Business Rules, Constitutions which will inform and guide the actions of the Parties under this MoU; and
- c) In conducting any activities under this MoU both Parties will seek to build and maintain a cohesive, cooperative and harmonious environment for all members.

6. AGREEMENT

- 6.1 The parties agree to work collaboratively together to:

- a) Identify and agree to Club Facilities that are suitable for each Parties use;
- b) Develop a process for identifying and notifying the availability from time to time of Club Facilities to each other and to other community groups and for public hire and use;
- c) Develop communication channels through their respective printed, Internet and social media presence to reach and inform the community about Club Facilities that are available for activities and events in accordance with this MoU;
- d) Acknowledge, communicate and promote the role that the Parties play in working with each other and with other members of the community;

(Appendix ORD: 12.4.1A)

- e) Provide to each other such information and assistance as reasonably necessary to give effect to this MoU and to support the other Parties contribution under this MoU; and
- f) Mutually agree from time to time to provide formal recognition of the support provided by others including the WA Government, the Council and other sponsors and supporters.

7. RESPECTIVE MANAGEMENT, ROLES, ACKNOWLEDGEMENTS AND OBLIGATIONS

7.1 The Parties agree that the respective roles of the Parties are as facilitators, to bring together members of each of the Parties to meet the objectives of this MoU.

7.2. The Parties acknowledges and agrees that:

- a) Members of the Parties undertake their activities under their own constituting instruments and governance documentation;
- b) Each of the Parties do not have any role in the regulation or control of each other's members beyond any conditions of membership that each of the Parties may apply to their membership from time to time;
- c) Members of the Parties undertake that their business activities will be under their own management and neither will be accountable or in control of each other's business. The Eaton Senior Citizens Association Inc will not be involved in the running of the TAB, bar or care of the outside bowling greens.

7.3 The Parties acknowledge and agree that they:

- a) Will not undertake any investigations or any checks on the other Parties organisation, business, activities or members; and
- b) Provide no insurance or warranties for the other Party in respect of their organisation, members or activities.

7.4. It is the responsibility of both Parties to communicate to their respective members:

- a) The existence of this MoU, its purpose and objectives; and
- b) That the Executive Group for each of the Parties act as facilitators to bring together members of each of the Parties to meet the objectives of this MoU;

7.5 The Parties agree:

- a) To determine and to make available representatives of their respective organisation's in the establishment of a Joint Management Committee in accordance with the structure as attached to this MoU at *Appendix 1*.
- b) The established Joint Management Committee will have equal representatives from both the Eaton Senior Citizens Association Inc and the Eaton Bowling & Social Club Inc with equal voting rights.

(Appendix ORD: 12.4.1A)

- c) To determine the operating procedures relating to the Joint Management Committee which will include –
 - i) The number of representatives from each of the Parties
 - ii) Appointment of committee chairperson and proxy;
 - iii) Committee meeting content, business and agenda
 - iv) Voting rights;
 - v) Quorum of the committee; and
 - vi) Any other such operating procedures as required.
- d) Each Parties representatives on the Joint Management Committee will have sufficient authority to make decisions on behalf of that Party.
- e) The Joint Management Committee will meet one (1) month following the signing of this MoU and thereafter as mutually agreed, to review progress in meeting the objectives of this MoU and to manage the activities associated with each of the Parties in the establishment and use of the Club Facilities.
- f) Agree to give effect to this MoU in accordance with the principles set out in Clause 5;
- g) Agree that the basis upon which Club Facilities will be made available will be in accordance with Clause 8;
- h) That access to Club Facilities is on legal and commercial terms as agreed between both Parties for the use and hire of Club Facilities;
- i) The Eaton Senior Citizens Association Inc will not be a party to any agreement between facility users, hirers and the provider of Club Facilities;
- j) The expectations of both Parties is that users and hirers of Club Facilities must adhere to principles that are consistent with those in Clause 5 in the provision and use of Club Facilities;
- k) That each Party will not use the other Party's trademarks, trade names, designs, logos, slogans or emblems (whether or not the use is related to the objectives of this MoU) for any purpose without the other Party's prior written consent which may be given subject to conditions;
- l) That each Party will bear their own costs of conducting and participating in any activities associated with this MoU unless otherwise agreed in writing;
- m) That in giving effect to this MoU, each must comply with all relevant laws, regulations and relevant policies.

8. PROVISION OF CLUB FACILITIES

8.1 The Parties agree that:

- a) It will be the intent of this MoU that Club Facilities will be made available to either of the Parties for any purpose in accordance with this MoU;

(Appendix ORD: 12.4.1A)

- b) From time to time the Joint Management Committee can determine the terms and conditions of entry to and use of Club Facilities to suit and facilitate the needs of each of the Parties; and
- c) The Joint Management Committee will determine the:
 - Activity and function programming schedule;
 - Distribution of utility, maintenance and lease costs;
 - Hiring of the premises for functions and events;
 - Allocation of operational and maintenance task responsibilities; and
 - Any future capital works or development plans.

8.2 The Parties acknowledge and agree:

- a) That each of the Parties may conduct a range of activities including sporting and social activities, events, gatherings and meetings.
- b) Undertake their own inquiries about the nature of the activities that each Party may wish to conduct in Club Facilities;
- c) To make their own determinations on whether their facilities are suitable for the type of activity contemplated and the conditions that should apply to their use;
- d) Every endeavor will be made to charge concessional rates or waive rates for venue hire or use, for facilities made available for each party in accordance with this MoU.

Clause 8.2(d) does not limit the right of the Eaton Bowling & Social Club to apply their usual charges for any services such as the supply of food and beverages, catering for events, hiring of equipment or furniture, or provision of security or other personnel in accordance with their lease of the Club Facilities;

- e) To provide for dissemination to their members in agreed formats and mediums, information about conditions of entry and use (including any hire fees or other charges) of Club Facilities as and when updated from time to time;
- f) That any media release, publicity or other public announcement concerning the subject matter of this MoU, must have the prior written consent of both Parties; and
- g) That in providing Club Facilities they must comply with all relevant laws and relevant policies.

9. CONFIDENTIALITY, PUBLICITY & RECOGNITION OF SUPPORT

9.1 Each of the Parties must keep the information of the other Party that is designated as confidential or that it knows or ought to know is confidential, in strict confidence and must not disclose or cause the disclosure of such information except:

- a) As is necessary for the parties to perform their obligations under this MoU;
- b) With the other party's prior written consent; or

(Appendix ORD: 12.4.1A)

c) As required by law.

9.2 The Parties acknowledge and agree that they will consult with each other and to the extent possible in the circumstances, mutually agree any media release, publicity or other public announcement concerning the subject matter of this MoU.

10 TERMINATION

10.1 It is acknowledge that this MoU has been formed to enable the redevelopment of the existing Club Facilities, which has involved the commitment of State Government funding and Council resources, including considerable planning, design and development costs. This long term commitment of funds and resources requires the long term commitment of both the Eaton Bowling & Social Club Inc and the Eaton Senior Citizens Association Inc.

10.2 While acknowledging the long term commitment of the State Government, Council and the Eaton Bowling & Social Club Inc and the Eaton Senior Citizens Association Inc, either Party may still withdraw from this agreement at any time and without reason should it wish to do so, provided due notice is given to the other Party and the Council. The Party intending to withdraw must advise the other party/ies and Council in writing, giving at least twelve-month's notice of its intention to do so.

11. GENERAL

11.1. This MoU may only be varied by agreement in writing signed by both parties.

11.2. As this MoU serves only as a record of the intentions of the parties any issue, dispute, controversy or claim which arises out of the interpretation or application of this MoU will be dealt with pragmatically through amicable consultations and negotiations as the only method of settling the issue, dispute, controversy, or claim.

(Appendix ORD: 12.4.1A)

MEMORANDUM OF UNDERSTANDING – EATON BOWLING & SOCIAL CLUB INC AND EATON SENIOR CITIZENS ASSOCIATION INC

EXECUTION

SIGNED FOR AND ON BEHALF OF EATON BOWLING & SOCIAL CLUB INC

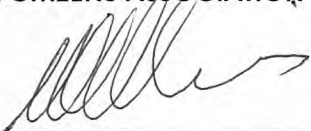
President 
(Mr Les Brook)

Date 18/12/19

Secretary 
(Mr Kerry Edwards)

Date 18/12/19

SIGNED FOR AND ON BEHALF OF EATON SENIOR CITIZENS ASSOCIATION INC

President 
(Mr Menno de Vries)

Date 18/12/19

Secretary 
(Ms Valerie von Willisen)

Date 18/12/19

Appendix 1

JOINT MANAGEMENT COMMITTEE STRUCTURE



(Appendix ORD: 12.4.1B)

From: [Kerry Edwards](#)
To: [Phillip Anastasakis](#); [Les Brook](#)
Cc: [Executive Support Officer](#); [André Schönfeldt](#); [Michael Bennett](#); [Donna Bailye](#)
Subject: RE: Final Draft - Eaton Bowling Club lease 2021
Date: Monday, 9 August 2021 4:32:54 PM
Attachments: [image008.png](#)
[image010.jpg](#)
[image011.jpg](#)
[image012.jpg](#)
[image013.jpg](#)
[image014.jpg](#)
[image015.jpg](#)
[image001.jpg](#)

Phil

I confirm on behalf of the EBSC that we are in agreement with the final version of the lease agreement. Thanks for your assistance with this.

Regards,
Les Brook
Acting Club Secretary

EATON BOWLING AND SOCIAL CLUB INC.

Pratt Road EATON WA 6232

ABN 65 634 667 792

Phone: (08) 9725 1074

Fax: (08) 9725 0124

President: Mr Les Brook

Secretary: Mr Kerry Edwards

Email: sec@eatonbowling.com.au

From: Phillip Anastasakis <Phillip.Anastasakis@dardanup.wa.gov.au>
Sent: Friday, 6 August 2021 8:34 AM
To: Kerry Edwards <sec@eatonbowling.com.au>; Les Brook <brooklcb@outlook.com>
Cc: Executive Support Officer <ESO@dardanup.wa.gov.au>; André Schönfeldt <Andre.Schonfeldt@dardanup.wa.gov.au>; Michael Bennett <michael.bennett@dardanup.wa.gov.au>; Donna Bailye <donna.bailye@dardanup.wa.gov.au>
Subject: Final Draft - Eaton Bowling Club lease 2021

Hi Les,

We have a Council meeting coming up in a few weeks times and we are starting to prepare Agenda Reports.

I am planning to present the final version of the new Eaton Bowling Club lease to this Council meeting on the 25th August 2021. You and representatives from the Club are welcome to attend.

I have updated the previous version of the lease I sent you to tidy up the page numbering.

Can you please confirm that the Club is in agreement with this final version of the lease to enable me to convey this to Council in the Agenda item, and to seek Council's final endorsement of the lease agreement. A response by next Tuesday 10th August would be appreciated and enable me to finalise this agenda report.

(Appendix ORD: 12.4.1B)

If you have any further questions then please contact me.

Regards

Phil Anastasakis

Deputy Chief Executive Officer



A: 1 Council Drive | PO Box 7016 | Eaton WA 6232

T: 08 9724 0309 | **M:** 0459 897 623 | **E:** Phillip.Anastasakis@dardanup.wa.gov.au

W: www.dardanup.wa.gov.au



From: Kerry Edwards <sec@eatonbowling.com.au>

Sent: Monday, 26 July 2021 3:50 PM

To: Phillip Anastasakis <Phillip.Anastasakis@dardanup.wa.gov.au>

Subject: RE: Final Draft - Eaton Bowling Club lease 2021

Phil

Thanks for amended lease document, I will review and get back with any comments.

One thing I did notice is the page number is in the wrong position on each page but this is easily corrected.

Regards,

Les Brook

Acting Club Secretary

EATON BOWLING AND SOCIAL CLUB INC.

Pratt Road EATON WA 6232

ABN 65 634 667 792

Phone: (08) 9725 1074

Fax: (08) 9725 0124

President: Mr Les Brook

Secretary: Mr Kerry Edwards

Email: sec@eatonbowling.com.au

From: Phillip Anastasakis <Phillip.Anastasakis@dardanup.wa.gov.au>

Sent: Monday, 26 July 2021 3:13 PM

To: Les Brook <brooklcb@outlook.com>; Kerry Edwards <sec@eatonbowling.com.au>

Cc: Executive Support Officer <ESO@dardanup.wa.gov.au>; Michael Bennett

<michael.bennett@dardanup.wa.gov.au>; André Schönfeldt

<Andre.Schonfeldt@dardanup.wa.gov.au>; Donna Bailye <donna.bailye@dardanup.wa.gov.au>

Subject: Final Draft - Eaton Bowling Club lease 2021

Importance: High

Hi Les,

(Appendix ORD: 12.4.1B)

Following our meeting today involving the Shire President, CEO, myself, yourself and Greg, I have updated the previous draft lease agreement.

Please find attached the final Draft Eaton Bowling Club lease agreement which I hope reflects all the points we discussed and agreed upon today, including:

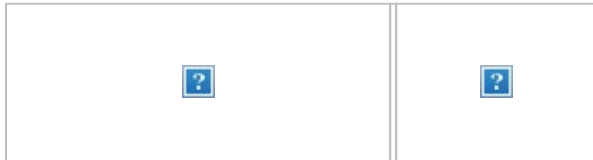
- An annual lease fee of \$8,000 per annum with a 1.5% increase each year
- Council paying for all rates, taxes and building insurance
- Council undertaking termite inspection and repairs
- A new Clause 12.9 added to outline the contribution towards the future replacement of the synthetic greens.

Please have a look over this final document and let me know if you have any other questions. As discussed, we are hoping to take this final Lease Agreement to Council for ratification as soon as possible, which will most likely be the 25 August 2021 Ordinary Council meeting.

Regards

Phil Anastasakis

Deputy Chief Executive Officer



A: 1 Council Drive | PO Box 7016 | Eaton WA 6232

T: 08 9724 0309 | **M:** 0459 897 623 | **E:** Phillip.Anastasakis@dardanup.wa.gov.au

W: www.dardanup.wa.gov.au



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(Appendix ORD: 12.4.1C)

RISK ASSESSMENT TOOL									
OVERALL RISK EVENT: Eaton Bowling & Social Club Inc – New Lease Agreement RISK THEME PROFILE: 2 - Business and Community Disruption 10 - Management of Facilities, Venues and Events RISK ASSESSMENT CONTEXT: Operational									
CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL			RESIDUAL RISK RATING
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING	
HEALTH	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
FINANCIAL IMPACT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
SERVICE INTERRUPTION	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
LEGAL AND COMPLIANCE	The non-establishment of the new lease could result in legal complications for Council	Moderate (3)	Possible (3)	Moderate (5 - 11)	Not required.	Not required.	Not required.	Not required.	Not required.
REPUTATIONAL	Council would be seen in a negative light if we failed to meet our contractual and legislative requirements.	Moderate (3)	Possible (3)	Moderate (5 - 11)	Not required.	Not required.	Not required.	Not required.	Not required.
ENVIRONMENT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.



and

**EATON BOWLING &
SOCIAL CLUB INC**

L E A S E

**EATON BOWLING & SOCIAL CLUB – RESERVE 27516
2021 - 2041**

Resolution ????
Date???



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LEASE OF EATON BOWLING CLUB

THIS DEED is dated the _____ day of _____ 2021

PARTIES

Lessor: Shire of Dardanup of 1 Council Drive, Eaton, Western Australia (“the Lessor”)

AND

LESSEE Eaton Bowling & Social Club Inc care of Lot 510 Pratt Road, Eaton Western Australia (“the Lessee”)

RECITALS

- A. The Land is crown reserve and that part of the Land that is occupied by the building that is vested in or otherwise held by the Lessor for the purposes of “Recreation” with power to lease not exceeding 21 years. A plan showing the location of the building and improvements on the Land is annexed to this Lease.
- B. The Lessor is the management body of the Land under the Management Order.
- C. The Lessor has agreed to Lease the Premises to the Lessee at the Rent and upon the terms and conditions contained in this Lease.
- D. This Lease is subject to the consent of the Minister for Lands.

OPERATIVE PART

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Deed unless the contrary intention appears the following words have the following meanings;

- 1.1.1 “**Alterations**” means any of the acts referred to in Clauses 5.20 and 7.9.
- 1.1.2 “**Amounts Payable**” means the Rent and any other money payable by the Lessee under this lease.
- 1.1.3 “**Bond**” means the bond set out in Item 13 of the Schedule and payable by the Lessee.
- 1.1.4 “**Building**” means the interior and exterior of all present and future buildings and improvements on the Land and includes all Building Services and Common Areas and all other conveniences, services, amenities and appurtenance of, in or to the Building.

- 1.1.5 **“Building Services”** includes all services (including gas, electricity, water, sewerage, lifts, escalators, stairways, communications, fire control, air-conditioning, plumbing and telephone and all plant, equipment pipes, wires and cables in connection with them as applicable) to or of the Building or any other premises in or on the Land supplied by any authority, the Council or any other person the Council authorises;
- 1.1.6 **“CEO”** means the Chief Executive Officer for the time being of the Lessor or any person appointed or delegated by the Chief Executive Officer to perform any of her or his functions under this lease;
- 1.1.7 **“Chattels”** means any item or piece of personal property, including something that can be moved, other than freehold land and buildings, including tangible goods.
- 1.1.8 **“Claims”** all claims, demands, writs, summonses, actions, suits, proceedings, judgements, orders, decrees, damages, costs, losses and expenses of any nature;
- 1.1.9 **“Commencement Date”** means the Commencement Date specified in the Schedule;
- 1.1.10 **“Council”** means the party described as ‘Council’ in this Lease and where the context permits includes the employees, contractors, agents and other invitees of the Council.
- 1.1.11 **“Council Equipment”** means all fixtures and fittings, plant, equipment, services, chattels and other goods installed or situated in or on the Premises and made available for use by the Lessee.
- 1.1.12 **“Expiration Date”** means the Expiration Date specified in the Schedule;
- 1.1.13 **“Fixtures and Fittings”** generally includes any item that is bolted or fixed to the floor or walls (fixtures), or any item that is free standing or hung by a nail or hook (fitting).
- 1.1.14 **“GST”** has the same meaning as given to that term in the GST Legislation.
- 1.1.15 **“GST Legislation”** means the Tax System (Goods and Services Tax) Act 1999 (cth) and any ancillary or similar legislation.
- 1.1.16 **“Land”** means the Land referred to in the Schedule and includes any part of the Land;
- 1.1.17 **“Lessee”** means the Lessee referred to in the Schedule;

- 1.1.18 **“Lessee’s Agents”** includes:
- (a) the sub-lessees, employees, authorised representatives or management committee members, agents, contractors, invitees and licensees of the Lessee; and
 - (b) any person on the Premises by the authority of a person specified in paragraph (a);
- 1.1.19 **“Lessee’s Covenants”** means terms covenants and conditions contained in this Lease and on the part of the Lessee to be observed and performed;
- 1.1.20 **“Lessor’s Covenants”** means terms covenants and conditions contained in this Lease and on the part of the Lessor to be observed and performed;
- 1.1.21 **“Lessee’s Equipment”** means any and all fixtures and fittings and other equipment installed in or brought onto or kept in the Premises by the Lessee.
- 1.1.22 **“Minister for Lands”** means the Minister for Lands in her or his capacity as the body corporate continued under section 7 of the *Land Administration Act 1997*;
- 1.1.23 **“Management Order”** means the vesting order published in the *Government Gazette* under the former *Land Act 1933* (and which now has the status of a Management Order made by the Minister under section 46 of the *Land Administration Act 1997*), or the Management Order made under section 46 of the *Land Administration Act 1997*, under which the Land was vested in the Lessor to be held for the purpose of “Recreation”;
- 1.1.24 **“Permitted Use”** means the permitted use specified in the Schedule;
- 1.1.25 **“Premises”** means that part of the Land described in the Schedule, together with all buildings and improvements, fixtures and fittings in the Premises, and Structures including the Council’s Equipment.
- 1.1.26 **“Rates and Taxes”** means all present and future rates, charges, levies, assessments, duties and charges of any Statutory Authority, other Department or Authority having the power to raise or levy any such amounts in respect of the use, ownership or occupation of the Land or Premises; and includes water and sewer service and consumption charges, Council rates, Emergency Services Levy and, subject to the Act, land tax (on a single holding basis).
- 1.1.27 **“Rent”** means that rent specified in the Schedule and the rent payable under this Lease from time to time;
- 1.1.28 **“Review Date”** means each date in Item 8 of the Schedule.
- 1.1.29 **“Schedule of Maintenance”** means the maintenance schedule described in Item 11 in the Schedule.

- 1.1.30 **“Special Conditions”** means the special conditions to this Lease described in the Schedule.
- 1.1.31 **“Statutory Authorities”** means any authorities created by or under any relevant Legislation including the Council in its separate capacity as such an Authority.
- 1.1.32 **“Structure”** means all present and future built structures on the Land (includes all built structures, sheds, shelters, bowling greens, etc.) and includes all Building Services and Common Areas and all other services and appurtenance of, in or to the Structure.
- 1.1.33 **“Term”** means the term of this Lease specified in the Schedule commencing on the Commencement Date and terminating on the Expiration Date;
- 1.1.34 **“this Lease”** means this lease and any variations to it agreed between the parties.

1.2. Interpretation

- 1.2.1. Words importing the masculine gender shall include the feminine gender and shall also have application to corporations. Words importing the plural number shall include the singular number and words importing the singular number shall include the plural number.
- 1.2.2. A reference to this Lease or any other instrument includes:
- 1.2.2.1. both express and implied terms, covenants and conditions of those documents; and
 - 1.2.2.2. all agreed variations, additions and deletions to the terms, covenants and conditions contained in those documents whenever effected.
- 1.2.3. A reference to a person includes a reference to the person’s personal representatives, executors, administrators, successors and assigns.
- 1.2.4. A reference to a corporation includes a reference to the corporation’s successors and assigns.
- 1.2.5. A reference to an Act includes all acts and statutes (State and Federal) amending consolidating or re-enacting the Act referred to or passed in substitution for or in lieu thereof and all regulations, local laws, by-laws, requisitions or orders made under any Act from time to time by any statutory, public or competent authority.

1.2.6. When two or more Lessees are parties to this Lease the covenants and agreements on their part shall bind them and any two or greater number of them jointly and severally.

1.2.7 Reference in this Lease to the Council's approval or consent, is to the Council's prior written approval or consent which may be granted or withheld in the absolute discretion of the Council, however such approval or consent will not be unreasonably withheld.

1.2.8 Any Special Condition in the Schedule will apply to this Lease and in the event of any inconsistency with the terms and conditions in the body of this Lease, then those Special Conditions will prevail.

2. LEASE

The Lessor LEASES the Premises to the Lessee for the Term at the Rent and otherwise upon the terms and conditions contained in this Lease.

3. RENT

The Lessee shall pay the Rent to the Lessor by either one annual payment, or otherwise by equal monthly instalments in advance commencing on the Commencement Date as agreed between the Lessor and the Lessee.

4. RENT REVIEW

Rent review provisions shall apply on the basis described in the Schedule.

5. LESSEE'S COVENANTS

The Lessee COVENANTS with the Lessor as follows:

5.1 Payment of Rent

To pay the Lessor the Rent reserved by this Lease at the times and in the manner provided in this Lease.

5.2 Outgoings

5.2.1 To pay and discharge all pest inspection and/or treatments (excluding termites), all costs for the use of telephone, electricity, gas and water consumption charges levied, and any other services and utilities charged or imposed upon the Premises or any part of the Premises or arising out of the use of the Premises and whether expressed to be payable by the owner or occupier of the Premises.

- 5.2.2. If there is no separate meter for recording or measuring the services and utilities consumed on or from the Premises, then the Lessee may, if required by the Council, install the necessary meters at its own cost.
- 5.2.3 To notify any relevant statutory authorities of the Lessee's occupation of the Premises.

5.3 Maintenance, Repairs & Replacement

Repair & Maintain:

- 5.3.1 Repair and maintain the Premises, fixtures and fittings, the Lessee's Equipment and any Building Services situated within the Premises and which exclusively services the Premises in good repair, excluding fair wear and tear, and if initially installed by the Lessee replace the item;
- 5.3.2 Repair and maintain all lighting, electrical and gas installations, including conducting annual test and tag electrical safety inspections;
- 5.3.3 Repair and maintain all perimeter fencing, where installed;
- 5.3.4 Repair and maintain all lawns and gardens forming part of the Premises;
- 5.3.5 Repair and maintain all fire warnings safety and prevention equipment;
- 5.3.6 Repair and maintain all drainage and other fixtures and fittings in good repair, order and condition to a standard acceptable to the Lessor, and to paint all such parts of the Premises as are now painted or are usually painted at such times and in accordance with the directions of the Lessor and to replace all light globes or fluorescent tubes in or about the Premises when they cease to function or are damaged.

Maintain & Replace

The Lessee must maintain all fixture and fittings in or attached to the Premises, and if damaged or worn, repair them or replace them with items of the same or similar quality to those in use when they were last replaced with the Council's approval, or if they have not been so replaced, to those in use at the Commencement Date.

5.4 Furniture

To keep and maintain all furniture and chattels set out in Item 10 of the Schedule in the same state of repair as they were at the commencement of the Term and to return at the expiration of the Term any furniture moved during the Term to the position stated in Item 10 of the Schedule.

5.5 Cleaning

At the Lessee's own expense at all times during the Term to keep and maintain the Premises clean, drained, properly disinfected, free from rubbish, vermin, insects and other pests, refuse, hazard and disused material of any kind, and in good and sanitary condition to a standard acceptable to the Lessor.

5.6 Gardens

Not without the prior written consent of the Lessor to cut down or remove any trees or shrubs or sell remove or otherwise dispose of any clay, sand, gravel, timber or other materials from the Premises.

5.7 Animals

Not without the prior written consent of the Lessor to keep any animal or bird in or about the Premises.

5.8 Laundry

Not to hang or display any laundry or other articles on any railing.

5.9 Entry by Lessor to View

To permit the Lessor, its officers, members or agents at all reasonable times with or without workmen or others to enter the Premises to view the state of repair and condition of the Premises and to forthwith carry out any repairs, cleaning, painting or other works for which the Lessee is responsible under this Lease in accordance with any notice in writing given to the Lessee or left on the Premises by the Lessor.

5.10 Abatement of Nuisances

5.10.1 Not to do or leave undone any act, matter or thing which may be or be deemed to be a nuisance within the meaning of the Local Government Act, the Health Act or any other Act or under any local laws or regulations applicable to the Premises or the use or occupation of the Premises by the Lessee and immediately to abate any such nuisance or alleged nuisance.

5.10.2 To ensure that the Premises are not used in any manner which may be or become a nuisance disturbance or annoyance to the quiet and comfort of any occupier of any land in the vicinity of the Premises, and on being required to do so by the Lessor or any officer of the Lessor to immediately abate any such nuisance, disturbance or annoyance.

5.11 Pests

To keep the Premises free of ants, insects, mice, rats, other pests and vermin (excluding termites).

5.12 Lessee's Responsibility for Securing the Premises

The Lessee must ensure the Premises, including Lessor's and Lessee's fixtures and fittings, are appropriately secured at all times.

5.13 Disorderly Behaviour

To prevent disorderly behaviour and indecent language in the Premises at all times during the day and night.

5.14 Compliance with Statutes

At the Lessee's own expense to comply with, carry out and perform the requirements of the Local Government Act, the Health Act, Work Health & Safety Act 2020 and all other Acts, town planning schemes, local laws or regulations or any requisitions or orders made under them applicable to the Premises or the use or occupation of the Premises.

5.15 Permitted Use

To use the Premises solely for the Permitted Use unless the written consent of the Lessor on each occasion has been obtained.

5.16 Prohibited Use

Not to use the Premises for any illegal, dangerous or immoral purpose or unauthorised activity.

5.17 Damage

To notify the Lessor or the Lessor's agent of any damage or defect in the Premises within one working day of the occurrence of such damage or defect.

5.18 Insurance

5.18.1 To effect and keep in force throughout the Term a public risk policy of insurance in an amount of not less than TWENTY MILLION DOLLARS (\$20,000,000) for any one event or such greater amount as the Lessor may require. A copy of the Certificate of Currency to be provided to the Lessor annually.

5.18.2 To effect and keep in force throughout the Term all insurance in respect of the Lessee's furniture, fixtures and fittings, and equipment including any cool rooms, refrigerators, etc.

- 5.18.3 To effect and keep in force throughout the Term a policy of insurance against claims for workers' compensation and damage to any person or persons employed by the Lessee in connection with the performance of the Lessee's duties hereunder.
- 5.18.4 Not to do or permit to be done anything whereby any policy of insurance in respect of the Premises may become void or voidable, or by which the rate or premium on it may be increased, and if any increased premium shall be payable by reason of any acts or defaults of the Lessee under this subclause then to immediately pay the amounts by which the premium shall be increased.
- 5.18.5 Within 24 hours of being requested by the Lessor to show evidence that all insurance policies referred to in this clause are currently in effect, and to provide the policies of insurance and any receipts for inspection.
- 5.18.6 At the Lessee's own expense to make such amendments, alterations and additions to the Premises as shall be required by any requisitions or requirements of the Insurance Council of Australia or other body or authority having power or control over electrical installations or fixtures or dealing with insurance matters if the amendments alterations and additions are required as a result of the Lessee's use of the Premises.
- 5.18.7 The Lessee must pay each premium before it is due for payment and not allow any insurance policy to lapse or vary or cancel it without the Council's consent.

5.19 Indemnity

To indemnify the Lessor and the Minister of Lands, keep the Lessor and Minister for Lands indemnified from and against all Claims which the Lessor may suffer or incur in connection with the loss of life, personal injury or damage to property arising from or out of any occurrence in upon or at the Premises or the use by the Lessee of the Premises, Lessee's Agents or any part or to any person or the property of any person using or entering or near any entrance to the Premises or occasioned (wheresoever it may occur) wholly or in part by any act, neglect, default or omission by the Lessee its agents, contractors, servants, workmen, customers, members or any other person or persons using or upon the Premises with its consent or approval expressed or implied.

5.20 Alterations & Improvements

- 5.20.1 Not without the prior written consent of the Lessor to erect or suffer to be erected any building or structure on the Premises nor to make or suffer to be made any alteration in or additions to any building or any other improvements to the Premises nor to remove any such improvements or to cut, maim or injure or suffer to be cut, maimed or injured any of the walls or timbers of the Premises

nor to drive any nails or screws into or in any other way deface the walls, ceiling, partitions, floor, woodwork, stone or ironwork.

- 5.20.2 The Lessee must provide in writing full details of any proposed alterations and additions to the Council, and not proceed to undertake any alteration or addition without the prior written consent of Council.
- 5.20.3 The Council may impose any conditions it considers necessary if it gives its approval, including requiring the Lessee to obtain the Council's consent to any agreements that the Lessee enters into in relation to the alterations or additions.
- 5.20.4 The Lessee must carry out any approved alterations and additions;
- a) In a proper and workmanlike manner;
 - b) In accordance with the conditions imposed by the Council and with the approvals made by Council in its capacity as lessor under this Lease;
 - c) in accordance with all Statutory Requirements; and
 - d) in a way to minimise disturbance to others.
- 5.20.5 Unless otherwise agreed in writing between the parties, all alterations and additions to the Land or the Premises made pursuant to this clause will be or become the property of the Council.

5.21 Fixtures, Fittings and Furniture

Not without the prior written consent of the Lessor to erect, install or place any fixtures or fittings in or upon the Premises.

5.22 Alcohol and Gaming

- 5.22.1 Not to sell or permit the sale of any spirituous or fermented liquors or alcohol on the Premises or any part of the Premises other than under a valid licence issued in pursuance of the Liquor Licensing Act, and then only with the prior written consent of the Lessor, and otherwise consistent with the directions of the Director of Liquor Licensing.
- 5.22.2 If the Lessee obtains a licence (or licences) under this clause, the Lessee must not do (or fail to do) or allow any of its employees, agents, contractors, licensees or invitees to (or fail to):
- a) do anything this is in breach of the Liquor Licensing Act 1997 or of the conditions of the relevant licence.

- b) do anything that may result in the relevant licence being revoked or suspended;
- c) assign the licence;
- d) apply to remove the licence;
- e) allow a licence to be granted to another person in respect of the Premises or any party of the Premises; or
- f) apply to vary or (revoke any conditions of the licence.

5.22.3 Unless the Lessee first obtains the written consent of the Council, the Lessee must not apply for a gaming permit from the Department of Local Government Sport & Cultural Industries.

5.23 Assignment, sub-letting and charging

5.23.1 No assignment or sub-letting without consent

The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, licence or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor, and the Minister for Lands (if required) and any other persons whose consent is required under the terms of this Lease or at law.

5.24 Signs

The Lessee shall not affix or exhibit or permit to be affixed to or exhibited upon any part of the exterior of the Premises or in any place visible from beyond the Premises any placard, sign, poster, hoarding or advertisement, except a sign or signs which:

- 5.24.1 is/are approved by the Council; and
- 5.24.2 comply with any relevant Statutory Requirements.

5.25 Legal Costs

- 5.25.1 To pay all of the costs (on the scale applicable to the Lessor) of and incidental to the negotiations and instructions for and the preparation, completion and stamping of this Lease (including stamp duty) and all copies thereon.
- 5.25.2 To pay all of the costs (including solicitor's costs and surveyor's fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of any notice under section 81 or any other section of the Property Law Act 1969 or otherwise under this Lease requiring the Lessee to remedy a breach of any of the covenants herein contained.

5.26 Delivery Up of Possession

- 5.26.1 At the expiry date or sooner determination of the Term peaceably and quietly to deliver up possession of the Premises and all furniture, fixtures and fittings belonging to the Lessor in such good and tenantable repair, order and condition as shall be consistent with the covenants contained in this Lease PROVIDED THAT immediately upon the expiry or sooner determination of the Term the Lessee shall remove any tenant's fixtures and fittings and shall make good to the reasonable satisfaction of the Lessor any damage caused to the Premises in doing so.
- 5.26.2 Any furniture, equipment, fixtures and fittings belonging to the Lessee that are not removed at the expiry of the lease Term, shall become the property of the Lessor, unless otherwise agreed.
- 5.26.3 Any goods belonging to the Lessee that are left at the Premises at the expiry of the lease Term, shall become the property of the Lessor to dispose of those goods, unless otherwise agreed.

6. LESSOR'S COVENANTS

The Lessor COVENANTS with the Lessee as follows:

6.1. Good Repair

- 6.1.1. that the Building and Structures comprised within the Premises are in good and tenantable repair and condition, and
- 6.1.2. that the Lessor will keep the Buildings and Structures in good and tenantable repair and condition for the duration of the Term, except for any damage caused by the Lessee or the Lessee's employees members or visitors, and
- 6.1.3. excluding those Structures installed by the Lessee on the Premises prior to the commencement of this Lease Agreement Term which remain the responsibility of the Lessee.

6.2 Quiet Possession

Provided that the Lessee pays the rental reserved by this Lease and observes and performs the covenants expressed and implied by this Lease and on the Lessee's part to be observed and performed, the Lessee shall during the Term and any agreed extension of the Term quietly enjoy the use and occupation of the Premises without interruption by the Lessor or any person lawfully claiming through or under the Lessor.

6.3 Insurance

- 6.3.1 The Lessor shall keep the Buildings and Structures on the Premises (and any contents belonging to the Lessor) adequately insured during the Term.
- 6.3.2 The Lessor will pay the insurance excess on any claim that arises from vandalism on the Premises.
- 6.3.3 The Lessee will pay the Council excess on any claim that arises from or is attributable to any act by the Lessee or the Lessee's visitors.

7. MUTUAL AGREEMENTS

IT IS MUTUALLY AGREED as follows:

7.1. Bond Moneys

- 7.1.1 The Lessee shall deposit with the Lessor a bond of an amount specified in Item 13 of the Schedule as security for the Lessee's compliance with the terms of this Lease and the bond may be applied to compensate and pay the Lessor for any breach or default by the Lessee in respect of this agreement, including and without limiting the generality of the foregoing, any charges for electricity, gas, water and costs of repairs arising out of damage or neglect by the Lessee to the Premises or the chattels during the Term or for any other moneys owing by the Lessee to the Lessor.
- 7.1.2 The Lessor shall refund to the Lessee upon the expiry of the Term the bond money less any amount applied in respect of any breach or default by the Lessee during the Term.

7.2. Default by Lessee

If:

- 7.2.1 the Rent or other moneys payable by the Lessee under this Lease are not paid within seven (7) days after becoming due (whether formally demanded or not);
or
- 7.2.2 the Lessee breaches any of the Lessee's Covenants and the breach continues for fourteen (14) days after notice has been served on the Lessee by the Lessor; or
- 7.2.3 the Lessee being a company or organisation goes into liquidation whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction) or a receiver or manager is appointed; or
- 7.2.4 any mortgagee of the Lessee's property enters into possession of the Premises;
or

- 7.2.5 any execution or process is made against the property of the Lessee; or
- 7.2.6 the Lessee being a natural person shall commit an act of bankruptcy; or
- 7.2.7 the Lessee abandons or vacates the Premises; or
- 7.2.8 the Lessee being an incorporated association:
 - 7.2.8.1 is wound up or resolves to be wound up voluntarily;
 - 7.2.8.2 without the prior consent of the Lessor, changes its name, objects, rules or constitution;
 - 7.2.8.3 is convicted of an offence under the Associations Incorporations Act 1987,

then and in any of such cases (but subject to the Bankruptcy Act 1966) the Lessor may at its option at any time after that event and without any notice or demand enter and repossess the Premises and as a result of that the Term and the estate and interest of the Lessee in the Premises will immediately determine but without prejudice to any other of the rights and remedies of the Lessor under this Lease and without releasing the Lessee from liability in respect of the Lessee's Covenants.

7.3. Destruction of Premises

- 7.3.1 Subject to paragraph 7.3.2 of this clause, if the Premises or any part of the Premises shall be burned down, destroyed or damaged by fire or other cause so as to render the same unfit for the purpose permitted by this Lease then in such case unless the insurance of the Premises shall have been forfeited or become null or void or the payment of any moneys payable under such insurance be refused or withheld through any act or default of the Lessee or its members, agents, servants, invitees or licensees the Rent or a fair and just proportion of the Rent according to the nature and extent of the damage sustained shall cease to be payable until the Premises shall have been rebuilt and rendered fit for the purpose permitted by this Lease.
- 7.3.2 If the Premises or any substantial part thereof be burnt down, destroyed or damaged so as to be wholly unfit for occupation or use this Lease may at the option of the Lessor (such option to be declared in writing within twenty-eight (28) days after such destruction) be determined, the Lessee in that event paying the rental hereby reserved up to such determination and all moneys paid or payable under any policy of insurance effected in respect of the Premises shall belong to the Lessor absolutely.

7.4. Entry by Lessor

If the Lessee shall fail to duly and punctually observe or perform any of the Lessee's Covenants the Lessor shall be entitled to carry out the observance or performance of such covenant, condition or agreement and for such purpose the Lessor or the Lessor's officers, agents or contractors may if necessary enter the Premises or any part of the Premises and the cost and expense incurred in such observance or performance together with interest thereon at the rate of three per centum (3%) per annum greater than the rate that would be charged by a the Lessor's bankers on an amount equal to the cost shall be a debt due by the Lessee to the Lessor and shall be payable on demand and may be recovered by the Lessor in the same manner as if such debt were for rent due under this Lease in arrears by action in law and such cost expense and interest shall be a charge on the Term.

7.5. Holding Over

If the Lessee holds over the Premises at the expiry of the Term:

- 7.5.1 a tenancy from year to year shall not thereby be presumed but the tenancy shall in such event be and continue to be a tenancy from week to week;
- 7.5.2 subject to paragraph 7.5.3, the tenancy shall be upon the terms and conditions contained in this Lease insofar as they are applicable and shall be determinable at the expiration of one week's notice by either party to the other at any time;
- 7.5.3 the Lessee shall pay to the Lessor by equal week instalments in advance a Rent being 110% of the Rent payable immediately prior to the expiry of the Term;
- 7.5.4 the Lessor may give to the Lessee notice in writing at any time specifying a Rent being an amount greater than the rent referred to in paragraph 7.5.3, and the Lessee shall commence paying the Rent specified in the notice at the commencement of the month following the receipt of the notice.

7.6 Redevelopment, Asset Rationalisation and Demolition

If as part of any redevelopment, asset rationalisation or other project conducted by the Council that includes the Premises (Redevelopment) or for any other reason the Council wishes to demolish or acquire vacant possession the Premises or any part of the Premises, then the Council will be entitled to terminate this Lease subject to the following provisions:

- 7.6.1 the Council must provide the Lessee with details of the proposed Redevelopment sufficient to indicate a genuine proposal to carry out that Redevelopment within a reasonably practical time after this Lease is to be terminated;
- 7.6.2 the Council may at any time after providing the Lessee with the information specified in clause 7.6.1, give the Lessee a written notice of termination of this Lease (Termination Notice) specifying the date on which this Lease is to come to an end, being a date not less than twelve (12) months after the Termination Notice is given. This Lease will, unless terminated earlier by the Lessee under clause 7.6.3, come to an end at midnight on the day specified in the Termination Notice;
- 7.6.3 at any time after receiving a Termination Notice under clause 7.6.1, the Lessee may terminate this Lease by giving not less than seven (7) days' written notice to the Council; and
- 7.6.4 when this Lease is terminated (whether by the Council under clause 7.6.2 or by the Lessee under clause 7.6.3), the rights and obligations of the Council and the Lessee hereunder will come to an end but if any breach by either party still exists at that time then the rights of the other party with regard to that existing breach will continue.

7.7 Waiver

If the Lessee shall be guilty of any breach of or default in the due observance or performance of any of the covenants herein expressed or implied and on the part of the Lessee to be observed or performed, or guilty of any other act which would entitle the Lessor to determine the Lease under the proviso for re-entry hereinbefore contained, the receipt of rent by the Lessor or the doing or omission of any other act or thing whatsoever by the Lessor or any agent or servant of the Lessor (which but for this clause would or might amount to a waiver of the Lessor's rights and powers in respect of any such breach or default) shall not affect or prejudice the rights or powers of the Lessor in respect of the breach or default or any future or other breach or default of any rule of law or equity to the contrary notwithstanding.

7.8 No Postponement of Rent

No moratorium, order, act or regulation of any nature or in relation to the postponement of payment of rents or other moneys or which affects or purports to affect leases and or the rights, powers, discretions or remedies of landlords or lessors or which contains any provisions lessening, delaying, prejudicing, limiting, restricting or affecting any right, power or remedy hereby given to the Lessor or any covenant, agreement or stipulation hereby undertaken or imposed upon the Lessee shall apply to this Lease or the rents and other moneys reserved and made payable hereunder or to the covenants agreements stipulations and conditions herein contained or implied on the part of the Lessee.

7.9 No Warranty

The Lessee hereby acknowledges that the Lessor has not made or given directly or otherwise any express or implied warranty that the Premises are or will remain suitable or adequate for any of the Lessee's purposes and all (if any) warranties as to suitability or adequacy of the Premises implied by law or equity are hereby expressly negated.

7.10 Structural Alterations

Despite anything contained in sub-clauses 5.3, 5.4, and 5.13 of this Lease, the Lessee shall not be liable to effect any structural alterations of the Premises unless the same shall be necessitated or occasioned by reason of any act or default of the Lessee.

7.11 Arbitration

Any dispute or disagreement between the Lessee and the Lessor in respect of the interpretation of this Lease or concerning anything in or arising out of this Lease or as to the rights, liabilities or duties of the parties hereunder shall in the first instance be the subject of discussion between the parties to determine an amicable settlement and the parties may invoke a mediation process. In the event that the dispute or disagreement continues the parties may refer the matter for determination in accordance with the provisions of the Commercial Arbitration Act 1985 and by a single arbitrator agreed upon by the parties in writing, or if he/she is unable or unwilling to act, or failing agreement, by a single arbitrator nominated at the request of either party by the President for the time being of the Law Society of Western Australia Incorporated. The parties to the dispute or disagreement may be represented by legal counsel.

7.12 Service of Notices

Any notice requiring to be made or given by one party to the other shall be delivered personally, posted or emailed to the last known business or commercial address of the other and shall be deemed received in due course of post.

7.13 Early Termination

Except where termination of the lease occurs under clause 7.6 or clause 7.14, either party may terminate this lease agreement prior to the expiry date, subject to at least 12 months' notice and the mutual agreement of each party.

7.14 Resumption

If the Council receives notice of resumption or acquisition of the Premises or the Land (or any part of the Land affecting the Premises) from or by any Statutory Authority or any governmental or semi-governmental body, then the Council may terminate this Lease by giving not less than twelve (12) months' written notice to the Lessee. When such termination takes effect, the rights and obligations of the Council and the Lessee hereunder will come to an end but if any breach by either party still exists at that time then the rights of the other party with regard to that existing breach will continue.

7.15 Management Obligations

7.15.1 The Lessor and the Lessee covenant and agree to establish a Joint Management Committee (**Joint Management Committee**) for the purpose of ensuring prompt and effective communication, issue resolution and to maximise operational outcomes associated with the community use of the Premises.

The Joint Management Committee is established to meet the obligations outlined in the Memorandum of Understanding (MOU) signed by the Eaton Bowling & Social Club Inc and the Eaton Senior Citizens Association Inc in December 2019.

7.15.2 The Joint Management Committee will be comprised of:

- i) Up to two (2) representatives from the Eaton Bowling & Social Club – President, Vice President, Secretary, Treasurer;
- ii) Up to two (2) representatives from the Senior Citizens Association – President, Vice President, Secretary, Treasurer; and
- iii) One (1) Councillor or Council Employee representing the Shire of Dardanup as an independent party.

with the chairperson elected from amongst the committee members.

7.15.3 Representatives from other user groups may be invited to participate as non-voting members on the Joint Management Committee, subject to the prior agreement of the Joint Management Committee members.

7.15.4 The Joint Management Committee will meet at least monthly for the first six months of operation of the Premises, and thereafter every three months unless otherwise agreed by the Lessor and the Lessee in writing. Minutes are to be taken of meetings to record agreed decisions and matters being considered.

7.16 Disputes

7.16.1 **Referral of Disputes – Phase 1:** Except as otherwise provided, any dispute arising out of this Lease is to be referred in the first instance in writing to the Lessor's Representative as nominated in writing by the Lessor from time to time (**Lessor's Representative**) who shall convene a meeting within 10 days of receipt of such notice from the Lessee or such other period of time as is agreed to by the parties between the Lessor's Representative and an officer of the Lessee for the purpose of resolving the dispute (**Original Meeting**).

7.16.2 **Referral of Disputes – Phase 2:** In the event the dispute is not resolved in accordance with **clause 7.16.1** of this Lease then the dispute shall be referred in writing to the CEO of the Lessor who shall convene a meeting within 10 days of the Original Meeting or such other date as is agreed to by the parties between the Chief Executive Officer and the President of the Lessee for the purpose of resolving the dispute.

7.16.3 **Appointment of Arbitrator – Phase 3** In the event the dispute is not resolved in accordance with **clause 7.16.2** of this Lease then the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* (as amended from time to time) and the Lessor and the Lessee may each be represented by a legal practitioner.

8. ESSENTIAL TERMS

The covenants by the Lessee contained in this Lease to pay electricity, gas and water in respect of the Premises at the time and in the manner therein respectively prescribed and to only use the Premises for the Permitted Use are essential terms of this Lease, and any breach of any of those covenants shall be regarded by the Lessor and the Lessee as a fundamental breach by the Lessee of this Lease. Should the Lessor determine this Lease following such a breach then (without prejudicing or limiting any other right or remedy of the Lessor arising from such breach or otherwise under this Lease) the Lessor shall be entitled to recover from the Lessee and the Lessee covenants to pay to the Lessor as and by way of liquidated damages for such breach the electricity, gas and water charges that would have been payable by the Lessee for the unexpired residue of the Term after making allowance for the electricity, gas and water charges which the Lessor by taking reasonable steps to relet the Premises obtains or could reasonably be expected to obtain by reletting the Premises for such unexpired residue of the Term on reasonable terms as to rent and otherwise PROVIDED THAT:

- 8.1 any such reletting shall not be required to be on like terms as are expressed and implied in this Lease;
- 8.2 the acceptance by the Lessor of arrears or any late payment of the rent shall not constitute a waiver of the essentiality of the Lessee's obligations to make such payments;
- 8.3 the Lessor's entitlement to recover damages as aforesaid shall not be prejudiced or limited if:
 - 8.3.1 the Lessee abandons or vacates the Premises;
 - 8.3.2 the Lessor elects to re-enter the Premises or to determine this Lease;
 - 8.3.3 the Lessor accepts the Lessee's repudiation of this Lease; or
 - 8.3.4 the parties' conduct constitutes a surrender by operation of law;
- 8.4 the Lessor shall be entitled to institute proceedings to recover damages either before or after any of the events or matters referred to in subparagraph 8.3;
- 8.5 any conduct by the Lessor to mitigate damages shall not of itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law; and
- 8.6 nothing expressed or implied in this Lease shall be construed to mean that no other covenant in this Lease on the part of the Lessee to be observed or performed may be an essential term.

9. ADDITIONAL TERMS

All of (if any) the additional terms covenants and conditions contained in the Schedule are incorporated into and apply to this Lease.

10. RENEWAL OF TERM

If the Lessee desires to renew the Term and gives to the Lessor notice in writing not earlier than six (6) calendar months but not later than three (3) calendar months prior to the expiration of the Term and if at the time of giving that notice and at the expiration of the Term there is no outstanding breach or non-observance of any of the Lessee's Covenants and if in the meantime the Lessor's right of re-entry has not otherwise arisen then the Lessor will at the cost of the Lessee grant to the Lessee a renewal of the Term for the further period stated in the Schedule and otherwise on the same terms and conditions contained in this Lease save for the rent which will be the subject of separate agreement between the Lessor and the Lessee and save for this right of renewal.

THE SCHEDULE

Item 1 The Lessee

Eaton Bowling & Social Club Inc

Item 2 The Land

Situated in Shire of Dardanup Western Australia. Reserve 27516, Lot 510 the subject of plan 70346 being the whole of the land in Volume LR3161 Folio 339 (“Lot 510”).

Item 3 Premises

The portion of the Land bordered red on the plan annexed to this Lease;

Facilities included within the Premises;

Premises inclusive of (as per the attached plan) three recreational grounds/playing greens, one clubroom inclusive of Function centre, lounge, match office, keg store room, cool rooms (x2), bar, commercial kitchen, store room (x2); male & female toilets, universal access toilet (x2), universal access WC (x2); office (x2); board room, chair storage room; commercial kitchen, function room, facilities and storeroom; domestic type kitchen & pantry; foyer and alfresco area.

Item 4 Term

A period of 20 years

Commencement date: 1st July 2021

Expiry Date: 30th June 2041

Item 5 Term of Renewal

A further period of 10 years

Commencement Date: 1st July 2041

Expiry Date: 30th June 2051

Item 6 Rent

A rent of \$8,000 per annum plus an annual cumulative increase of 1.5% per annum.

Item 7 Rent Review Clause

Applicable

Item 8 Rent Review Dates

An annual cumulative increase of 1.5% per annum for the term of the Lease and to be reviewed if renewed.

Item 9 Permitted Use

All activities operated or otherwise conducted by the “Lessee” (being activities generally related to and consisting of community, recreational and wellness activities) which are approved by the Lessor from time to time (which approval shall not be unreasonably withheld or delayed). At the Commencement Date, these activities comprise of the promotion of recreational and competitive bowls and ancillary seniors activities, and may include other like activities that are consistent with the aims and objectives of the club.

Item 10 Furniture Inventory

Nil

Item 11 Schedule of Maintenance

Additional Terms and Conditions

Structural: Relates to the main building, including walls, internal ceiling, external roof and gutters, doors, windows and foundations, but excluding furniture, fixings and fit-out components.

Fit-Out: All fittings made to the structure of the building, including but not limited to, lighting, electricity, plumbing, heating, air-conditioning, gas fitting and fixtures, cupboards, benches, floorcovering, ovens, toilets, basins, sinks.

Maintenance: Works undertaken to delay and prevent premature deterioration of an asset in order to achieve the expected life expectancy of the asset. Also includes activities required to keep the asset in a condition suitable to performs its intended function.

Repair: Works undertaken to fix an asset or any of its component that has been damaged, whether accidentally or as a result of misuse.

Item	Lessee Responsibility	Lessor Responsibility
Water Supply & Charges– Building & Surrounds	Payable by Eaton Bowling & Social Club Inc	
All Rates, Charges & Taxes including Local Government, Water and Sewer Rates		Payable by Lessor as per the lease agreement.
Power Supply	Payable by Eaton Bowling & Social Club Inc	
Gas Supply	Payable by Eaton Bowling & Social Club Inc	
Telephone	Payable by Eaton Bowling & Social Club Inc	
Internet	Payable by Eaton Bowling & Social Club Inc	
Insurance – Contents, Works Compensation and Public Liability	Taken out by the Eaton Bowling & Social Club Inc and payable by the Eaton Bowling & Social Club Inc	
Insurance – Main Building/Clubroom, other Buildings/Sheds/Structures & Bowling Greens		Payable by Lessor as per the lease agreement.

(Appendix ORD: 12.4.1D)

Item	Lessee Responsibility	Lessor Responsibility
Stormwater	Clean gutters, downpipes and stormwater drains – keep free of debris to prevent blockages	Repair / Replace as required (Based on Council's Capital Works Program and budget priorities) unless damage caused by Lessee's negligence.
Windows	Clean glazing. Replace damaged windows panels or glazing	Repair/Replace glass and frames and opening/closing mechanisms unless damage is caused by Lessee's negligence.
Roof & Guttering	Keep guttering clean and free of debris at all times.	Repair leaks to the roof and repair or replace roof coverings. Repair/replace guttering as required (Based on Council's Capital Works Program and budget priorities), unless damaged caused by Lessee's negligence.
Doors & Locks	Key Replacement. Keep doors operational – repair (eg if door hinge/lock broken, repair/replace locks, door covering). Replace damaged locks. Replacement of damaged doors.	Replace at end of natural life, unless damage is caused by Lessee's negligence.
Walls	Wash, clean periodically. Minor repairs and repainting periodically. Remove minor graffiti.	Maintain Structural Stability. Remove major graffiti or repair vandalism.
Stairwells/Stairways	Keep free from rubbish and debris. Keep access/egress area clear. Repair/replace as required including balustrades, treads, risers and landings.	Nil
Painting	Touch up where damaged, Repaint as required.	Major external painting as required (Based on Council's Capital Works Program and budget priorities)
Retaining Walls		Repair or replace as required (Based on Council's Capital Works Program and budget priorities)
Signs	Maintain/Replace (Observing Council's requirements for installation of signage)	Nil
Security Lights	Replace globes, maintain and replace light units as required.	Repair or replace major wiring or circuitry as required (Based on Council's Capital Works Program and budget priorities)
Pipe Work	Remove Blockages and repair damage.	Replace at end of natural life. Remove tree roots if

(Appendix ORD: 12.4.1D)

Item	Lessee Responsibility	Lessor Responsibility
		damage caused by trees on Council Reserves.
Water, Sewerage Piping & Associated Fittings	Keep free from blockages, unblock drain, clean fitting eg taps, toilets sinks, replace washers. Repair damage	Replace at end of useful life.
Hot Water System	Full responsibility to repair and service, payable by Eaton Bowling & Social Club Inc.	Replace as required (Based on Council's capital works program and budget priorities unless urgent or a safety hazard)
Air Conditioning	Maintenance and repairs including all testing and servicing.	Replace as required (Based on Council's capital works program and budget priorities unless urgent or a safety hazard)
Electrical Services	Limited or minor responsibility for repair and replacement.	Major or significant repairs or replacement to circuitry or supply lines.
Lighting & Fixtures	Replace lights and globes, ballasts and fuses, repair/replace wiring connections.	Nil
Smoke Detectors	Full responsibility to repair and service, payable by the Eaton Bowling & Social Club Inc	Replace as required (Based on Council's capital works program and budget priorities unless urgent or a safety hazard)
Flooring ie: carpet, timber, tiles, etc	Clean – Remove all stains. Repair/replace to appropriate finish.	Replace as required (Based on Council's capital works program and budget priorities unless urgent or a safety hazard)
Internal Walls/Screens	Clean, keep free of mould/grime. Repair damage caused by use. Repair cracking, replace, repaint.	Replacement responsibility for structural walls only.
Ceilings	Clean, keep free from cobwebs, minor repairs /repainting periodically	Replace due to structural failure or repair damage caused by roof leaks.
Security System	Full responsibility and payable by Eaton Bowling & Social Club (Council to approve installation of Security Cameras)	Nil.
Linemarking of greens	Full responsibility and payable by Eaton Bowling & Social Club	
Fertilising	Full responsibility and payable by Eaton Bowling & Social Club	
Topdressing	Full responsibility and payable by Eaton Bowling & Social Club	
Weed / Pest Spraying	Full responsibility and payable by Eaton Bowling & Social Club	
Car Park Surfaces	Nil	Payable by Lessor
Car Park Linemarking	Nil	Payable by Lessor
Maintenance, Replacement and Repairs to any Fitout Items in relation to any damage or actions attributable to the Lessee and which	Payable by the Eaton Bowling & Social Club Inc	

(Appendix ORD: 12.4.1D)

Item	Lessee Responsibility	Lessor Responsibility
is occurring before its normal serviceable life expectancy.		
The replacement of Fitout items that form part of the leased premises, in relation to fair wear and tear and reaching its normal serviceable life expectancy		Lessor, timing subject to scheduling within asset programs.
Cleaning, including tidy, unobstructed and free from dirt and rubbish	Full responsibility and payable by Eaton Bowling & Social Club Inc	
Structural repair, replacement and/or maintenance in relation to any damage or actions attributable to the Lessee, and which is occurring before its normal serviceable life expectancy.	Payable by Eaton Bowling & Social Club Inc	Lessor may make a contribution, but is not obligated to. Any contribution must be agreed prior to by the lessee and lessor prior to the work being undertaken.
The replacement of structural components, building materials that form part of the leased premises, in relation to fair wear and tear and reaching its normal serviceable life expectancy.		Lessor, timing subject to scheduling within asset programs.
Supplies and Consumables	Payable by the Eaton Bowling & Social Club Inc	
Landscaping / garden areas	Keep clean, unobstructed and maintained. No adding or removal of trees, shrubs or hedges without the Lessor approval.	
Alterations to the Premises	Payable by the Eaton Bowling & Social Club Inc. No works permitted without the prior written approval of the Lessor.	Must be approved in writing by the Lessor
Pest Maintenance	Payable by the Eaton Bowling & Social Club Inc	Termite inspection and spraying to be undertaken by Lessor.
External Fencing and Gates	Maintain and keep in good condition. Repairs to be payable by the Eaton Bowling & Social Club Inc	Scheduled upgrades & replacement (Based on capital works program & budget priorities)
Rubbish Removal	Payable by the Eaton Bowling & Social Club Inc	Nil
Ancillary Structures – Storage Shed, rainwater tank, shade structures	Maintain and repair in good order. Repairs to be payable by the Eaton Bowling & Social Club Inc	Nil

Item 12 Special Conditions

- 12.1 The Lessee must not and must not allow anyone else without the written consent of Council
- 12.1.1 To alter locks, copy keys, install additional locks or alter alarm codes. A complete set of keys and alarm codes must be made available to the Council at all times.
- 12.1.2 Place any sign on the exterior of the buildings.
- 12.2 The Lessee shall be responsible for ensuring all **ELECTRICAL EQUIPMENT** is subject to appropriate checks, tests and inspections necessary to reduce the risk of injury or harm occurring to a person at the premises. The Lessee shall provide written confirmation to the Lessor that all electrical equipment at the premise meets the relevant standards and, where applicable, meets the requirements of Part 3. Workplace Safety Requirements of the Occupational Safety and Health Regulations 1996 (Note: this does not include equipment that is hard wired). This shall be in the form of an Electrical Test and Tag Register. **Confirmation detailing the annual Tests and Tag compliance shall be provided by the Lessee to the Lessor annually, by the 31st August each year.**
- 12.3 The Lessee shall be responsible for ensuring all **FIRE FIGHTING EQUIPMENT** is subject to appropriate checks, tests and inspections necessary to reduce the risk of injury or harm occurring to a person at the premises. The Lessee shall provide written confirmation to the Lessor that all fire extinguishers, fire hose reels and associated equipment at the premise meets the relevant standards and where applicable, meets the requirements of Part 3. Workplace Safety Requirements of the Occupational Safety and Health Regulations 1996 and Australian Standards - AS.1851. **Conformation detailing the AS 1851 Maintenance Record for Fire Fighting Equipment testing shall be provided by the Lessee to the Lessor annually, by the 31st August each year.**
- 12.4 The Lessee is to provide the Lessor with free use of the leased facilities for up to a total of 5 events per calendar year. The Lessor is required to formally book the use of the Eaton Bowling Club with the Lessee when these events or activities are proposed, and will not interfere with any existing booking arrangements or schedules. If a proposed booking date conflicts with any existing booking arrangement, then an alternative date will be negotiated to the mutual satisfaction of the Lessee and Lessor.
- 12.5 The Lessor will insure the buildings, sheds, bowling greens and other structures located on the Reserve.
- 12.6 In relation to the maintenance of the bowling surfaces and fixtures associated with the use of the bowling surfaces (Bowling Surfaces)(if any) on the premises.
- 12.6.1 the respective obligations of the Council and the Lessee are set out in the Schedule of Maintenance (Item 11).

12.7 The Lessee must keep all rubbish, bottles, cans, cartons and refuse in proper containers and shall in all respects comply with all Statutory Requirements and all reasonable directions of the Council.

12.8 The “Lessee” under the agreement permits the use of the Parking Areas on an unreserved, non-exclusive basis and solely by employees, patrons & guests. The “Lessor” shall not be liable for any incidents and this Lease shall not be affected if any parking rights are impaired by any law, ordinance or other government regulation imposed after the date of the execution of this lease.

12.9 When the synthetic bowling greens require replacement, the Lessee and Lessor shall contribute funding towards their replacement, subject to:

- at least 1/3 additional funding being sought and obtained through the Western Australian state government’s Community Sporting & Recreation Facilities Fund (CSRFF) or another grant program or external contribution, and
- aligning with Council’s scheduled capital works program & budget priorities.

Should the grant or external contribution be equal to 1/3 of the total project capital expenditure, then the Lessee and Lessor will contribute funding of 1/3 each. Should the grant or external contribution be greater than 1/3 of the total project capital expenditure, then the Lessee and Lessor will contribute funding for the remaining portion on an equal 50/50 basis.

Item 13 Amount of Bond

Nil

PLAN



EXECUTION

EXECUTED AS A DEED.

THE COMMON SEAL of)
Shire of Dardanup)
was hereunto affixed in the)
presence of:)

CR. MICHAEL T BENNETT
Shire President

MR ANDRÉ SCHÖNFELDT
Chief Executive Officer

THE COMMON SEAL of)
Eaton Bowling & Social Club Inc was)
hereunto affixed in accordance with)
its Constitution in the presence of:)

President

Secretary

RISK ASSESSMENT TOOL									
OVERALL RISK EVENT: Shire of Dardanup Printers Tender RISK THEME PROFILE: 15 - Supplier and Contract Management RISK ASSESSMENT CONTEXT: Operational									
CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL			RESIDUAL RISK RATING
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING	
HEALTH	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
FINANCIAL IMPACT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
SERVICE INTERRUPTION	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
LEGAL AND COMPLIANCE	Failure to comply with procurement policy	Moderate (3)	Rare (1)	Low (1 - 4)	Not required.	Not required.	Not required.	Not required.	Not required.
REPUTATIONAL	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
ENVIRONMENT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.

(Appendix ORD: 12.4.3A)



Leschenault Catchment Council

Leschenault Homestead
Cnr Leschenault and Estuary Drive
PO Box 4186, Bunbury East, WA 6230
P: (08) 9791 4773

Chief Executive Officer
Shire of Dardanup
1 Council Drive
Eaton WA 6232

27 July 2021

Attention: Phil Anastasakis

LESCHENAULT CATCHMENT COUNCIL UNSOLICITED BID TO LEASE THE WATERLOO FIRE STATION – LOTS 57 AND 97

The Leschenault Catchment Council (LCC) is currently housed at the Leschenault Homestead at the Southern Ports complex. Our lease expires in November and unfortunately the Port cannot renew the lease as their growth demands reclaiming the space for their internal needs.

Following a meeting between the CEO and LCC Chairman, it was agreed in general terms that the Shire supported the concept of the LCC leasing the Waterloo Fire Station facility for a term up to five years for a peppercorn annual lease. Subsequently a delegation met with Mr Anastasakis on site to inspect the property and discuss the LCC requirements. The site visit confirmed the potential of the site based on the following:

- The fire shed was suitable for the LCC storage requirements;
- The fire shed had adequate ablutions and wet area;
- The fire shed had adequate amenities/common area;
- The cleared area to the east of the shed (Lot 97) was suitable for the location of transportables and an operations area.

The LCC currently has a transportable accommodation module (4 x 12m) which will be used either for staff office accommodation or for a climate-controlled seed drying facility in the first instance as further transportable accommodation is purchased or leased.

Mr Anastasakis advised that if the LCC wished to progress the option then the LCC should present a formal request outlining the business and site operations. The LCC therefore seeks the Shire of Dardanup approval for the LCC to lease the site for staff accommodation and for the LCC to carry out environmental operations.

The specifications proposed are:

- To use the existing fire shed as an operations and storage shed;
- Retain the existing ablutions, wet area and amenity area, as are, for ongoing use;
- Relocate the LCC transportable to accommodate 5 staff – will be repositioned adjacent to the fire shed on Lot 97;
- Site a new transportable module next to the accommodation transportable for seed drying and other operations – either 4 x 12m or two smaller modules;
- Erect a chain mesh security fence on site for security of offices and vehicles;
- Erect a timber shade structure over the transportables; and
- Install a solar battery system – approx 6 kw or maximum to fit on roof;

www.leschenaultcc.org.au
[@LeschenaultCC](https://www.facebook.com/leschenaultcc)
contact@leschenaultcc.org.au
ABN 55 847 961 699

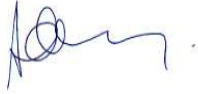
(Appendix ORD: 12.4.3A)

The conceptual layout is shown on the attached sketch.

Please advise of any Council requirements to facilitate this move, including likely lease conditions, and any approvals required.

Thank you for your support to the Leschenault Catchment Council as we deal with these changes. Please ring me direct if you have any questions.

Yours Sincerely,



Adrian Azzari-Colley
Chairman, LCC

Mob: 0419 915 654



EXISTING WATERLOO FIRE BRIGADE SHED
LOT 67 SOUTH WESTERN HIGHWAY, WATERLOO



SITE PLAN

(Appendix ORD: 12.4.3B)

RISK ASSESSMENT TOOL									
OVERALL RISK EVENT:		Leschenault Catchment Council – Request to Lease – Waterloo BFB Shed							
RISK THEME PROFILE:		3 - Failure to Fulfil Compliance Requirements (Statutory, Regulatory)							
RISK ASSESSMENT CONTEXT:		Strategic							
CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL			RESIDUAL RISK RATING
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING	
HEALTH	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
FINANCIAL IMPACT	Failure to establish a Lease Agreement could lead to financial implications to the Shire	Minor (2)	Possible (3)	Moderate (5 - 11)	Not required.	Not required.	Not required.	Not required.	Not required.
SERVICE INTERRUPTION	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
LEGAL AND COMPLIANCE	Failure to establish a lease agreement and meet all statutory requirements could lead to legal action.	Minor (2)	Likely (4)	Moderate (5 - 11)	Not required.	Not required.	Not required.	Not required.	Not required.
REPUTATIONAL	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
ENVIRONMENT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.

(Appendix ORD: 12.4.4A)



POLICY NO:-
CnG CP042 – COUNCILLOR FEES POLICY

GOVERNANCE INFORMATION			
Procedure Link:	NA	Administrative Policy Link:	NA

ADMINISTRATION INFORMATION								
Version:	1	CP042	OCM:	30/08/17	Res:	238/17	Synopsis:	Policy created.
Version:	2		SCM	26/07/18	Res:	251-18	Synopsis:	Reviewed and Adopted by Council
Version	3	CnG CP042	OCM	30/09/20	Res:	270-20	Synopsis	Reviewed and Adopted by Council

1. RESPONSIBLE DIRECTORATE

Corporate & Governance

2. PURPOSE OR OBJECTIVE

This policy provides direction and guidelines on the payment of elected members fees and allowances.

The *Local Government Act 1995*- Section 5.98 and the *Local Government (Administration) Regulations 1996* permits a payment to Councillors for attending Council and committee meetings and the reimbursement of prescribed expenses. The Salaries and Allowances Tribunal (SAT) determines minimum and maximum fees.

The Salaries and Allowances Tribunal (SAT) is empowered to determine certain payments that are to be made or reimbursed to elected Council members. Where the SAT has chosen to determine minimum and maximum amounts for fees, expenses or allowances, there is an obligation on Local Governments to set the amounts to be paid or reimbursed within the range determined.

SAT has determined four categories (or bands) and has assessed each Local Government to be categorised from Band 1 (largest Councils) through to Band 4 (smallest). Shire of Dardanup has been categorised as Band 3.

The Policy Objectives are:

- To outline the support that will be provided to Councillors through the payment of allowances and reimbursement of expenses incurred in accordance with the Local Government Act 1995 while performing the official duties of office; and
- Ensure legislative requirements are adhered to.

The Council shall meet entitlements and reimburse out of pocket expenses that are reasonably incurred as a Councillor and in accordance with the Policy.

3. REFERENCE DOCUMENTS

All payments are to comply with the following legislative requirements:

- Local Government Act 1995 – s5.98, s5.98A, s5.99, s5.99A, s5.101A, s5.102AA
- Local Government (Administration) Regulations 1996 – r30, ~~r33~~ **r31**, ~~r33A~~ **r32**

4. POLICY

4.1 Eligibility to Fees and Allowances whilst a Councillor

The Act provides for the payment of sitting fees, allowances and reimbursement of specific expenses related to or incurred in performing the role of Councillor for the Shire of Dardanup. These are processed each financial year following the adoption of the budget. ~~and upon submission of a Councillor Claim request form.~~

Councillors' fees and allowances shall generally be payable ~~quarterly~~ **monthly in arrears (Jan, April, July, Oct), with the option of being paid monthly in arrears where requested and upon submission of a Councillor Claim request form. Where a Councillor does not hold office throughout the payment period, an amount of one twelfth of the annual fee is to be paid for each month or part of a month that the member held office.**

4.2 Fees for attending meetings

(Appendix ORD: 12.4.4A)

All Councillors who attend Council or committee meetings are entitled to be paid a sitting fee. The fees can be paid based on individual meetings or as an annual fee, in accordance with Section 5.99 of the Act and Regulation 34 30 of the Administration Regulations.

The Shire of Dardanup's policy is for an annual meeting fee to be paid in lieu of Council and Committee meeting attendance fees, which shall be within the prescribed range set by the SAT, regardless of the meeting structure in place, or the number of meetings attended by a particular Councillor. The annual meeting fee, set within this SAT prescribed payment band, shall be determined by Council as part of the annual budget adoption and is based on ~~70%~~ 75% of the maximum band value.

4.3 President Local Government Allowance

The prescribed range for the payment of the annual Local Government allowance for the President is determined by the SAT and shall be set by Council as part of the annual budget adoption process in accordance with Section 5.98(5) of the Act and Regulation 33 30 of the Administration Regulations and is based on ~~70%-75%~~ of the maximum band value. The President's allowance shall generally be payable ~~quarterly~~ monthly in arrears. ~~(Jan, April, July, Oct), with the option of being paid monthly in arrears where requested and upon submission of a Councillor Claim request form.~~

Where the President does not hold office throughout the payment period an amount of one twelfth of the annual fee is to be paid for each month or part of a month that the President held office.

The expenditure of the allowance is at the discretion of the President.

4.4 Deputy President Local Government Allowance

The prescribed range for the payment of the annual Local Government allowance for the Deputy President is determined by the SAT and shall be set by Council as part of the annual budget adoption process in accordance with Section 5.98(5) of the Act and Regulation 33 30 of the Administration Regulations and is based on ~~70%~~ 75% of the maximum band value. The Deputy President's allowance shall generally be payable ~~quarterly~~ monthly in arrears. ~~(Jan, April, July, Oct), with the option of being paid monthly in arrears where requested and upon submission of a Councillor Claim request form.~~

Where the Deputy President does not hold office throughout the payment period an amount of one twelfth of the annual fee is to be paid for each month or part of a month that the Deputy President held office.

The expenditure of the allowance is at the discretion of the Deputy President.

4.5 Reimbursement of ICT Expenses

All Councillors are entitled to be paid an annual allowance in lieu of telecommunications expenses within the prescribed range determined by the SAT and shall be set by Council as part of the annual budget adoption process, with the allowance based on ~~70%~~ 75% of the maximum band value.

The annual Information & Communications Technology (ICT) allowance shall be in accordance with Section 5.99A of the Act instead of reimbursement under section 5.98(2) for the actual cost related to Information and Communications Technology that might otherwise have been approved for the reimbursement under Regulation 31 and 32 of the Administration Regulations.

The allowance is for costs relating to telephone usage including plans/contracts, rentals, mobile phones, mobile devices, extra telephone lines, call cost, internet service provider fees and consumables incurred while performing the functions of the Councillor. Councillors allowance shall generally be payable ~~quarterly~~ monthly in arrears. ~~(Jan, April, July, Oct), with the option of being paid monthly in arrears where requested and upon submission of a Councillor Claim request form.~~

4.6 Authorised Functions

For the purpose of Regulation 32(1)(a) of the Administration Regulations, express authority of the Council is given to Councillors to attend the following functions:

- a) Attendance by a Councillor at any working group meeting, ordinary or special briefing session and Council forum, notice of which has been given by the Chief Executive Officer ;
- b) Attendance by a Councillor at any meeting or any body to which the Councillor has been appointed by the Council or to a secondary body as approved by the Chief Executive Officer (but not including any meeting of a regional Local Government);
- c) Attendance by a Councillor at any annual or special electors' meeting;
- d) Attendance by a Councillor at a Shire of Dardanup civic function to which all Councillors are invited;

(Appendix ORD: 12.4.4A)

- e) Attendance by a Councillor at a citizenship ceremony conducted by the Council;
- f) Attendance by a Councillor at any ceremony for the presentation by the Council of awards to school students by any Councillor responsible for presentation of the awards;
- g) Attendance by a Councillor at any site where:
 - The site is the subject of an item of business on an agenda for a Council briefing session or a Council meeting; and
 - The attendance occurs between the issue of the agenda and the Council briefing session or the Council meeting;
- h) Attendance by a Councillor at a meeting with the Chief Executive Officer or a Director of the Council at the request of the Chief Executive Officer or a Director;
- i) Attendance by the President at a meeting or function of any body including any State Government body, in their capacity as the President, including attendance by the Deputy President or a Councillor in place of the President; and
- j) Any other function, meeting or event in their role as a Councillor that is supported by a written invitation.

4.7 Reimbursement of Expenses

Councillor reimbursement of expenses shall generally be payable quarterly in arrears **and on receipt of evidenced expenditure incurred (i.e. log book / receipts).** ~~(Jan, April, July, Oct), with the option of being paid monthly in arrears where requested and upon submission of a Councillor Claim request form. This Claim form shall be submitted within fourteen (14) days after the close of each quarter or month if applicable.~~

4.7.1 Reimbursement Of Child Care Expenses As A Result Of Attendance At An Authorised Function, Meeting Of Council Or Committee

In accordance with Section 5.98(2)(a) of the Act and Regulations 31(1)(b) of the Administration Regulations, a Councillor who incurs child care costs (where they are a parent or legal guardian) because of the Councillor's attendance at a Council meeting or meeting of a committee (of which he or she is a member), is entitled to be reimbursed the actual cost per hour or the prescribed amount as determined by the Salaries and Allowances Tribunal whichever is the lesser amount.

Child care costs will not be paid for where the care is provided by a member of the immediate family or relative living in the same premises as the Council member.

Claims must be made on the claim form provided and be accompanied by a receipt or invoice detailing the date, number of hours, rate and function attended and the details of the service provider.

4.7.2 Reimbursement Of Travel And Parking Expenses Because Of Attendance At An Authorised Function, Meeting Of Council Or Committee

It is noted that under Section 5.98(2)(a) of the Act and Regulations 31(1)(b) of the Administration Regulation, a Councillor who incurs travel expenses because of the Councillor's attendance at a Council meeting or meeting of a committee of which he or she is a member, or authorised function is entitled to be reimbursed for travel from the person's place of residence or work to the meeting and back.

If transportation is provided by another Councillor, then only that Councillor is entitled to claim the actual cost applicable.

Claims for travel must be made on the claim form provided and be accompanied by a receipt or invoice for the actual cost detailing the date, function attended and the expense incurred. In accordance with Clause 8.2(5) of the *Salaries and Allowance Tribunal Determination* dated 8 April 2021, a claim for travel using the Councillor's own vehicle may be made based on the same rate contained in Section 30.6 of the Local Government Officers' (Western Australia) ~~Interim~~ Award ~~2011~~ **2021** (currently \$0.6866 per kilometre for a vehicle with an engine displacement of between 1600 to 2600cc in the South West Land Division), to which the person would be entitled for that expense in the same circumstances.

Parking costs are to be reimbursed at the actual cost upon production of a receipt.

4.8 Claim for Reimbursement

Councillor reimbursement of expenses shall generally be payable ~~quarterly~~ **monthly in arrears and on receipt of evidenced expenditure incurred (i.e. log book / receipts).** ~~(Jan, April, July, Oct), with the option of being paid monthly in arrears where~~

(Appendix ORD: 12.4.4A)

~~requested and upon submission of a Councillor Claim request form. This Claim form shall be submitted within fourteen (14) days after the close of each quarter or month if applicable.~~

In submitting claims for reimbursement the Councillor shall detail the date of the claim, particulars of the claim and nature of business, eg. the amount paid for child care costs, distance travelled, vehicle displacement and the total travelled in kilometres and certify the accuracy of such information.

Parking fees will only be reimbursed if receipts accompany claim. This should be accompanied by supporting documentation where applicable.

Expenses for the quarter ended or month of June are to be submitted by 15 July.

Failure to present claims within identified time periods will be considered by the Chief Executive Officer and may result in the non-payment of the claim particularly if the claim relates to a former financial period. Under no circumstances is any reimbursement to be made in connection with costs incurred for re-election to the office of Councillor.

RISK ASSESSMENT TOOL									
OVERALL RISK EVENT:		2021/22 CnG CP042 Councillor Fees Policy – Policy Update							
RISK THEME PROFILE:		3 - Failure to Fulfil Compliance Requirements (Statutory, Regulatory)							
RISK ASSESSMENT CONTEXT:		Operational							
CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL			
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING	
HEALTH	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	
FINANCIAL IMPACT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	
SERVICE INTERRUPTION	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	
LEGAL AND COMPLIANCE	Risk of Non-compliance to Council Policy CnG CP042 Councillor Fees Policy if the policy is not updated.	Minor (2)	Unlikely (2)	Low (1 - 4)	Not required.	Not required.	Not required.	Not required.	
REPUTATIONAL	Risk of negative impact to reputation if Council is at risk of not adhering to its own adopted Council Policies.	Insignificant (1)	Rare (1)	Low (1 - 4)	Not required.	Not required.	Not required.	Not required.	
ENVIRONMENT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your ref: CML:cml
Our ref: 4111:13

4 August 2021

Cr Michael Bennett
President, Shire of Dardanup
PO Box 7016
1 Council Drive
Eaton WA 6232
By email: Ms Cathy Lee at cathy@dardanup.wa.gov.au

Dear President

Shire of Dardanup Bush Fire Brigades Local Law 2021

Thank you for the Explanatory Memorandum and supporting material for the above local law contained in the letter from Manager of Governance and HR, Ms Cathy Lee submitted on 21 May 2021.

The Joint Standing Committee on Delegated Legislation considered the local law at its meeting today and resolved to write to you about the following.

Typographical and formatting errors

Clause 1.5

This clause begins:

This local law come into operation...

The word 'come' should be replaced with 'comes'.

Clause 4.5

The Explanatory Memorandum for the local law explains the rationale for this clause as follows:

Makes it clear that to be appointed an honorary life member a person must have achieved 15 years' active service to a brigade.

The clause is currently drafted as follows:

4.5 Honorary life member

(1) The bush fire brigade may by a simple majority resolution appoint a person as an honorary life member in recognition of services by that person to the bush fire brigade.

(2) A brigade member who has achieved 15 years active service to a brigade within the Shire of Dardanup;

(Appendix ORD: 12.4.5A)

(3) No membership fees are to be payable by an honorary life member.

(4) The Shire of Dardanup and Department of Fire and Emergency Services (DFES) to be notified of nominees.

As drafted, the clause does not read coherently. It should be re-drafted as follows (changes marked up):

4.5 Honorary life member

(1) The bush fire brigade may by a simple majority resolution appoint a person who has achieved 15 years' active service to a brigade within the Shire of Dardanup as an honorary life member in recognition of services by that person to the bush fire brigade.

~~(2) A brigade member who has achieved 15 years active service to a brigade within the Shire of Dardanup;~~

(2) No membership fees are to be payable by an honorary life member.

(3) The Shire of Dardanup and Department of Fire and Emergency Services (DFES) are to be notified of nominees.

Clause 8.1(2)

Clause 8.1(2) is currently not properly aligned:

8.1 Notices

(1) Notices of meetings of the bush fire brigade are to be in writing and sent by ordinary post to the registered address of each brigade member.

(2) Notices of meetings of the Committee may be given in writing in accordance with subclause (1) or by such other means as the Committee may decide (by an absolute majority) at a meeting of the Committee.

This clause needs to be left justified.

Undertakings

The Committee requires the following undertakings:

1. Within the next six months, correct the typographical and formatting errors in clauses 1.5, 4.5 and 8.1(2).
2. Ensure all consequential amendments arising from the undertaking will be made.
3. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertaking.

The undertakings should be given in the form of a letter signed by you as President, not the Chief Executive Officer or other officer of the Shire of Dardanup. This is because, pursuant to section 2.8(1)(d) of the *Local Government Act 1995*, the 'Mayor or President speaks on behalf of the local government' to the Parliament of Western Australia.

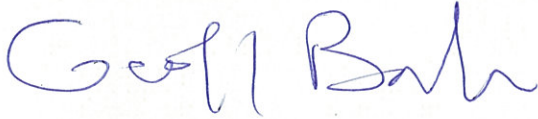
I note your Council is next due to meet on 25 August 2021. The Committee therefore requests that the undertakings be provided by 30 August 2021.

To assist you I attach a suggested form of Council resolution to provide the undertakings.

(Appendix ORD: 12.4.5A)

Please provide your response by **30 August 2021**. If you have any queries in relation to this matter, please contact Mr Alex Hickman, Advisory Officer (Legal) on 9420 7633 or at delleg@parliament.wa.gov.au.

Yours sincerely



Mr Geoff Baker MLA
Chair

This correspondence including any attachments is confidential and privileged. Your local government may only discuss the content of this letter and any attachments with the Western Australian Local Government Association, the Department of Local Government and the Shire's legal advisors to the extent necessary to obtain information the Committee seeks. Each person to whom you distribute this material must be made aware of its confidential and privileged status.

Suggested form of Council resolution to provide the undertakings:

The Council of the Shire of Dardanup resolves to undertake to the Joint Standing Committee on Delegated Legislation that:

1. Within the next six months, correct the typographical and formatting errors in clauses 1.5, 4.5 and 8.1(2).
2. Ensure all consequential amendments arising from the undertaking will be made.
3. Where the local law is made publicly available by the Shire, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertaking.
4. Provide reasons for the delay in giving a copy of the proposed local law to the Minister for Emergency Services.

(Appendix ORD: 12.4.5B)

RISK ASSESSMENT TOOL

OVERALL RISK EVENT: Bush Fire Brigades Local Law 2021 - Undertakings

RISK THEME PROFILE:

3 - Failure to Fulfil Compliance Requirements (Statutory, Regulatory)

RISK ASSESSMENT CONTEXT: Strategic

CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
HEALTH	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
FINANCIAL IMPACT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
SERVICE INTERRUPTION	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
LEGAL AND COMPLIANCE	Council has a statutory obligation to make laws which are clear and effective. Council will be viewed in a negative light if it fails to discharge its statutory obligation.	Minor (2)	Unlikely (2)	Low (1 - 4)	Not required.	Not required.	Not required.	Not required.
REPUTATIONAL	Council will be viewed in a negative light if it fails to discharge its statutory obligation.	Minor (2)	Unlikely (2)	Low (1 - 4)	Not required.	Not required.	Not required.	Not required.
ENVIRONMENT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.

RISK ASSESSMENT TOOL									
OVERALL RISK EVENT: Failing to monitor the financial performance can increase the risk of a negative impact on the Shire's financial position. Non-compliance with legislative requirement could result in a qualified audit.									
RISK THEME PROFILE:									
3 - Failure to Fulfil Compliance Requirements (Statutory, Regulatory)									
RISK ASSESSMENT CONTEXT: Operational									
CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL			RESIDUAL RISK RATING
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD		
HEALTH	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
FINANCIAL IMPACT	Not monitoring ongoing financial performance would increase the risk of a negative impact on the financial position.	Moderate (3)	Unlikely (2)	Moderate (5 - 11)	Not required.	Not required.	Not required.	Not required.	Not required.
SERVICE INTERRUPTION	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.
LEGAL AND COMPLIANCE	Non-compliance with the legislative requirements that results in a qualified audit.	Minor (2)	Unlikely (2)	Low (1 - 4)	Not required.	Not required.	Not required.	Not required.	Not required.
REPUTATIONAL	Non-compliance that results in a qualified audit can lead stakeholders to question the Council's ability to manage finances effectively.	Insignificant (1)	Unlikely (2)	Low (1 - 4)	Not required.	Not required.	Not required.	Not required.	Not required.
ENVIRONMENT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.	Not required.

