

ITEM NUMBER: 19.2

CONFIDENTIAL REPORT

GLENELG FOOTBALL CLUB – NEW LEASE AND LICENCE

Pursuant to Section 83(5) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- b. Information the disclosure of which –
 - i. would reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - ii. would, on balance, be contrary to the public interest.

- d. commercial information of a confidential nature (not being a trade secret) the disclosure of which –
 - i. could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - ii. would, on balance, be contrary to the public interest.

Recommendation – Exclusion of the Public – Section 90(3)(b) and (d) Order

1. That pursuant to section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 118/24 Glenelg Football Club Lease and Licence in confidence.
 2. That in accordance with section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 118/24 Glenelg Football Club Lease and Licence on the following grounds:
 - b. pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is proposing to conduct business with, in that the disclosure of the rent valuation could prejudice the Glenelg Football Club's current agreement with its sublessee.
 - d. pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the rent valuation for the premises.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.
 3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
-

Item No: 19.2

Subject: GLENELG FOOTBALL CLUB – NEW LEASE AND LICENCE

Summary

The Glenelg Football Club Incorporated (“Club”) has occupied its current premises at Glenelg Oval under a lease and licence arrangement since 1 July 2001. At its meeting held 11 July 2017, Council resolved to enter into a new lease and licence agreement with the Club for a period of five years commencing 1 October 2017 and ending on 30 September 2022, with an option to renew for a further five years thereafter. Rather than enter into a new lease at the time of its expiry in late 2022, Council resolved to holdover the lease to allow consideration of the new licence and lease concurrently with the review of the Club’s broader financial arrangements with Council. Having regard to the progress made with respect to the broader financial arrangements with the Club, it is timely that Council now enter into a new lease and licence agreement with the Club for a period of five years commencing 1 July 2024, with an option to renew for a further five years thereafter, with an annual payable rent of \$27,127. It is also recommended that negotiations commence to finalise the terms of a sub-lease between the Club and the commercial entity currently enjoying exclusive use of a section of the first floor in the Clubroom building. Details of the proposal are outlined within this report.

Recommendation

That Council:

- 1. enters into a new Lease Agreement with the Glenelg Football Club Incorporated over a portion of land contained within Certificate of Title Volume 5869 Folio 949 for a period of five (5) years commencing 1 July 2024, with an Option to Renew for a subsequent five (5) years;**
- 2. enters into a new Licence Agreement with the Glenelg Football Club Incorporated for non-exclusive use rights over a portion of land contained within Certificate of Title Volume 5869 Folio 949 for a period of five (5) years commencing 1 July 2024, with an annual rent of \$1 payable on demand;**
- 3. charges the Lessee an annual rent in the first year of \$27,127 (excluding GST) per annum from 1 July 2024 to be reviewed annually in accordance with movements in CPI (Adelaide All-Groups);**
- 4. endorses the Mayor and Chief Executive Officer to be authorised to execute and seal any documents required to give effect to this lease; and**
- 5. authorises Administration to negotiate the terms of a sub-lease for Council’s authorisation between the Glenelg Football Club and ACH for exclusive use of the first floor.**

RETAIN IN CONFIDENCE - Section 91(7) Order

6. That having considered Agenda Item 19.2 - Glenelg Football Club – New Lease and Licence in confidence under section 90(2) and (3)(b and d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments and minutes be retained in confidence for a period of 12 months and/or the Chief Executive Officer is authorised to release the documents when signing and that this order be reviewed every 12 months.

Background

At its meeting held 11 July 2017, Council resolved to enter into a lease and licence agreement with the Glenelg Football Club for a period of five years ending on 30 September 2022, with an option to renew for a further five years thereafter (Resolution No. C110717/834). Since that time, Council endorsed the *Sporting and Community Club Leasing Policy* at its meeting held 24 April 2018 (Resolution No. C240418/1124), with the intent being that it be used to inform future sporting club leases.

At its meeting held 14 December 2021, Council resolved to maintain the annual lease for the Glenelg Football Club at \$40,000 (including GST) (Resolution No. C141221/2502) to assist with the Club's debt reduction strategy. Prior to Council's intervention, the Club was paying \$72,000 in rent per annum. At its meeting held 23 August 2022, Council resolved to holdover the current lease and licence agreements between the City of Holdfast Bay and the Glenelg Football Club for a further period of time to allow consideration of the new lease and licence concurrently with the review of the Club's broader financial arrangements with Council (Resolution No. C230822/7232).

Report

Since Council last entered into a lease and licence agreement with the Club in July of 2017, Council adopted the *Sporting and Community Leasing Policy* (the Policy) on 24 April 2018. In this regard, the new lease for the Glenelg Football Club will be based on the new Policy, including its inherent rent calculation model. The Policy was endorsed to ensure a balance between commerciality, community benefits and the long-term viability of sporting clubs, and to provide consistency and transparency in the treatment of leases. Furthermore, the Policy provides the opportunity to formally recognise the exclusive commercial use of a section of the first floor in the Clubroom building, enabling negotiations to commence for a separate sub-lease for the space, with rent calculated at a commercial rate, portion of which would be returned to Council.

Administration has been working with the Glenelg Football Club to review and negotiate various conditions and terms of the lease, maintenance schedules, and applicable rental. It is proposed that Council enter into a lease agreement with the Club to allow exclusive use rights of the Club buildings, including, with the licence permitting non-exclusive use rights of the Oval and the Edward Rix Grandstand, Oval surrounds and car park. The lease and licence areas are detailed in Attachment 1.

Refer Attachment 1

Basis for Rental

Under the 2018 *Sporting and Community Leasing Policy*, clubs are required to pay a market rent for Council owned premises they occupy based on a fixed percentage of the capital cost of the building less any equity (capital contribution) that the club has invested in the building.

This “market rent” is then discounted by a standard 70% Community Club Leasing rebate to determine the “net rental”. This net rental figure is then subject to further incentive discounts (up to a maximum of 70%) as outlined in the Policy, which reflect a club’s commitment/ adoption of activities and programs with specific community outcomes. With respect to the Glenelg Football Club, the incentives relative to community outcomes have been calculated as follows:

- Clubrooms available/hired for public access (maximum 10% discount);
- Implementation of inclusive sports programs (maximum 20% discount);
- Quality and implementation of good club governance practices (max 20% discount);
- Implementation of youth programs (maximum 10% discount); and
- Grounds/clubrooms used for multi-code programs (maximum 10% discount).

As such, the Glenelg Football Club is entitled to the standard 70% community club discount plus an additional 60% incentive discount (out of a total further discount of 70%).

Having regard to the Glenelg Football Club’s equity in the building (which it funded in 2002 through a loan by Council), the rent of the Glenelg Football Clubrooms (including ACH facility) amount is \$6,030.00 per annum.

A grounds maintenance charge is being introduced in this lease to ensure the Glenelg Football Club pay a proportion of the additional grounds maintenance costs to maintain the grounds from community park level to sports ground level. These additional costs include extra top dressing; fertiliser, weed controls and soil conditioners; and additional watering and higher costs for bore and irrigation repairs to ensure the turf is safe for sport and can survive the high usage of sports fields.

Administration has calculated a reasonable ground maintenance charge for tenants of Glenelg Oval to be \$0.30 per square metre of leased area. This equates to an annual maintenance fee of \$6,434.10 for the 21,477m² of grassed area (car park area excluded). This amount is halved to reflect joint use of the playing field with the Glenelg District Cricket Club. The land charge for the Glenelg Football Club is therefore \$3,221.55. As such, the total rent payable when merging the market rent with the ground maintenance fee is \$9,251.55. The rent calculator is provided as Attachment 2.

Refer Attachment 2

However, in a separate agreement, the Glenelg Football Club is renting approximately 207m² of the first floor of the Clubroom building to a third-party commercial operator (being ACH) for exclusive use to operate a health studio. Attachment 3 to this report outlines the area on the first floor intended for exclusive commercial use as a health studio operated by ACH.

Refer Attachment 3

In accordance with the Council’s *Sporting and Community Clubs Leasing Policy*, where facilities are not made available to the community, Council reserves the right to apply occupancy terms

and conditions that reflect exclusive use of the premises. Furthermore, the Policy requires that where a club restricts community access for the purpose of exclusive use, annual rental fees based on a market appraisal of the land will be imposed. Given that revenue from the health studio on the first floor of the Clubroom building will be retained by ACH, the *Sporting and Community Clubs Leasing Policy* seeks that where the profits gained from a commercial activity are not reinvested into the Club facilities or sport, then a rent charged in accordance with the separate *Commercial Leasing and Licensing Policy* may apply.

The *Commercial Leasing and Licensing Policy* seeks that rent must reflect a rent that could reasonably be obtained in the open market, determined by an independent valuation. An independent commercial valuation was therefore commissioned in mid-2022 as part of the then rent review and is provided as Attachment 4 to this report. The valuation provides for an annual rent of up to \$65,000 for the upstairs ACH health studio, or \$314.00 per square metre of floor area. A copy of the valuation is provided at Attachment 4 to this report. If we take the Club's equity in the buildings it leases of 72.5%, the rent returned to Council could be 27.5%, being \$17,875. Add this to the rent payable equates to a total annual rent of \$27,127 (excluding GST) to the Council.

Refer Attachment 4

Rent Calculation

The Glenelg Football Club has never been charged a separate market rent by the Council for the upstairs area of the Clubroom building, even when part of the space operated as The Bay Function Centre. However, with the adoption of the *Sporting and Community Clubs Leasing Policy*, and with precedent being established through other recent lease negotiations, Council is entitled to consider a rent akin to that expected in the open market, in recognition that the sections of the upstairs Clubroom are not available to the community, with all profits retained by a third-party commercial operator.

Whilst the *Commercial Leasing and Licensing Policy* requires that the rent must reflect a rent that could reasonably be obtained in the open market determined by an independent valuation, and therefore in accordance with the valuation provided as Attachment 4, the Policy does enable Council to consider other factors in determining the final rent. From the Club's perspective, these factors include:

1. The risk of losing the tenant (ACH) if the rent imposed is too high.
2. The Glenelg Football Club wholly funded the construction of the Clubroom building (albeit through a loan provide to it by Council).
3. The Club has a significant amount of equity in the leasable area and it should be entitled to negotiate its own terms as a means to generate secure income.

Conversely, the Council's perspective requires greater latitude, as it needs to consider factors on behalf of the broader community, which include:

1. The Club borrowed funds from Council to construct the Clubroom building, with an ongoing debt to the Council.
2. The likelihood that the approach taken with respect to setting the terms of this lease will establish a precedent for future discussions with other clubs.

It would seem reasonable and responsible for the Council to therefore adhere to its policies, but apply the discretion available to it to establish terms that reflect existing agreements, which are also transferrable to future lease negotiations with other clubs. Therefore, Council could apply a rent equation that takes its cues from the independent valuation, whilst acknowledging the Club's equity in the Glenelg Football Club buildings.

Rental and Ground Maintenance Fee Summary

Buildings Rent

After allowing for the equity contribution of \$5,300,657, the rental calculation after the Community Lease discount of 70% and incentive discounts of 60% (out of a total of 70%) has resulted in rebated commencing rent of \$6,030 (excl GST) per annum for the occupancy of the buildings.

Commercial Rent

Applying a commercial rent of [REDACTED] per square metre to the 207m² section of the first floor of the Clubroom building occupied exclusively by ACH as a health studio, a market rent of [REDACTED] is derived. With the Glenelg Football Club's equity across the buildings it occupies being 72.5%, Council's portion of the rent should be 27.5% or [REDACTED].

Ground Maintenance Fee

The portion of leased area utilised by the Club includes a grassed playing surface and warm up areas is determined at 21,477m² in size.

Applying the grounds maintenance fee at \$0.30/m² of leased grass area the grounds maintenance fee has been set at \$6,443 (excl GST). This amount is halved \$3,221.55 (excl GST) to acknowledge the shared use of Glenelg Oval with the Glenelg District Cricket Club, and charged to the Club in addition to rent over the term of the lease.

Total Rent

Combining property rental, commercial rent, and grounds maintenance fees gives a total commencing annual rent charge to the Club of \$27,127 (excl GST). The rent will then be subject to annual CPI increases.

In addition to rental charges for the buildings occupied by the Glenelg Football Club, Council's policy requires a sharing of the maintenance costs for both the buildings and grounds, in addition to the Club contributing approximately \$12,000 towards outgoings. Responsibilities for building maintenance are established through a site-specific maintenance schedule, which sets out the respective responsibilities for operational costs, repairs, maintenance (whether routine servicing or breakdown maintenance) and end-of-life replacement. Administration and the Club have negotiated over these responsibilities and the draft maintenance schedule reflects Administration's view of what we consider are fair and equitable.

Council Administration and Glenelg Football Club representatives have been negotiating the terms of the new lease and licence for some time. Agreements have been reached on the lease and licence documents, the basic terms of which are summarised in the following tables.

Proposed basic terms and conditions of the lease.

Lessor	City of Holdfast Bay
Lessee	Glenelg Football Club Inc.
Address	Brighton Road, Glenelg East
Leased Areas	Glenelg Football Club, including Edward Rix Grandstand
Commencement Date	1 July 2024
Term of Lease	5 years
Expiry Date	30 June 2029
Option to Renew	5 Years
Rental Per Annum	\$27,127 (excluding GST)
Rental Commencement Date	1 July 2024
Rental Payable	Monthly in advance
Rental Review	1 July 2025
Rental Review Type	CPI, all Groups Adelaide quarter ending 30 June of each year.
Permitted Use	Sporting, recreation, hospitality and community activities for the operation of the Glenelg Football Club Inc. and Glenelg Footballers' Club.
General Maintenance	Lessee responsible for the general maintenance of all leased areas in accordance with the lease maintenance schedule.
Structural Maintenance	Responsibility of Lessor, unless caused by negligence of Lessee.
Water	Water used in building areas payable by Lessee
Electricity	Payable by Lessee
Gas	Payable by Lessee
Other Utilities	Payable by Lessee
Council Rates	Payable by Lessee
Other Levies and Charges	Payable by Lessee
Building Insurance	Paid by Lessor and reimbursed by Lessee
Contents Insurance	Lessee to insure all contents its uses and provide a certificate of currency when requested by the Lessor.
Public Liability Insurance	Lessee to have a minimum \$20 million per claim and unlimited in the annual aggregate public liability insurance and provide a certificate of currency when requested by the Lessor.
Security	All costs payable by Lessee.
Building Services	Maintenance and running costs of all building services payable by Lessee.
Assignment or Sub Letting	The Lessee will not assign, sub lease or sublet any part of the premises without the prior written consent of the Lessor.
Indemnity	The lessee will indemnify the Lessor for injury, death, damage and all demands, claims, losses, suits or actions that may arise as a result of this lease.
Warranty	The Lessor does not warrant that the premises are fit for the use that the Lessee proposes to use them for.
Lease Preparation	Lessor's lawyers to prepare the licence document on terms and conditions which incorporated this document. The Lessee to be responsible for its own costs.
Contemporaneous agreements	Lessee acknowledges the lease will be entered into at the same time as a licence for the Glenelg Oval. A breach of the lease by the Lessee will constitute a breach of the licence.

Redevelopment and demolition	Subject to the lease agreement, the Lessee acknowledges that during the term of the lease, the Lessor may refurbish, repair, redevelop or extend the building and/or land ("property"), and if necessary, the Lessor may obtain vacant possession of the property for the purpose of any such works.
Special Conditions	
	The lessee must make available for the use of the council 40 tickets to each game for all SANFL league matches conducted at the property.
	The Lessee will be responsible for keeping all areas clean and tidy during times of use.
	The Lessee will be responsible for planning, administering, and review all traffic management for game days at its own cost in all things.

Proposed basic terms and conditions of the licence.

Licensor	City of Holdfast Bay
Licensee	Glenelg Football Club
Address	Brighton Road, Glenelg East
Licensed Areas	Oval area and surrounds, including grandstand
Commencement Date	1 July 2024
Term of Licence	5 years
Expiry Date	30 June 2029
Times of Use	1 April to 31 September of each year
Option to Renew	5 Years
Rental Per Annum	\$1 payable on demand
Rental Commencement Date	1 July 2024
Rental Payable	Monthly in advance
Rental Review	1 July 2025
Permitted Use	Sporting, recreation and community activities for the operation of the Glenelg Football Club Inc.
General Maintenance	<p>The Licensee is responsible for cleaning the licensed area prior to and at the end of each use. The Licensee must also repair any damage caused by the Licensee and/or its contractors and invitees and otherwise comply with the attached maintenance schedule.</p> <p>Licensor to maintain the oval in a condition generally suitable for SANFL games only. The Licensee is responsible for all maintenance costs to improve the grounds above this standard.</p> <p>Otherwise, in accordance with the lease maintenance schedule</p>
Structural Maintenance	Responsibility of Licensor, unless caused/contributed by the act, omission, negligence or default of the Licensee.
Water	Payable by Licensor
Electricity	Payable by Licensee
Other Utilities	Payable by Licensee
Council Rates	Payable by Licensee
Other Levies and Charges	Payable by Licensee
Building Insurance	Paid by Licensor and reimbursed by Licensee
Contents Insurance	Licensee to insure all contents its uses.

Public Liability Insurance	Licensee to have a minimum \$20 million per claim and unlimited in the annual aggregate public liability insurance
Security	All costs payable by Licensee.
Assignment or Sub Letting	The Licensee will not assign, sub licence or sublet any part of the premises without the prior written consent of the Licensor.
Indemnity	The Licensee will indemnify the Licensor against any demands, claims, losses, suits or actions that may arise as a result of this licence.
Warranty	The Licensor does not warrant that the premises are fit for the use that the Lessee proposes to use them for.
Licence Preparation	Licensor's lawyers to prepare the licence documents on terms and conditions which incorporate this document. The Licensee to be responsible for its own costs
Contemporaneous agreements	Licensee acknowledges the licence will be entered into at the same time as a lease for a portion of the Glenelg Oval Precinct. A breach of the licence by the Licensee will constitute a breach of the lease.
	The Licensee acknowledges that the Licensor may in its absolute discretion, after consultation with the Licensee, grant a licence to third parties for the use of the premises outside of the Times of Use.
	The Licensee will be responsible for collecting and removing all waste and rubbish from the oval and surrounds following game day matches and ensuring that the oval and surrounds are clean and tidy for use by the general public by the commencement of the next calendar day.
	The Licensor will be responsible for the maintenance of the oval surround areas, including grassed area, mounds, steps, ramps and grandstand seating areas.
	The Licensee may let advertising space in or upon the fences on the perimeter of the oval and may control the placing and erection of such signs and hoardings subject to obtaining Licensor approval, Development Approval if required under the <i>Planning, Development & Infrastructure Act 2016</i> .
	On days of SANFL competition matches, trial matches and other football matches organised by the Licensee, the Licensee has the following rights subject to all relevant laws: <ul style="list-style-type: none"> - The right to sell foodstuffs from the booths and canteens within the property. - The right, (subject to compliance with the <i>Liquor Licensing Act, 1997</i>), to supply and sell alcoholic and other beverages from the booths and canteens, - The right, (in conjunction with the SANFL), to full control of all gates and entrances to the property. - The right to sell seating within the property. - The right to charge fees, or to permit fees to be charged for admission to the property and grandstands. - The right to sell or permit to be sold any football publications or souvenirs. - The right to use parking areas.
	The Licensor will be responsible for cleaning and generally maintaining the caretakers building and toilets.

Sub-Lease Negotiations

It is recommended that Council authorises Administration to progress with the preparation of the terms for the sub-lease in consultation with the Glenelg Football Club as a means to have the sub-lease with ACH resolved as soon as practicable.

Budget

The current rent paid by the Glenelg Football Club is higher than the \$27,127 recommended in this report. As such, this recommendation will see a \$12,873 reduction in Council's operating budget for 2024-25.

Life Cycle Costs

Under the terms of the new lease the City of Holdfast Bay will be responsible for the structural maintenance of this facility. The renewal of the major structural components of the building is provided within Council's asset management plans.

Strategic Plan

Holdfast 2050+ Vision: Protecting our heritage and beautiful coast.
Vision - Creating a welcoming and healthy place for everyone.

Council Policy

Sporting and Community Clubs Leasing Policy
Commercial Leasing & Licensing Policy

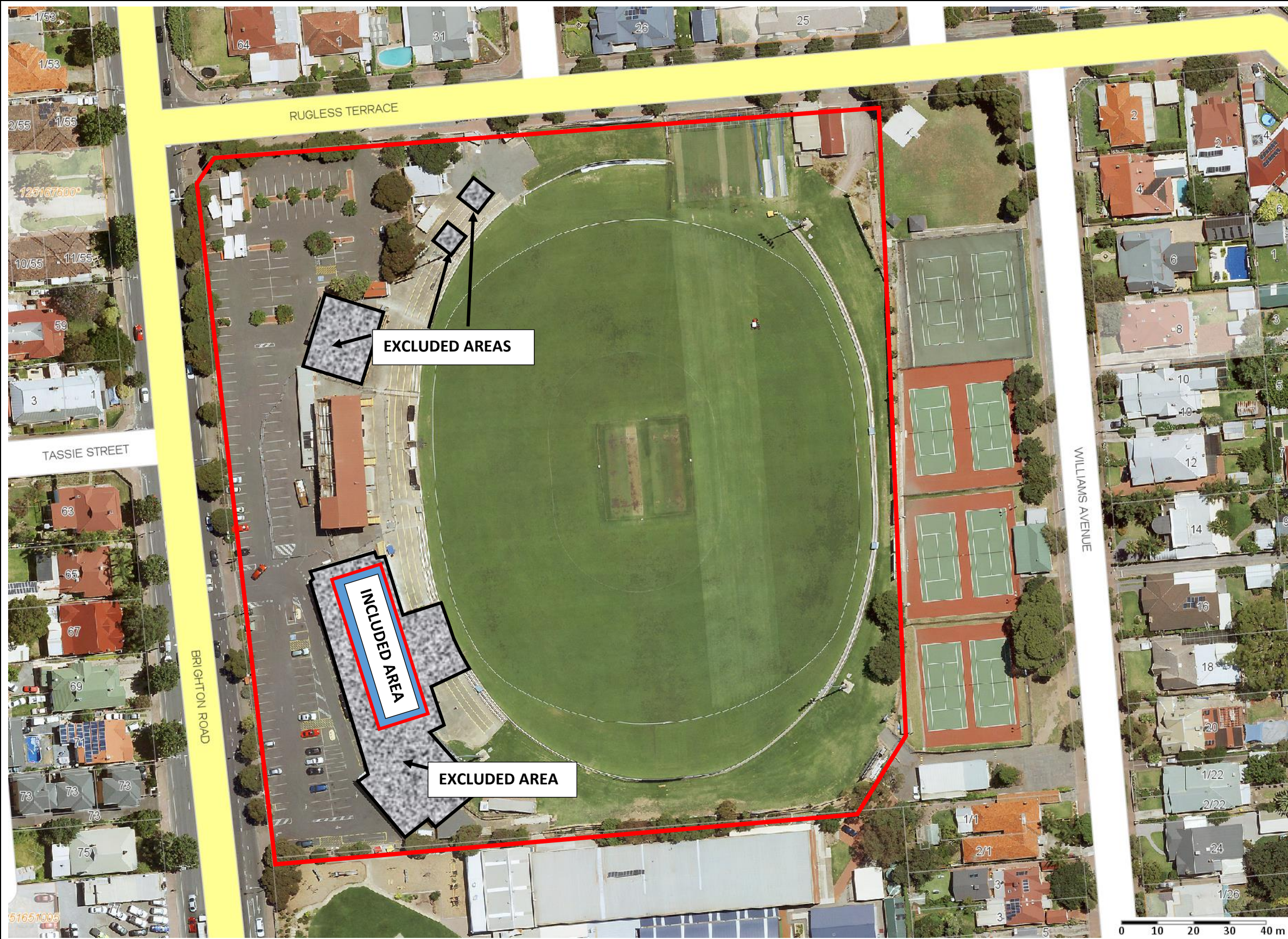
Statutory Provisions

Local Government Act 1999
Retail and Commercial Lease Act 1995

Written By: Manager, Development Services

General Manager: Strategy and Corporate, Ms S Wachtel

Attachment 1



This map has been created for the purpose of showing basic locality information and is a representation of the data currently held by The City of Holdfast Bay. This information is provided for private use only. While every effort has been made to ensure the accuracy of the product, Council accepts no responsibility for any errors or omissions. Property Boundary line network data is supplied by State Government.

**GLENELG FOOTBALL CLUB
LICENSED AREA**

22/08/2023

1:1127



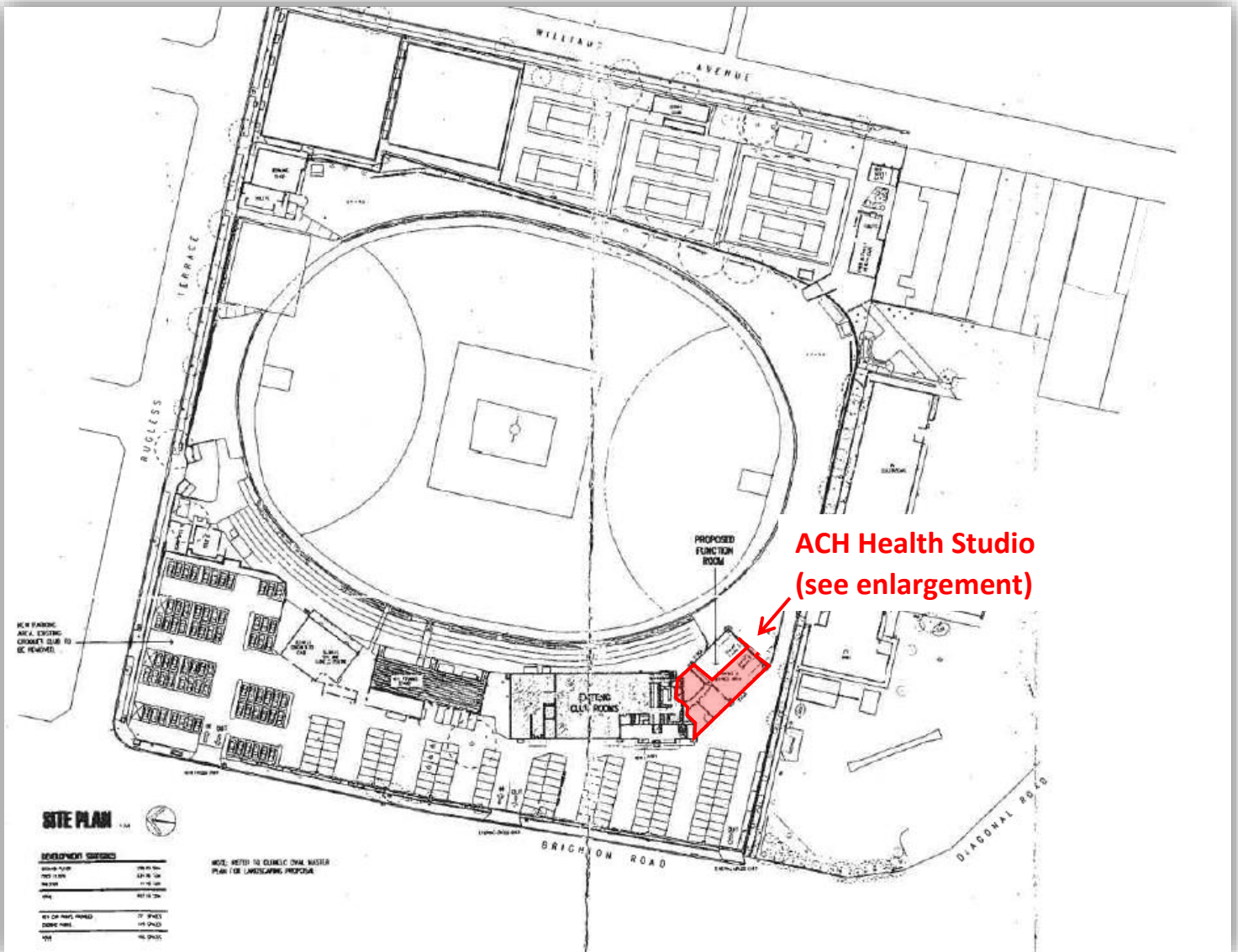
Attachment 2

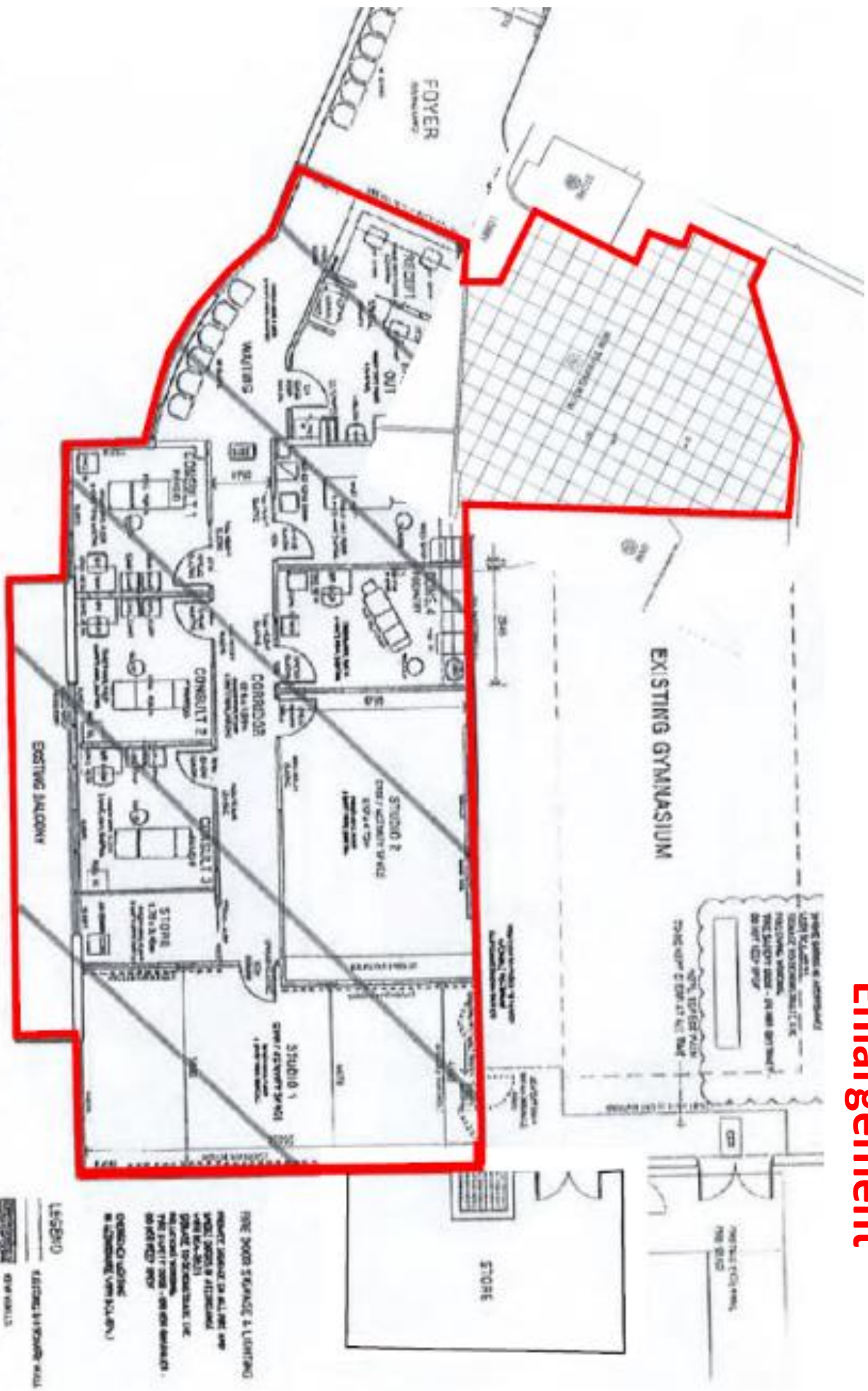
Lease - Rental Calculator - Rent payable by Glenelg Football Club for Leased Premises on basis of Sporting & Community Leasing Policy

Premises Value	\$ 7,310,498	<i>NOTE: Capital Asset Value of clubrooms, grandstand, kiosk and training centre</i>															
Area used	100%	<i>NOTE: Building Area used by lessee <100%</i>															
	\$ 7,310,498																
Equity	\$ 5,300,657	<i>NOTE: \$ Lessee Contributed to the build/premises, if no contribution, then \$0.</i>															
Current Rental		<i>NOTE: Add current rent exc GST to determine incremental increases.</i>															
		Lease incentive discounts (community)															
	Property Value	Property value minus Equity	Market Rent 2.50%	Net Rent (CoHB Discount) 70%	Non-Exclusive Use (<50%)	OR	hire for Public Access (for exclusive use only)(<10%)	Inclusion (<20%)	Governance (<20%)	Youth Programs (<10%)	Multi-Code (<10%)	Total discount	New Rent Per Annum	PLUS	Land Size (m2)	Land Charge	
BUILDING	\$ 7,310,498	\$ 2,009,841	\$ 50,246	\$ 15,074			0%	20%	20%	10%	10%	60%	\$ 6,030				1-Feb
LAND	\$ -		\$ -										\$ -		21477	\$ 6,443	\$3,221.55
							<small>The tenant is responsible for providing ongoing evidence of their compliance with the incentive discounts</small>						\$ 6,030				
Rent per annum:	9,251.55	plus GST															

To be applied only when Council maintains a area of land (ie playing surface) to a level that is above "Reserve" status. Examples: Cricket Pitch, Football Ovals, Rugby PIT etc.

Attachment 3





Enlargement