



EASTBOURNE COMMUNITY BOARD

11 February 2020

Supplementary Order Paper

for the meeting to be held in the
East Harbour Women's Clubrooms, 145 Muritai Road, Eastbourne,
on:

Tuesday 18 February 2020 commencing at 7.15pm

Membership

Virginia Horrocks (Chair)
Belinda Moss
Frank Vickers
Deputy Mayor Tui Lewis

Murray Gibbons (Deputy Chair)
Bruce Spedding

For the dates and times of Council Meetings please visit www.huttcity.govt.nz

HUTT CITY COUNCIL

EASTBOURNE COMMUNITY BOARD

Meeting to be held in the East Harbour Women's Clubrooms, 145 Muritai Road, Eastbourne
on
Tuesday 18 February 2020 commencing at 7.15pm.

SUPPLEMENTARY ORDER PAPER

PUBLIC BUSINESS

15. **WILLIAMS PARK TENNIS COURT REFURBISHMENT (20/120)**

Memorandum dated 10 February 2020 by the Team Leader Parks

4

Kathryn Stannard
HEAD OF DEMOCRATIC SERVICES

Our Reference 20/120



TO: Chair and Members
Eastbourne Community Board

FROM: Aaron Marsh

DATE: 10 February 2020

SUBJECT: WILLIAMS PARK TENNIS COURT REFURBISHMENT

Recommendation

That the Board:

- (i) notes the general concept and planning work undertaken to date by officers and Wellesley College on the proposed refurbishment of the asphalt tennis courts at Williams Park;
- (ii) notes that Wellesley College is funding a significant portion of the refurbishment with an approximate 80/20 percentage share basis;
- (iii) notes that management and ownership of the tennis courts is retained by Council with a Licence Agreement outlining the obligations of Wellesley College as it relates to access rights, among other things;
- (iv) agrees with the general outcomes of the proposed refurbishment; and
- (v) notes that officers will continue to work with Wellesley College on implementing the proposal ensuring that the interests of the general public are maintained.

Purpose of Memorandum

1. The purpose of the memorandum is twofold. It is a follow up to a general consultation meeting held between the Eastbourne Community Board (ECB), members of the Days Bay Residents Association (DBRA), Wellesley College (WC) and some property owners adjoining the Park. Secondly, it is to provide an outline of the proposal in addition to further information to clarify particularly the management of and access to the tennis courts by members of the public.

Background

2. Wellesley College is proposing to invest significantly in the upgrade of the asphalt tennis courts at Williams Park. The proposal will essentially involve the resurfacing of three asphalt courts and three poor condition synthetic surfaces, to a new synthetic (artificial) surface across all six courts. The proposed refurbishment will improve and broaden the function of the courts while still making available the area for public use. Currently, the public has access to three asphalt courts which are marked for tennis use.

3. An informal meeting was convened by the ECB and attended by some Eastbourne residents and members of DBRA. The meeting provided an opportunity for attendees to hear from WC and Council officers, to get a better understanding of the refurbishment, to ask questions, obtain clarity and get confirmation.
4. Two main issues surfaced during the meeting. These were (1) how will the courts be managed and (2) access. These will be addressed in further detail later but a brief summary of the other general topics discussed at the meeting are as follows:
 - Scope of Refurbishment – replacement of all fencing; resurface of asphalt courts with an artificial product; product is primarily tennis friendly; install of removable posts and tennis nets and retractable central dividing net curtain (to allow the courts to be divided in two eg school use of three courts and public access of three courts).
 - Use – broadened use; available for tennis (x six courts); training and playing surface space for junior football and other sports; general recreation space; available for use by playcentre; main use for general public is after school and during weekends; impact to public is less than minor.
 - Court maintenance – Council will take responsibility for this.
 - Cost – project significantly funded by WC (approximately 80% of total refurbishment cost). Council budget provision is made by way of costs related to assets replacement of, for example, fencing and some asphalt resurfacing work requiring renewal in the next 12-24 months. WC is investing heavily in a publicly available asset.
5. In terms of the two specific themes:
 - a. **Access** – Wellesley College (WC) is proposing to book specific time slots during the 10am – 3pm time period, Monday to Friday, no WC use on the weekends. These time slots will be booked via Council’s booking system and is likely to be on a regular time slot basis. It is proposed to install a sign informing the public of the general time slots. General public can access the courts at anytime without a booking where this is informal use. This is consistent with current policy.

Similar arrangement exists where club investment is pro rata through use of space at agreed time slots, and at an agreed hourly charge.
 - b. **Managing the Courts** – As landowners Council will manage the courts. A Licence Agreement between WC and Council will be entered into which, will outline, among other things, the obligations and responsibilities of each party as it relates to access, costs, agreement duration (five-years), maintenance and care. The Licence is Council’s standard template used for circumstances of this nature. A copy of the (draft) Licence is attached. Details are still to be finalised.

WC has agreed to take responsibility for ensuring the divider curtain and tennis nets are in place following its use (and when appropriate).

6. In addition to the asphalt tennis courts at Williams Park there are also grass courts (xthree) located at the south end of the Park, and xtwo asphalt courts at HW Shortt Park, at Tuatoru Street, Eastbourne.
7. Construction is scheduled to commence in mid-April 2020 with an approximate four-six week construction programme.
8. Council has entered into a similar agreement with another local sports club following investment by that club in the creation of a new asset. Council funded the majority of new asset with the clubs investment being apportioned over a period of time (ie club are given specific time use slots with the value of this being spread over a period of time). This has been in place for around four-five years.
9. Officers will be undertaking a Reserve Management Plan process for Williams Park within the next 12-18 months. The proposal will not compromise this process.
10. WC submitted during the annual plan process in 2018/2019 seeking funding contribution towards the project. While supportive of the concept, Council priorities meant capital funding was not committed. Historically Council's practice has been to contribute up to a third of the costs of a renewal/refurbishment project of this nature.

Appendices

No.	Title	Page
1	Reserves Licence Template (Draft)	7

Author: Aaron Marsh
Team Leader Parks

Approved By: Marcus Sherwood
Head of Parks and Recreation

Licence to Occupy Reserve Land

Williams Park

Hutt City Council

Wellesley College

Table of contents

Parties	1
Background	1
Operative provisions	1
1 Licence and use of Site	1
2 Licence term	2
Licence term	2
Right of Extension.....	3
3 Payment of Licence Fee and other charges	3
Licence Fee	3
Other Outgoings	3
GST.....	4
Council's monitoring costs.....	4
Penalty interest	4
4 Review of Licence Fee	4
Review at Review Dates.....	4
Deed recording reviewed Licence Fee.....	5
5 Licensee's Obligations	5
6 Electricity Supply	7
7 Installation of Additional Improvements	7
8 Access	8
9 Vegetation	8
Revegetation.....	8
Removal of vegetation.....	8
10 Fences	9
11 Common Areas	9
12 Signs	10
13 Security	10
14 Insurance	10
15 Health and Safety	11
16 Suitability	11
17 Indemnities	11
18 Termination of the Licence	11
Termination by the Council.....	11
Termination by the Licensee	12
19 The Council's further rights of termination	12
20 Licensee's obligations on Termination	13

21	Holding Over	14
22	Notices	14
	Giving notices	14
	Change of address or fax number	15
	Time notice is given	15
23	Assignment and sublicensing	15
24	Licence of Site only	15
25	Disputes.....	15
26	Default by the Licensee	16
27	Costs and expenses	16
28	The Council's capacity.....	17
29	Miscellaneous	17
	Approvals and consents	17
	Further acts.....	17
	Severability	18
	Variation.....	18
	Waivers.....	18
30	Interpretation.....	18
	Execution and date.....	21
	Schedule 1.....	22
	Reference Schedule	22
	Schedule 2.....	23
	Plan of Site	23
	Schedule 3.....	24
	Schedule 4.....	25
	Owners' acknowledgment and guarantee.....	25

Parties

Hutt City Council (Council)

[Licensee] (Licensee)

Background

- A The Council is the owner of the land referred to in Schedule 1 (**Land**).
- B The Licensee wishes to occupy and use the improvements referred to in schedule 1 (**Improvements**) on that part of the Land described in Schedule 1 (**Site**).
- C In consideration of the entry by the Licensee into this Licence, Council has agreed to grant to the Licensee the exclusive right to install and use or operate the Improvements on the Site on the terms set out in this Licence.
- D The Licensee acknowledges that the Land is managed by Council as a reserve, and it is of paramount importance to the Council that the Licensee's use of the Land for the Improvements is consistent with Council's objectives of providing public recreation on the Land and protecting the natural environment.
- E This Licence is granted by the Council in accordance with the Local Government Act 2002 or section 54(1)(d) of the Reserves Act 1977 or both.

Operative provisions

1 Licence and use of Site

- 1.1 The Council grants to the Licensee and the Licensee accepts an exclusive licence:
 - 1.1.1 use or operate the Improvements on the Site,
 - 1.1.2 to have access to the Site on the terms set out in this Licence.
- 1.2 The Licensee must not use the Site for any purpose other than for the use or operation of the Improvements in accordance with clause 1.1 and the Permitted Use, as expressly provided for under this Licence and in accordance with the terms of this Licence.
- 1.3 This Licence does not grant the Licensee the exclusive possession of the Site. The Council retains exclusive possession and the shared use of the Site with the Licensee and the Council's Invitees in accordance with the terms of this Licence.
- 1.4 The Licensee's rights to use of the Site are as expressly outlined in this Licence.
- 1.5 The Licensee must ensure that all tenants of the Adjacent Property are aware of the terms of this Licence and the Licensee's obligations under this Licence. The Licensee must ensure compliance by all tenants with the terms of this Licence.
- 1.6 Subject to any express rights of the Council under this Licence, any permitted Improvements installed or placed at the Site will remain the property of the Licensee and no part of the Improvements will become a fixture on the Site, unless agreed to by Council.

- 1.7 The Licensee acknowledges and agrees that the rights conferred on the Licensee by this Licence are in contract only and do not create in or confer on the Licensee any tenancy or any estate or interest in the Site, and the Licensee's rights are those of a licensee only.
- 1.8 The Licensee acknowledges that the Land is managed by Council as a reserve, and it is of paramount importance to the Council that the Licensee's use of the Site and the Land including the use or operation of the Improvements under this Licence must be carried out in a way that it is consistent with Council's objectives for the Land which include the following:
- 1.8.1 providing areas for public recreation and the physical welfare and enjoyment of the public (including freedom of public access),
 - 1.8.2 protection of the natural environment (including scenic, historic, archaeological, biological or other features or native flora or fauna),
 - 1.8.3 conserving the qualities of the Land which contribute to the pleasantness, harmony and cohesion of the natural environment and to the better use and enjoyment of the Land.

2 Licence term

Licence term

- 2.1 This Licence will commence on the Commencement Date and will continue in force until the Expiry Date or the sale of the Adjacent Property (whichever comes first) unless otherwise determined or extended in accordance with the express provisions of this Licence.

Right of Extension

- 2.2 If the Licensee is not in breach of this Licence, and has given to the Council written notice to extend this Licence at least 3 months before the end of the Term (in which respect time will be of the essence), then the Council may, at the cost of the Licensee, extend the Term for the next Extended Term in accordance with the dates set out in schedule 1.
- 2.3 During any Extended Term the Licensee will pay a Licence Fee (payable annually in advance) to the Council which will be the current licence fee determined under clauses 4.1 to clause 4.7. Any Extended Term will otherwise be on and subject to the covenants, terms and conditions expressed or implied in this Licence except that the term of this Licence altogether with any Extended Terms must expire no later than the Final Expiry Date or on the sale of the Adjacent Property (whichever comes first).

3 Payment of Licence Fee and other charges

Licence Fee

- 3.1 On the Commencement Date and on each succeeding Payment Date during the Term and any Extended Terms of this Licence, the Licensee must pay to the Council the Licence Fee, without set-off or deduction.
- 3.2 The Council will, on the Commencement Date, issue a GST tax invoice to the Licensee in respect of the first payment of the Licence Fee payable under this

Licence. The first payment will be calculated on a pro-rata basis (to the nearest month) based on the time until the next Payment Date. The Council will issue GST tax invoices to the Licensee for all successive Payment Dates.

Other Outgoings

- 3.3 The Licensee will pay to the Council, in addition to the Licence Fee referred to in clause 3.1, all rates, taxes, charges and other outgoings which may be charged, levied, or reasonably assessed, or which become payable in relation to the Site or the Licensee's occupation, management, use or carrying on of the Permitted Use or any related activity on the Site.
- 3.4 The Licensee will pay to the Council, in addition to the Licence Fee referred to in clause 3.1 the annual water charge and the annual wastewater charge should the Improvements be deemed to have a water connection or sewer connection in relation to the Site or the Licensee's occupation, management, use or carrying on of the Permitted Use or any related activity on the Site.
- 3.5 The Council may require that the Licensee pay the amounts under clauses 3.2 and 3.3 annually on the Payment Date on the basis of the annual amount determined by the Council based on the proportion the area of the Site bears to the area of the Land. Any rates, taxes, charges or other outgoings which have not been taken into account in assessing the annual amount payable under this clause will be payable by the Licensee to the Council on demand. Following the relevant Payment Date, the Council will provide the Licensee with reasonable details of the actual outgoings for the relevant year or period, and any overpayment will be applied to the next year's outgoings payable by the Licensee, or any underpayment will be payable by the Licensee immediately on demand.

GST

- 3.6 The Licensee must pay all GST on the Licence Fee and other payments made by the Licensee under this Licence either to the Council or as the Council may direct, as well as any additional GST the Council may be required to pay as a result of the Licensee's failure to pay when required.

Council's monitoring costs

- 3.7 If required, the Licensee must pay all reasonable costs and expenses (including, without limitation, officers' time, transport and other related expenses) incurred by the Council in carrying out the administration and monitoring of compliance by the Licensee of the terms of this Licence, including, in particular, any costs associated with any supervision of installation of the Improvements, Additional Improvements or other works.

Penalty interest

- 3.8 If the Licence Fee or any other amount payable by the Licensee to the Council under this Licence (including costs pursuant to clause 27) is unpaid for 5 business days after the due date or the date of the Council's demand (if there is no due date), the Licensee must pay interest to the Council on the unpaid money at the Penalty Interest Rate, calculated from the due date or the date of the Council's demand (as the case may be) to the date of payment to the Council.

4 Review of Licence Fee

Review at Review Dates

- 4.1 At each Review Date, the Licence Fee will be reviewed and adjusted in accordance with the current Council Policy on Private Use of Hutt City Council Land (as amended from time to time).
- 4.2 After each Review Date, the Licensee will pay the new Licence Fee calculated.
- 4.3 Despite any other provisions of this Licence, any new Licence Fee (following the relevant Review Date) will not be less than the Licence Fee immediately before that Review Date.

Licence Fee Review

- 4.4 The Council may, no earlier than 3 months before the relevant Review Date and at any time up to the relevant Review Date, give written notice to the Licensee specifying any new Licence Fee to apply from the Review Date.
- 4.5 The new Licence Fee payable from the relevant Review Date will be the amount specified in the Council's notice given under clause 4.4.
- 4.6 The Licensee will pay the new Licence Fee from the relevant Review Date and the parties will make any necessary adjustments so that the new Licence Fee has been paid from the relevant Review Date.
- 4.7 Following any increase in the Licence Fee under clause 4.1, if the Licensee does not pay the new Licence Fee from the Review Date in accordance with this Licence, then Council may terminate this Licence in accordance with clause 19. For clarity, the disputes provisions in clause 25 do not apply to this clause 4.

Deed recording reviewed Licence Fee

- 4.8 The Council may require the Licensee to enter into a deed of variation of licence to record a reviewed Licence Fee under this clause 4. The Licensee will pay the Council's costs of preparation, negotiation and execution of any variation under this clause 4.8, if required by Council.

5 Licensee's Obligations

- 5.1 The Licensee must, at its own cost:
 - 5.1.1 at all times maintain all parts of the Improvements located on the Site in a clean, good and substantial state of repair to the reasonable satisfaction of the Parks Assets Manager.
 - 5.1.2 repair any damage or vandalism (including removal of graffiti) to the Improvements or the Site as soon as practicable within 24 hours of the damage occurring.
 - 5.1.3 advise the Council as soon as possible if any damage is blocking any access on the Site or Land.
 - 5.1.4 ensure that no part of the Improvements become a danger to the safety of members of the public or to the Council's Invitees or other occupants or users in the vicinity of the Site, including, where appropriate, erecting safety barriers as may be required.

- 5.1.5 advise the Council immediately of any hazards the Licensee is aware of on the Site, or any land adjacent to the Site.
- 5.1.6 ensure that at all times the Improvements do not cause any obstruction to vehicles and pedestrians using the Site or the area in the vicinity of the Site, and must immediately advise the Parks Assets Manager of any obstructions.
- 5.1.7 obtain and keep current all approvals, permits and licences from all statutory or other authorities and (if required) a resource consent or compliance certificate for the installation, replacement and maintenance of the Improvements.
- 5.1.8 Comply in all respects at all times with:
 - (a) relevant laws, including, but not limited to, the Resource Management Act 1991, the Building Act 2004, and the Health and Safety in Employment Act 1992,
 - (b) the District Plan,
 - (c) the terms of any resource consent and any other consent necessary from all authorities for the Licensee to maintain the Improvements under this Licence.
- 5.2 The Licensee must not use the Site for any purpose other than installing using or operating the Improvements as expressly provided for under this Licence, and in accordance with the terms of this Licence.
- 5.3 The Licensee must not erect or store anything other than the Improvements on the Site, and at all times ensure that materials are not piled or stored on the Site or the Land or in any place where they may obstruct the public or other users of the Site or the Land or create a nuisance.
- 5.4 The Licensee must not store or permit to be stored fuels or other combustible materials on the Site or the Land, or within the Improvements.
- 5.5 The Licensee, at the Licensee's cost, will ensure that any Improvements, if required, are painted (in a colour specified by the Council in either its regulatory capacity or landlord capacity), installed and maintained to blend as much as reasonably possible with the surrounding environment, to the reasonable satisfaction of the Parks Asset Manager.
- 5.6 The Licensee must take all precautions to ensure no fire hazards arise from its occupation of or operations carried out on the Site, or from any act or neglect of the Licensee or the Licensee's Invitees.
- 5.7 The Licensee will not permit the Improvements or any part of the Improvements to be used for any activity that is or may become dangerous, offensive, noxious, noisy, illegal or immoral, or which is or may become a nuisance or annoyance to the Council or other users of the Land, or to the owner or occupier of any neighbouring property.
- 5.8 The Licensee will not permit the Improvements or any part of the Improvements to be used in a way that causes interference with the Council's utilities or assets on the Site or the Land, or adjacent to the Site or the Land (if any).

- 5.9 The Licensee must not use the Improvements for gaming or gambling purposes, or allow any breach of the provisions of the Sale of Liquor Act 1989 or the Gaming and Lotteries Act 1977 or any other statute or bylaw.
- 5.10 The Licensee must not allow any person, including themselves, to sleep in the Improvements, or provide any overnight accommodation in the Improvements or on the Site or Land.
- 5.11 The Licensee must not allow any animals to live in the Improvements or remain on the Site or Land.
- 5.12 The Licensee will not leave rubbish or rubbish bins on or about the Improvements or the Site or Land, except at the times for collection of rubbish, and will regularly cause all rubbish to be removed from the Improvements and Site.

6 Electricity Supply

- 6.1 The Licensee may connect the Improvements on the Site to the Council's electricity supply. The Licensee must pay to the Council on demand the cost of the connection. The electricity supplied to the Site will be separately metered at the cost of the Licensee (including the installation of any necessary meters).
- 6.2 If the Council's electricity supply is not available or is insufficient for the Licensee's needs at the Site, the Licensee may at its sole cost, on obtaining the Council's prior written approval, complying with any other statutory requirements, and otherwise complying with clause 6, provide the Licensee's own electricity supply to the Site.
- 6.3 The Licensee must pay the cost of electricity consumed by the Licensee to the Council on demand or direct to the electrical supply authority.
- 6.4 Any connections to the Council's electricity supply, or electricity supply provided by the Licensee on the Land or the Site, must (unless the Council otherwise agrees) be removed by the Licensee at the expiry or termination of this Licence, at the Licensee's cost, and otherwise in accordance with the requirements of clause 20.
- 6.5 The Council will not be liable for any injury, damage or loss that the Licensee may suffer by reason of any non-supply, failure of or interruption to the electricity supply or any other services or utilities on the Site or the Land, due to any cause.

7 Installation of Additional Improvements

- 7.1 The Licensee will not install any Additional Improvements or increase the footprint of the current Improvements without the prior written consent of the Parks Asset Manager (for the Council as landowner and administering body of the Site), in addition to any approval required from the Council as regulatory authority or any other authority as required.
- 7.2 The Council may require the Licensee to enter into a deed of variation of licence to record any necessary changes or any revised Licence Fee payable under the current Council Policy on Private Use of Hutt City Council Land (as amended from time to time) following installation of any Additional Improvements under this clause 7. The Licensee will pay the Council's costs of preparation, negotiation and execution of any variation under this clause 7.2.

8 Access

- 8.1 The Licensee will have the right, in common or with others including the public, to pass over those parts of the Land as shown on the Access Plan (outlined in blue), and any roads of the Council, for access to and from the Site as is necessary for the Licensee and the Licensee's Invitees to exercise the rights granted to the Licensee in this Licence.
- 8.2 The Licensee will ensure that only the Licensee's Invitees who are required for the express purpose of exercising the Licensee's rights or complying with the Licensee's obligations under this Licence may access the Land and the Site.
- 8.3 The Licensee acknowledges that the access routes will be those as shown in the Access Plan and as existing at the Commencement Date. For the sake of clarity the Council will not be required to upgrade any access ways on the Land or the Site.
- 8.4 The Licensee must immediately advise the Council of any damage to any access on the Site or the Land of which the Licensee is aware or which is caused by the Licensee or the Licensee's Invitees.

9 Vegetation

Revegetation

- 9.1 The Licensee must, at its own cost, if required by the Council, at any time during the Term or any Extended Term, landscape the Site and plant and maintain trees and shrubs on the Site (as required by the Council and from sources approved by the Reserves Asset Manager) to provide visual screening of the Improvements.
- 9.2 Except for vegetation expressly allowed under clause 9.1, the Licensee must not plant any trees or shrubs on the Site or the Land without the prior written approval of the Reserves Asset Manager.

Removal of vegetation

- 9.3 The Licensee must not remove or trim any trees or shrubs from the Land or the Site other than from those parts of the Site (if any) as shown on the Plan (and from time to time if the prior consent of the Reserves Asset Manager is obtained), or with the prior approval of the Reserves Asset Manager (which may be withheld in the Reserve Asset Manager's sole discretion or, if given, may be subject to conditions).
- 9.4 If the Licensee removes vegetation from the Land or the Site in breach of the provisions of clauses 9.3, the Licensee must as soon as possible re-vegetate to the Reserves Asset Manager's reasonable requirements (including regarding landscaping and the type and source of the trees and shrubs to be planted), and must consult with the Reserves Asset Manager in this regard.
- 9.5 If the Licensee does not comply with its obligations in relation to landscaping and planting under clause 9.1, or replanting under clause 9.4, to the satisfaction of the Reserves Asset Manager or within a reasonable time, the Council may carry out the landscaping and planting and/or replanting and the Licensee must pay the Council's costs of doing so immediately on demand.
- 9.6 The Licensee must ensure that its use and occupation of the Site and Land preserves as far as possible the natural environment and landscape amenity, and in particular the survival and health of any native flora and fauna on the Land and on the Site.

10 Fences

- 10.1 The Licensee may, on obtaining the prior written approval of the Parks Asset Manager under clause 7, or must if required by the Council, erect and maintain a fence around the Improvements or the Site at the Licensee's cost, and otherwise in compliance with approvals by the Reserves Asset Manager under clause 7. For the sake of clarity, the Licensee must not fence the Site otherwise than in accordance with this clause 10, unless the Council otherwise agrees.
- 10.2 If the Licensee erects a fence under clause 10.1, the Licensee must keep and maintain the fence at its cost, and remove the fence at the Expiry Date or other termination of the Term (and make good resulting damage and reinstate the Site to the satisfaction of the Parks Asset Manager) in accordance with the provisions of this Licence.
- 10.3 The Licensee acknowledges that if the Licensee has fenced the Site, this does not give the Licensee any rights of exclusive possession of the Site.
- 10.4 Any fence built by the Licensee under this clause:
- 10.4.1 must be in accordance with site specific plans as approved by the Parks Asset Manager,
 - 10.4.2 must be in a location approved by the Parks Asset Manager,
 - 10.4.3 must not be higher than 2 metres from the ground level of the Site (or lower if required by the Council),
 - 10.4.4 must be constructed from materials stipulated by the Parks Asset Manager.

11 Common Areas

- 11.1 If there are any Common Areas on the Land that are used by the Licensee, the Licensee is jointly and severally responsible with other users of the Land, to keep those Common Areas clean and tidy.

12 Signs

- 12.1 The Licensee must not erect or place any signs on the Site unless approved by the Parks Assets Manager.

13 Security

- 13.1 It is the responsibility of the Licensee to ensure that any Improvements are properly secure on the Site. Council is not liable for any loss from or damage to any Improvements of the Licensee on the Site (except for any wilful damage by Council or Council's Invitees).

14 Insurance

- 14.1 The Licensee will insure the Licensee's Improvements for full replacement, including all professional and consent fees, and costs of demolition, site clearance, and for any works required by statute. The insurance policy must note the Council's interest, and if the Licensee's Improvements are attached to or adjacent to any building owned by

the Council, including any Council Improvements, then any policy under this clause must be with an insurance company nominated by the Council.

- 14.2 The Licensee will be responsible for arranging the Licensee's own contents insurance.
- 14.3 The Licensee acknowledges that:
- 14.3.1 the Council has not insured the Site or the Land against destruction or damage arising from fire, flood, explosion, lightning, storm, earthquake, volcanic activity, or any other risks,
- 14.3.2 the Licensee will meet the cost of making good destruction or damage to the Improvements or Site, or indemnify the Council against the cost of making good the destruction or damage to the Improvements or Site to the extent that:
- (a) the destruction or damage arises from a risk referred to in clause 14.3.1,
- (b) at the time of damage or destruction, the Council was not in fact entitled to be indemnified under a policy of insurance in whole or in part of the destruction or damage.
- 14.4 The Licensee will not be entitled to any compensation, or reduction or abatement of Licence Fees or any other costs due to the provisions of clause 14.3.
- 14.5 The Licensee must, on request, provide the Council with a copy of the insurance policies and evidence that the Licensee has paid the premiums.

15 Health and Safety

- 15.1 The Licensee must comply with any obligations imposed by the Council regarding the identification and mitigation of hazards, and health and safety of persons on the Site and the Land.

16 Suitability

- 16.1 The Council makes no warranty or representation that the Site is or will remain suitable or adequate for the Permitted Use, or that the use of the Site by the Licensee will comply with any statutes, regulations or bylaws.
- 16.2 The Licensee will use the Site at its own risk and the Council will not be responsible for any loss arising out of the Licensee's use of the Site or the Land.

17 Indemnities

- 17.1 The Licensee indemnifies the Council against all costs, damages, claims, demands or losses and expenses of any nature resulting from any act or omission of the Licensee or the Licensee's Invitees, on or about the Site or the Land.
- 17.2 The Licensee must comply with all regulatory and statutory requirements regarding the Licensee's use of the Site.
- 17.3 Without limiting clause 17.1 and 17.2, the Licensee indemnifies the Council against all fines, penalties, costs, actions, demands, losses, damages and expenses for which

the Council becomes or may become liable for arising from the Licensee's or the Licensee's Invitees' failure to comply with any statutes or regulations, including, but not by way of limitation, the Health and Safety in Employment Act 1992 (to the extent permitted under that Act), the Building Act 2004, and the Resource Management Act 1991.

18 Termination of the Licence

Termination by the Council

- 18.1 The Council may cancel this Licence by re-entering the Site or by obtaining an order for possession from a Court, if:
- 18.1.1 the Licence Fee or any part is in arrears and unpaid for 1 month after any of the Payment Dates, and the Licensee has failed to remedy that breach within 20 business days after service on the Licensee of a notice in accordance with section 245 of the Property Law Act 2007,
 - 18.1.2 the Licensee neglects or fails to perform and observe any of the covenants, conditions or agreements contained in this Licence which are to be performed or observed by the Licensee, and after the Licensee has failed to remedy that breach within a period specified in a notice served on the Licensee in accordance with section 246 of the Property Law Act 2007,
- and the Term will terminate on such cancellation, but without prejudice to the rights of either party against the other.
- 18.2 It will be a breach of this Licence for the purposes of clause 18.1.2 (but not by way of limitation) if the Licensee :
- 18.2.1 makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of the Licensee's creditors,
 - 18.2.2 becomes insolvent or bankrupt or enter receivership or liquidation,
 - 18.2.3 is subject to an execution process against the Licensee's property, goods or effects under any judgment against the Licensee in any Court for a sum in excess of \$5,000.

Termination by the Licensee

- 18.3 The Licensee may on giving the Council 6 months' written notice terminate the Term if the Licensee has determined that the Site is no longer required or is no longer suitable for the Licensee's Improvements.
- 18.4 On the Licensee giving notice to the Council under clause 18.3 the provisions of this Licence will cease to apply from the later of the date of that notice and the date on which the Licensee completes the removal of all Improvements on the Site (if required pursuant to clause 20). The Council will credit to the Licensee any portion of the Licence Fee actually paid calculated on a daily basis for the period starting on the date on which the Improvements were removed and ending on the date to which the Licence Fee has been actually paid.
- 18.5 For the purposes of clause 18.4, removal of the Improvements will include the completion of restoration of the Site as required by clause 20.1.

19 The Council's further rights of termination

- 19.1 Without limiting the Council's rights to cancel this Licence under clause 18.1, the Council may terminate this Licence at any time if any one or more of the following occurs:
- 19.1.1 the Council wishes to develop or sell the Site,
 - 19.1.2 a change in Council policy or a Council decision is made as to the use and/or future suitability of the Site for the Improvements which is inconsistent with this Licence,
 - 19.1.3 the Site is required for a public work or another public work,
 - 19.1.4 the Improvements causes interference with the Council's other utilities or assets at the Site (or adjacent to the Site or the Land), if any
- provided that the Council must first give 6 months' written notice to the Licensee (or shorter notice by mutual agreement) of the Council's intention to terminate this Licence for one or more of the above reasons, and, in the case of clause 19.1.4, the Licensee has failed to remedy the interference or comply with the requirements within that period.
- 19.2 On termination under clause 19.1 the Licensee must comply with the renewal and reinstatement obligations under clause 20, and the Council will credit to the Licensee any portion of the Licence Fee actually paid calculated on a daily basis for the period starting on the date on which the Improvements have been removed and ending on the date to which the Licence Fee has been actually paid.
- 19.3 For the purposes of clause 19.2 removal of the Improvements will include the completion of restoration of the Site as required by clause 20.1.
- 19.4 The Licensee acknowledges that it will not be entitled to any compensation for early termination under clause 19.1.

20 Licensee's obligations on Termination

- 20.1 At the later of the expiration or determination of the Term or any Extended Term as the case may require, the Licensee must (if directed by Council) at the Licensee's sole cost and within 20 business days remove the Improvements and other works installed by the Licensee on the Site or the Land (including fences and utilities or services) from the Site and the Land and restore the Site and the Land to as close as reasonably possible to the same condition in which it would have been had the Improvements not been installed at the Site (including, but not limited to, replanting, re-vegetation and re-turfing), to the satisfaction of the Reserves Asset Manager.
- 20.2 In the case of a licence for a boatshed, on the later of the expiration or determination of the Term or any Extended Term as the case may require:
- 20.2.1 the Licensee must (whether directed to by Council or not) at the Licensee's sole cost and within 20 business days remove all chattels from on or in the boatshed and from the Site;
 - 20.2.2 if the Licensee does not remove all chattels from on or in the boatshed or from the Site within 20 business days, Council may enter the Site and the boatshed and remove any chattels, at the cost of the Licensee;

20.2.3 Council shall not be considered a bailee of any chattels removed from the boatshed pursuant to this clause 20.2, and may:

- (a) put the chattels into storage, at the Licensee's risk and cost; or
- (b) sell the chattels and apply the proceeds towards the Council's costs incurred under this Lease; or
- (c) dispose of the chattels by dumping them.

20.2.4 The Licensee shall have no entitlement to compensation from Council for any loss of any sort as a result of Council exercising its rights under this clause 20.2.

20.3 The Licensee must continue to pay to the Council the Licence Fee calculated on a daily basis for the period starting on the date up to which the Licence Fee has actually been paid and ending on date on which the Licensee's obligations under clause 20.1 have been fully complied with to the satisfaction of the Reserves Asset Manager.

21 Holding Over

21.1 If the Council has not granted the Licensee a new licence of the Site or extended this Licence but consents to the Licensee leaving the Improvements on the Site after the Expiry Date or the Final Expiry Date (as the case may be), then the Licensee will use the Site from that date under a licence which either party may terminate on 20 business days' written notice.

21.2 The licence under clause 21.1 will be on the terms and at the licence fee the Council specifies but if the Council does not specify the terms or the licence fee, the licence is on the same terms as apply during the Term and any Extended Term of this Licence (so far as those terms are applicable to a licence terminable on 20 business days' notice) with a monthly licence fee that is one twelfth of the Licence Fee payable immediately before the Expiry Date or the Final Expiry Date (as the case may be).

22 Notices

Giving notices

22.1 Any notice or communication given to a party under this Licence is only given if it is in writing and sent in one of the following ways:

22.1.1 delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out in schedule 1.

22.1.2 faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out in schedule 1.

Change of address or fax number

22.2 If a party gives the other party three business days' notice of a change of its address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the amended address or fax number.

Time notice is given

22.3 Any notice or communication is to be treated as given at the following time:

22.3.1 if it is delivered, when it is left at the relevant address,

22.3.2 if it is sent by post, two business days after it is posted,

22.3.3 if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

22.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

23 Assignment and sublicensing

23.1 The Licensee must not assign, transfer, sub-license, part with possession, or in any way deal with the Licensee's interest under this Licence to the intent that any assignment, transfer, sub-licencing or parting with possession of the Site is expressly prohibited.

24 Licence of Site only

24.1 The Council will at all times be entitled to use, occupy and deal with the Site and the Land and any property owned or under the possession or control of the Council on the Site or on the Land without reference to the Licensee, and the Licensee will have no rights other than the rights of installation, use or operation provided in this Licence.

25 Disputes

25.1 If a dispute arises between the parties about anything in relation to this Licence, then a party must give written notice to the other party stating that there is a dispute and giving details of it. The parties must then attempt in good faith to settle the dispute, including by using alternative dispute resolution techniques.

25.2 If such attempts do not result in a resolution within 20 business days from the date of receipt by the other party of the notice under clause 25.1, then the dispute will be referred to the arbitration in New Zealand of a single arbitrator if the parties can agree on one, or otherwise to two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before entering on their reference) in accordance with the Arbitration Act 1996 or any replacement or amendment legislation.

25.3 If a difference or dispute is referred to alternative dispute resolution or arbitration, under this clause 25, each party will bear its own costs of the alternative dispute resolution or the arbitration, subject to any award or order which may result from that alternative dispute resolution or arbitration.

26 Default by the Licensee

26.1 If the Council gives the Licensee written notice of any failure of the Licensee to comply with any of the requirements of this Licence, the Licensee must carry out any required work as soon as possible and in a good and workmanlike manner.

26.2 The Council or the Council's Invitees may (without being under any obligation to do so) enter the Site or (where applicable) the Improvements on giving the Licensee reasonable notice (or at any time without notice in case of an emergency), with all

necessary equipment and materials, and carry out any necessary works or other obligations, if:

- 26.2.1 the Licensee fails to comply with a notice given under clause 26.1, or any of the Licensee's obligations under this Licence within a reasonable period, or
 - 26.2.2 any repairs or maintenance for which the Licensee is responsible need to be undertaken as a matter of urgency, and the Licensee has failed to undertake such repairs or maintenance in a timely manner.
- 26.3 The Licensee must pay to the Council on demand, the cost of any work carried out by the Council under clause 26.2.
- 26.4 If the Council exercises the Council's rights under clause 26.2, the Council will not be liable to the Licensee for any loss or cost

27 Costs and expenses

- 27.1 The Licensee will pay all costs in connection with the preparation, perusal, negotiation and execution of this Licence, and any document related to this Licence or variation to this Licence.
- 27.2 The Licensee will pay the Council's reasonable costs incurred in connection with considering any request by the Licensee for the Council's consent to any matter under this Licence (whether or not the consent is granted).
- 27.3 The Licensee will pay the Council's costs of and incidental to the enforcement or attempted enforcement of the Council's rights, remedies and powers under this Licence.
- 27.4 If the Licensee fails to comply with any of its obligations under this Licence within the stipulated time (or if no time is specified, within a reasonable period), then the Council may, without being under any obligation to do so, enter the Site and carry out any necessary works or other obligations, and the Licensee must pay the Council's costs of carrying out the works or completing the Licensee's obligations under this clause. Such costs are payable by the Licensee upon demand.

28 The Council's capacity

- 28.1 This Licence binds the Council as landowner but does not bind the Council in its regulatory capacity. The Council (acting in its regulatory capacity) is not bound to grant any consent or permission which the Council, the Licensee or anyone else needs to give effect to this Licence. The Licensee will not be entitled to any damages or other payment if the Council (acting in its regulatory capacity) either declines any consent or permission, or issues such consent or permission on terms that are unsatisfactory to either party.
- 28.2 The Licensee acknowledges that the Council is subject to the Local Government Official Information and Meetings Act 1987, and may be required to release information in relation to this Licence.
- 28.3 The rights granted under this Licence are subject to the Reserves Act 1977 (if applicable), and any other statutory or regulatory provisions, bylaws, the District Plan or Council policies (including, but not limited to, the Council's reserves management plans) affecting the Land from time to time.

29 Miscellaneous

Approvals and consents

- 29.1 Unless this Licence expressly provides otherwise, the Council may give or withhold an approval or consent in the Council's absolute discretion and subject to any conditions determined by the Council. The Council is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.
- 29.2 Where this Licence refers to a matter being to the "satisfaction" of the Reserves Asset Manager, this means to the satisfaction of the Reserves Asset Manager in his or her absolute discretion.

Further acts

- 29.3 Each party must, at its own expense, promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Licence and all transactions incidental to it.

Severability

- 29.4 Each provision of this Licence is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Licence in the relevant jurisdiction, but the rest of this Licence will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Variation

- 29.5 No variation of this Licence will be of any force or effect unless it is in writing and signed by each party to this Licence.

Waivers

- 29.6 A waiver of any right, power or remedy under this Licence must be in writing and signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 29.7 The fact that a party fails to do, or delays doing, something the party is entitled to do under this Licence does not amount to a waiver.

30 Interpretation

- 30.1 In this Licence, unless inconsistent with the context:

Access Plan means the plan attached as Schedule 3 of the Land and Site showing the access ways (outlined in blue) to the Site at the date of this Licence.

Additional Improvements means any further Improvements (other than the Improvements in place on the Site as at the Commencement Date as set out in Schedule 1) made by the Licensee during the Term and any Extended Term of this Licence.

Adjacent Property means any land that is owned by the Licensee and which is directly adjacent to the Site or the Land.

Commencement Date means the commencement date in Schedule 1.

Common Areas means those areas of the Site or the Land which are available for shared use by any Licensees or other occupiers or users of the Site or Land, as the Council allocates from time to time, including those designated common areas as at the Commencement Date set out in the Schedule 1 (if any).

Council means the Council and the Council's successors in title.

Council's Invitees means each and every servant, employee, agent, contractor or sub-contractor of the Council and includes, where the context requires, tenants, licensees, and other invitees of the Council.

Expiry Date means the expiry date in Schedule 1

Extended Term means any further terms granted in accordance with clause 2.

Extension Date means the extension dates in Schedule 1.

Final Expiry Date means the final expiry date in Schedule 1

GST means Goods and Services Tax under the Goods and Services Tax Act 1985.

Improvements means building and/or other improvements of the Council on the Site as at the Commencement Date (as set out in Schedule 1 (if any)), together with any Additional Improvements made by the Licensee during the Term and any Extended Term of this Licence.

Licence means and includes all schedules, appendices, plans and annexures to this Licence.

Licence Fee means the Licence Fee in Schedule 1 as varied from time to time pursuant to the provisions of clauses 4.1 to clause 4.7.

Term means the term in Schedule 1.

Licensee's Invitees means each and every servant, employee, agent, contractor or sub-contractor of the Licensee.

Payment Date means the Commencement Date of this Licence and otherwise as set out in Schedule 1.

Plan means the plan of the Site and the Land, attached as Schedule 2.

Parks Asset Manager means the Council's Parks Asset Manager, Parks & Recreation Division, or the equivalent Council Officer from time to time.

Review Date means the review dates in Schedule 1.

Site means that part of the Land described in Schedule 1 shown outlined in red on the plan attached as Schedule 2 corresponding to the description in Schedule 1 on which the Licensee has located the Improvements.

30.2 In the interpretation of this Licence, the following provisions apply unless the context otherwise requires:

30.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Licence.

- 30.2.2 A reference in this Licence to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington.
- 30.2.3 If the day on which any act, matter or thing is to be done under this Licence is not a business day, the act, matter or thing must be done on the next business day.
- 30.2.4 A reference in this Licence to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 30.2.5 A reference in this Licence to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 30.2.6 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Licence.
- 30.2.7 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 30.2.8 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 30.2.9 A word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders.
- 30.2.10 A reference to the word 'include' or 'including' is to be construed without limitation.
- 30.2.11 A reference to this Licence includes the agreement recorded in this Licence.
- 30.2.12 Any schedules and attachments form part of this Licence.

Execution and date

Signed on behalf of **Hutt City Council** by:

Print name:

Position held at HCC:

In the presence of:

Witness:

Occupation:

Address

Signed by (the Licensee):

In the presence of:

Witness:

Occupation:

Address

Date:

Schedule 1

Reference Schedule

Land:	Being a part of Part Section 33 SO 17210 Harbour District , known as Williams Park
Site:	3,088m ² more or less as shown outlined in red on the attached plan
Term:	Five (5) years
Common areas (if any):	As shown on the Plan of site and coloured yellow
Commencement Date:	
Expiry Date:	
Rights of Extension:	One (1) of Five (5) years
Extension Dates:	
Final Expiry Date:	
Licence Fee (subject to review under clause 4]):	\$1 per year, incl. GST (if demanded)
Payment Date:	<i>1 July in each year during the term of this Licence and any Extended Term</i>
Review Dates:	<i>1 July in each year during the term of this Licence and any Extended Term</i>
Penalty Interest Rate:	12% a year
Improvements:	The multi-use courts including the fencing, surfacing and access to the same, whether owned by the Council and/or the Licensee
Permitted Use:	For the purposes of an artificial sports surface
Council's Contact Details:	Hutt City Council Private Bag 31912, Lower Hutt Fax 04 570 6871 Attention: Parks Asset Manager, Parks & Recreation Division
Licensee's Contact Details:	

Schedule 2
Plan of Site



Schedule 3

Access Plan

(plan to be added)