

DEED made day of 2013.

BETWEEN: BYRON SHIRE COUNCIL ABN 14 472 131 473 and BYRON COAST RESERVE TRUST (hereinafter jointly called "the Council")

AND: FISHHEADS @ BYRON PTY LTD ACN 095 065 759 (hereinafter called "the Contractor").

Ministerial Consent*

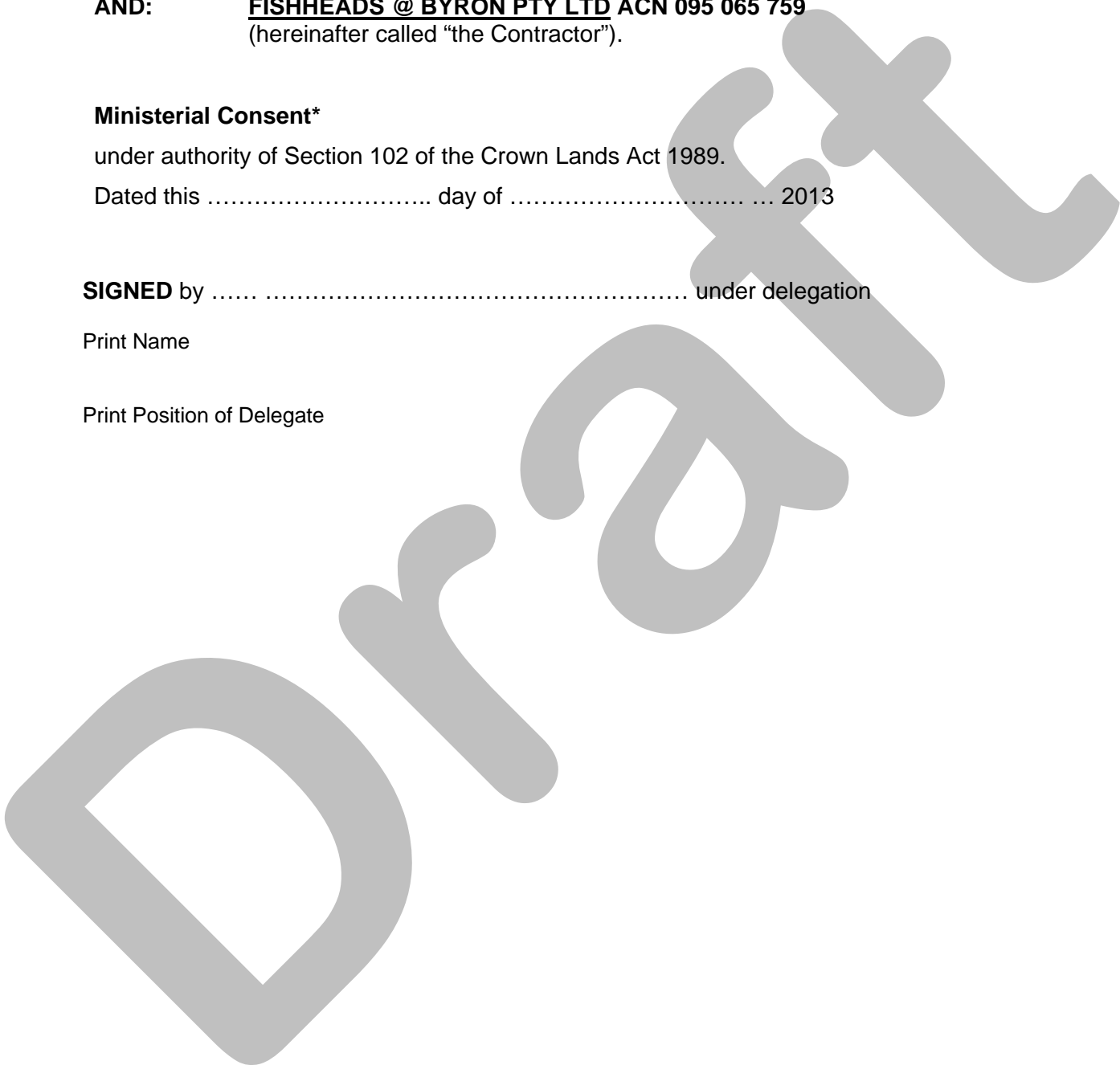
under authority of Section 102 of the Crown Lands Act 1989.

Dated this day of 2013

SIGNED by under delegation

Print Name

Print Position of Delegate



RECITALS**WHEREAS:**

- A Byron Coast Reserve Trust is a corporation established, constituted and appointed in terms of Section 92 of the CL Act.
- B. The Council is the Corporate Manager of Byron Coast Reserve Trust of Reserve 82000 under the provisions of Section 95 of the CL Act.
- C. The Byron Bay War Memorial Swimming Pool, Kiosk/Cafe and Retail Shop is situated on part of four parcels of land being part Council owned Operational Land part Lot 5 DP 827049 and part Lot 4 DP 827049, part Crown Reserve R82000 part Lot 10 DP 1049827, and part Council owned Road Reserve.
- D. The Contractor and the Council hereby, subject to the consent of the Minister responsible for administrating the CL Act, enter into this Deed for the lease and the management of the premises on the terms and conditions contained herein.

The Council and the Contractor hereby covenant and agree the one with the other as follows:

1 INTERPRETATION DEFINITIONS AND ADMINISTRATION**1.1 Authority for Grant of Deed**

The Council warrants:

- (a) that part of the Premises comprise ~~the whole or~~ part of a Reserve within the meaning of Part 5 of the Crown Lands Act 1989;
- (b) that the Council was established and appointed as trustee of the Reserve Trust under Section 95 of the Crown Lands Act 1989;
- (bi) that Byron Coast Reserve Trust is a corporation established, constituted and appointed under Section 92 of the Crown Lands Act 1989;
- (c) that the Council has power under Section 102 of the Crown Lands Act 1989 to grant a lease of the Reserve or part thereof subject to the Minister's consent.

1.2 Effect of Instrument

The Council and the Contractor expressly acknowledge that no rights or interests are conferred on any Party by the provisions of this instrument unless the Minister has granted consent under Section 102 of the CL Act to the grant of the Lease.

2 DEFINITIONS

In this Deed, unless the contrary intention appears:

Business Day means any day which is not a Saturday, Sunday or Public Holiday in New South Wales;

CL Act means the Crown Lands Act 1989;

Commencing Date means the date specified in Column 2 of Item 1 of Schedule 1;

Environmental Law means any Law or State protection policy incorporated by reference to or being part of any Law relating to protection of the Environment;

Terminating Date means the date on which the Term expires, as specified in Column 2 of Item 3 of Schedule 1;

Hazardous Substance means a substance that because of its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, or physical, chemical or infectious characteristics, may pose a hazard to property, human health or the environment when improperly treated, stored, disposed of or otherwise managed;

Improvements means any structure or work of a permanent nature attached to the land;

this Deed means this Deed, including the Schedules and all Annexures to this Deed

the Lease means the Lease of the Premises granted under this Deed;

Local Council means the council established under the Local Government Act 1993 for the Local Government Area in which the Premises are situated;

Minister means the Minister for the time being administering the CL Act or any act consolidating or replacing that Act;

Party means a party to this Deed;

Premises means the land and the buildings on the land described in Part 2 of Schedule 2;

Regulations means the Crown Lands Regulation 2006 and successors;

Rent means the rent as defined by Clause 9.1;

Reserve means the Reserve described in Part 1 of Schedule 2;

Revocation means the revocation of a Reserve under Sections 83, 84, 89 or 90 of the CL Act;

Sub-Lessee – deleted.

Contractor's Fixtures means any plant equipment fittings or improvements in the nature of fixtures brought onto the Premises by, on behalf of, or at the request of the Contractor;

Term means the period specified in Column 2 of Item 2 of Schedule 1;

Termination means a termination of this Deed as a consequence of the expiration of the Term, a termination by virtue of Section 109 of the CL Act or a termination under Clause 7B, 23 or clause FF of Schedule 3.

Contractor's Equipment means the vehicles, plant, implements, appliances and equipment used by the Contractor for carrying out its obligations under this Deed whether or not owned by the Contractor but specifically excluding the Council's plant and equipment;

Guarantor means a person identified in column 2 of Item 17 of Schedule 1 and shall mean and include the said person, their respective executors, administrators, successors and assigns;

Services means the delivery of services and works as specified in Schedule 4 and Schedule 7 of this Deed and elsewhere in this Deed.

"Subcontractor" means a person or entity who provides goods and services to the Contractor.

Contract Supervisor means the person/organisation nominated in column 2 of Item 13 in Schedule 1.

Lump Sum means the difference between the Rent and Management Fee as set out herein.

3 CONSTRUCTION

3.1 Construction in accordance with this Clause

This Deed shall be construed in accordance with this clause unless the context requires otherwise.

3.1.1 Plurals

Words importing the singular include the plural and vice versa.

3.1.2 Genders

Words importing any gender include the other genders.

3.1.3 Persons

A reference to a person includes:

- (a) an individual, a firm, unincorporated association, corporation and a government or statutory body or authority; and
- (b) the legal personal representatives, successors and assigns of that person.

3.1.4 Headings

Headings (including any headings described as parts and sub-headings within clauses) wherever appearing shall be ignored in construing this Deed.

3.1.5 Clauses and Sub-clauses

- (a) A reference to a clause includes all sub-clauses, paragraphs, subparagraphs and other components which form part of the clause referred to.
- (b) A reference to a sub-clause includes any sub-paragraphs and other components of the sub-clause referred to.

3.1.6 Time

A reference to time is a reference to local time in Sydney.

3.1.7 Money

A reference to \$ or "dollars" is a reference to the lawful currency of Australia.

3.1.8 Defined Terms

If a word or phrase is defined cognate words and phrases have corresponding definitions. A defined term, unless inconsistent with the context of its use, is denoted by the appearance of that word using a capital letter at the beginning of that word.

3.1.9 Writing

A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form.

3.1.10 Contra Preferentum

No rules of construction shall apply to the disadvantage of any party responsible for preparation of this Deed or any part of it.

3.1.11 Statutes

A reference to a statute, legislation, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

3.1.12 Deed

A reference to this Deed shall include any extension or variation of this Deed.

3.1.13 Priority

If an inconsistency occurs between the provisions of this Deed and the provisions of a Deed granted in accordance with this Deed, the provisions of this Deed shall prevail.

3.2 Warranties and Undertakings

- (a) The Contractor warrants that it:
 - (i) has relied only on its own inquiries about this Deed; and

- (ii) has not relied on any representation or warranty by the Council or any person acting or seeming to act on the Council's behalf.
- (b) The Contractor must comply on time with undertakings given by or on behalf of the Contractor.

3.3 Further assurances

Each Party must do everything necessary to give full effect to this Deed.

3.4 Relationship of Council and Contractor

Nothing contained or implied in this Deed will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the Council and the Contractor. Specifically, the Parties understand and agree that neither the method of computation of the Lump Sum, nor any other provision, nor any acts of the Contractor and the Council or either of them will be deemed to create any relationship between them other than the relationship of landlord and tenant and as Council and Contractor upon the terms and conditions only as provided in this Deed.

3.4A Relationship – Independent Contractor

3.4A.1 Nothing in this Deed shall in any way constitute a Contract of Service nor shall a master and servant relationship be established by virtue of this Deed.

3.4A.2 The Contractor expressly agrees and acknowledges that all the Services provided in terms of this Deed shall be on the clear and unequivocal understanding that the Contractor is an independent contractor and not an employee of the Council.

3.5 Time to be of the essence

Where in any provision of this Deed a party is given or allowed a specified time within which to undertake or do any act or thing or any power is conferred or any event occurs after the lapsing of a specified time, time shall be the essence of the contract in that regard.

4 SEVERABILITY

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provisions in any other jurisdiction.

5 ESSENTIAL TERMS OF LEASE

The Council and the Contractor agree that the clauses specified in Column 2 of Item 15 of Schedule 1 are essential conditions of this Deed.

6 SECTIONS OF LEGISLATION NOT TO APPLY

- 6.1** The covenants and powers implied in every lease by virtue of Sections 84, 84A, 132, 133, 133A and 133B of the Conveyancing Act 1919 do not apply or are not implied in the Lease and are expressly negated except in so far as the same or some part or parts of it are included in the covenants hereinafter contained. The employment in the Lease of any words in any of the forms of words contained in the first column of Part II of the Fourth Schedule to the Conveyancing Act 1919 shall not imply any covenant under Section 86 of that Act.
- 6.2** Part 4 of the Civil Liability Act 2002 (NSW) does not apply to this Deed.
- 6.2A** The Retail Leases Act 1994 (NSW) does not apply to the Lease as the predominant permitted use of the premises under the Lease is for a public swimming pool and not a retail shop as defined under Retail Leases Act 1994.

TERM AND PERMITTED USE

7. TERM OF LEASE

The Council grants to the Contractor a lease of the Premises for the Term specified in Column 2 of Item 2 of Schedule 1. The Term shall commence on the Commencing Date specified in Column 2 of Item 1 of Schedule 1.

7A. GUARANTEE

- 7A.1** For the purposes of this Deed, Guarantors means and includes the persons specified in column 2 of Item 17 of Schedule 1.
- 7A.2** The Guarantors, jointly and severally, agree with the Council, and the Contractor acknowledges that the terms on which their joint and several guarantee is given are, as follows:
- 7A.3** The Guarantors guarantee to the Council that they will be, with the Contractor, jointly and severally liable to the Council for the performance of all of the Contractor's obligations under this Deed including any failure, for whatever reason, of the Contractor to surrender and vacate the premises at the expiration or sooner determination of the lease;
- 7A.4** The Guarantors will indemnify the Council at all times against all losses and expenses which the Council may suffer or incur in consequence of any breach of the Contractor's obligations under this Deed including failure to surrender and vacate the premises at the expiration or sooner determination of the lease and the Guarantors agree that the Guarantors shall remain liable to the Council under this indemnity notwithstanding the Council may have exercised any of the rights under this Deed including its rights of re-entry; and
- 7A.5** The Council's rights against the Guarantor and the Guarantors' liability are not affected by the fact that the Lease is not registered under the *Real Property Act 1900*.

7B COASTAL EROSION HAZARDS

- (a) The Contractor acknowledges that it has been notified that the Premises are at immediate risk from coastal erosion hazards and inundation.
- (b) The Contractor acknowledges that in the event that either the existing rock protection seawall located seaward of the premises is removed, or the erosion escarpment or the threat of coastal inundation as defined by the Council of the Shire of Byron from time to time, comes to within 20 metres of any buildings or structures approved by development consent 10.2001.305.1, the Council shall be required to remove the buildings and shall be at liberty to terminate this Lease.
- (c) Council shall be entitled to terminate this Deed in accordance with clause 7B(b):
 - a. On the giving of 24 hours notice in the event that any part of the Premises are damaged by coastal erosion hazards or inundation; or
 - b. On the giving of not less than 6 months notice in the event that the existing rock protection seawall is to be removed; or
 - c. On the giving of not less than 7 days notice in the event that the erosion escarpment comes within 20m of any buildings or structures approved by development consent 10.2001.305.1;

and where more than one event is applicable at any one time, the Council shall be entitled to terminate the Lease on the giving of the lesser period of notice.

8. PERMITTED USE

- 8.1** The Contractor will not use the Premises or allow the Premises to be used for any purpose other than the Permitted Use specified in Column 2 of Item 4 of Schedule 1.
- 8.2** Unless expressly permitted under a provision of this Deed, the Contractor will not reside on the Premises or permit any other person to reside on the Premises.

8A. APPOINTMENT AS MANAGERS AND GRANTING OF LEASE

- 8A.1** The Council grants a Lease of the Premises and the Contractor accepts a Lease of the Premises on the terms and conditions set out in this Deed.
- 8A.2** The Council appoints the Contractor to manage the premises and the Contractor agrees to manage the premises on the terms and conditions set out in this Deed.
- 8A.3** The Contractor has appointed a Representative set out in column 2 of Item 14 of Schedule 1 of this Deed.

- 8A.4** The Representative shall supervise all the Services to be provided by the Contractor under this Deed.
- 8A.5** The Council has appointed a Contract Supervisor specified in column 2 of Item 13 of Schedule 1 of this Deed.
- 8A.6** The Contractor shall be at liberty to change the Representative but shall provide written notice to the Contract Supervisor immediately upon such change.
- 8A.7** The Council shall be at liberty to change the Contract Supervisor and shall provide written notice to the Representative upon such change.

CONTRACTORS PAYMENTS AND OUTGOINGS

9 PAYMENT OF RENT

9.1 Definitions

For the purposes of this clause:

Base Annual Rent means:

- (a) the Initial Rent where the Rent has not been adjusted or redetermined in accordance with sub-clauses 9.3A ~~or 9.4~~; or
- (b) in any other case - the Rent as last redetermined or adjusted in accordance with the provisions of sub-clauses 9.3A ~~or 9.4~~;

Due Date means the date for payment of Rent under this Deed as is specified in Column 2 of Item 7 of Schedule 1 and thereafter each anniversary of that date;

Initial Rent means the Rent payable under this Deed by the Contractor to the Council in respect of the Premises as is specified in Column 2 of Item 5 of Schedule 1 expressed as an annual amount;

Management Fee means - the Management Fee payable under this Deed by the Council to the Contractor in respect of the Premises, as is specified in Column 2 of Item 5A of Schedule 1 expressed as an annual amount;

Market Rent - Deleted.

Market Rent Review Date – Deleted.

Lump Sum means the difference between the Rent and Management Fee as set out in this Deed.

Rent means ~~the greater of:~~

- (a) the Base Annual Rent payable upon each Due Date ~~less any Rent Rebate granted to the Contractor by the Council~~; or
- (b) Deleted.

Lump Sum Adjustment means an adjustment of Rent made under sub-clause 9.3A.

Rent Rebate means such amount as specified in Column 2 of Item 6 of Schedule 1 granted to the Contractor by the Council under Clause 9.5 and expressed either as an absolute dollar value or a percent of the Base Annual Rent.

9.2 Contractor to Pay Rent

Deleted

9.2A Contractor to Pay Lump Sum

- (a) It is agreed a Lump Sum shall be payable to the Council by the Contractor.
- (b) The Lump Sum has been calculated as the difference between the Rent of the Premises as set out in column 2 of Item 5 of Schedule 1 hereto which is payable to the Council and the Management Fee as set out in column 2 of Item 5A Schedule 1 of this Deed.
- (c) Payment of the Lump Sum by the Contractor to the Council is as set out in column 2 of Item 7 of Schedule 1 of this Deed.
- (d) The Council shall not be required to make any payment to the Contractor in respect of any of the Services which are either not performed or which are not performed in accordance with the manner prescribed under this Deed.
- (e) The Contractor shall provide written certification to the Contract Supervisor at the time of payment of the Lump Sum that the Contractor has:-
 - i. paid all wages and allowances owing to its employees;
 - ii. paid all amounts due to any party to which it has, with the Council's consent, sub-contracted or assigned any of its rights and obligations under this Deed;
 - iii. made all payments in connection with insurances and any applicable law or regulation;
- (f) In the event the Contractor does not provide the Services and meet their obligations contained herein the amount payable by the Council being reasonably assessed part of the Management Fee may be withheld by the Council until the service/obligation is performed and accordingly the Lump Sum payable will increase by the amount of Management Fee withheld.
- (g) Any additional Services the Contractor wishes to perform shall be approved by the Council and shall be paid for by the Council provided that prior written approval for the additional Services and the payment for same is obtained from the Contract Supervisor.

9.3 Calculation of Rent Adjustment

Deleted

9.3A Calculation of Lump Sum Review

- (a) The Lump Sum shall be reviewed as follows:

$$\text{NLS} = \text{LS} \times \text{CPI}$$

Where:

NLS is New Lump Sum

LS is Lump Sum for the year immediately preceding the date on which the Lump Sum is to be reviewed.

CPI = Consumer Price Index (all groups) for Sydney published for the quarter immediately preceding the review date.

- (b) Notwithstanding any of the above, the new Lump Sum shall not be less than the Lump Sum for the immediately preceding year.
- (c) The review date shall be 1 July 2014.
- (d) For the purposes of the review, the CPI figure used shall be the CPI for the June 2014 quarter.

9.4 Market Rent Review

Deleted.

9.5 Rent Rebate for Charitable or Non Profit Organisations

Deleted.

10 CONTINUING OBLIGATION

The obligation of the Contractor to pay the Lump Sum is a continuing one during the Term of this Deed and any extension of it and shall subject to clause 11, not abate in whole or in part or be affected by any cause whatsoever.

11 NO REDUCTION IN RENT

Subject to this Deed, the Contractor will not without the written consent of the Council by any act, matter or deed or by failure or omission impair, reduce or diminish directly or indirectly the Lump Sum required to be paid under this Deed. However, if at any time during the Term:

- (a) some natural disaster or other serious event occurs which is beyond the reasonable control of the Contractor; or
- (b) as a result of the damage, the Contractor is not able to use the Premises in a reasonable manner,

the Contractor's obligations to pay the Lump Sum will abate to the extent proportional to the effect on the Contractor's ability to occupy and use the Premises until the Premises are restored to a condition in which the Contractor is able to conduct the Contractor's activities and/or occupy the Premises in a reasonable manner.

12 CONTRACTOR TO PAY RATES

Deleted

13 CONTRACTOR TO PAY OTHER CHARGES

The Contractor will pay all other fees, charges and impositions not referred to in clause 12 for which it may properly be liable and which are at any time during the Term payable in respect of the Premises or on account of the use and occupation of the Premises by the Contractor.

14 CONTRACTOR TO PAY FOR SERVICES

The Contractor will as and when the same become due for payment, pay to the Council or to any other person or body authorised to supply the same all proper charges for gas, ~~electricity, water~~ or other services supplied to the Contractor or consumed in or on the Premises, by the Contractor.

15 CONTRACTOR TO PAY COST OF WORK

Whenever the Contractor is required under this Deed to do or effect any act, matter, work or thing then the doing of such act matter or thing will unless this Deed otherwise provides be at the sole risk, cost and expense of the Contractor.

16 COSTS PAYABLE**16.1 Costs Payable to Council**

Except where a law limits costs being incurred by a Contractor being recovered from the Council, the Contractor will pay in full the Council's reasonable legal costs, the fees of all consultants and all duties fees, charges and expenses incurred reasonably, properly and in good faith by the Council in consequence of or in connection with or incidental to:

- (a) ~~the preparation, completion, stamping and registration of this Deed;~~
- (b) any variation of this Deed made otherwise than at the request of the Council;
- (c) any application for the consent of the Council and the Minister if applicable under this Deed;
- (d) any and every failure to comply, breach or default by the Contractor under this Deed;
- (e) the exercise or attempted exercise of any right power privilege authority or remedy of the Council under or by virtue of this Deed;
- (f) the examination of plans, drawings and specifications of any improvement erected or constructed or to be erected or constructed on the Premises by the Contractor and the inspection of it, in this case the costs to be mutually agreed;
- (g) any entry, inspection, examination, consultation or the like which discloses a breach by the Contractor of any provision of this Deed; and

- (h) the Contractor requiring the Council to do any act, matter or thing under this Deed, unless otherwise provided for in this Deed, the Contractor will reimburse the Council for all reasonable costs and expenses incurred in complying with that requirement.

16.2 Costs payable by Council

Deleted.

16.2A Costs payable by Council

- (a) The Council will when the same become due for payment pay all (or in the first and last year of the Term the appropriate proportionate part) rates that are at any time during the currency of this Deed separately assessed and lawfully charged upon, imposed or levied in respect of the Contractor's use or occupation of the Premises to the extent referable to the Contractor's use or occupation of the Premises.
- (b) The Council will when the same become due for payment pay all (or in the first and last year of the Term the appropriate proportionate part) water and sewer charges that are at any time during the currency of this Deed separately assessed and lawfully charged upon, imposed or levied in respect of the Contractor's use or occupation of the Premises to the extent referable to the Contractor's use or occupation of the Premises, provided Council approval for the emptying of the swimming pools at any time has been obtained.
- (c) The Council will pay all electricity charges and telephone line rental charges that are at any time during the currency of the Lease separately assessed for the premises provided, such charges are first paid by the Contractor and then claimed by way of a monthly invoice, supported by evidence of the charges, issued to Council by the Contractor.

17 INTEREST ON OVERDUE MONEYS

Deleted. Deletion of this clause will not affect any Parties' rights at law or in equity to claim interest on overdue monies.

18 MANNER OF PAYMENT OF LUMP SUM AND OTHER MONEYS

The Lump Sum and other moneys payable to the Council in accordance with this Deed must be paid to the address or bank account specified in Column 2 of Item 9 of Schedule 1 or to such other person or at such other address as the Council may from time to time direct by notice in writing served on the Contractor.

19 GOODS AND SERVICES TAX

- (a) For the purposes of this Deed, "GST", "taxable supply", "consideration" and "tax invoice" have the meanings given to those terms in A New Tax System (Goods and Services Tax) Act 1999.
- (b) All payments to be made or other consideration to be provided under this Deed are GST exclusive unless otherwise expressly stated. If any payment or

consideration to be made or provided by the Contractor to the Council is for a taxable supply under this Deed on which the Council must pay GST and the Council gives the Contractor a tax invoice, the Contractor must pay to the Council an amount equal to the GST payable (the "GST Amount") by the Council for that taxable supply upon receipt of that tax invoice.

- (c) The Parties agree that they are respectively liable to meet their own obligations under the GST Law. The GST Amount must not include any amount incurred in respect of penalty or interest or any other amounts payable by the Council as a result of default by the Council in complying with the GST Law.

20 SUBLEASING, ASSIGNMENT AND PARTING WITH POSSESSION

- (a) The Contractor may not sublet the Premises, assign the Lease or this Deed or part with possession of the Premises or any part of them without the written consent of the Council. The Council will not unreasonably withhold its consent.
- (b) The Contractor agrees that consent will be taken not to have been "unreasonably withheld" if the Council has been served with a notice by the Minister requiring the Minister's consent to any assignment or sub lease or parting with possession of the Premises and the Minister has been requested to give consent but has not given that consent.
- (c) If the Contractor is a corporation, it will be treated as assigning the Lease and this Deed, for the purposes of sub-clause 20(a), if the person or persons who beneficially own or control a majority of its voting shares at the commencement of this Lease cease to do so, ~~except as a result of transmission on the death of a shareholder. This clause will not apply if the Contractor is a corporation, the voting shares of which are listed on a Stock Exchange in Australia.~~
- (d) The Contractor is to pay the Council's reasonable legal and other costs relating to considering and giving consent, including any costs which the Council incurs in making inquiries as to the respectability, solvency, responsibility, stature, experience and capability of any proposed subtenant or assignee or the person to whom possession is to be transferred.
- (e) The Contractor may not mortgage or charge the Lease or this Deed or any estate or interest in the Premises.

21 TERMINATION OF DEED

- 21.1** Subject to Clauses 7B, 22, 23 and Clause FF of Schedule 3, this Deed terminates on the date specified in Column 2 of Item 3 of Schedule 1.

22 TERMINATION OF LEASE UNDER SECTION 109 OF CL ACT

- 22.1** The Council and Contractor acknowledge that, subject to sub-clause 22.2, this Deed will terminate under Section 109 of the CL Act if the Reserve is revoked or that part of the Reserve is revoked that comprises the whole or part of the Premises unless the revocation notification otherwise provides.

22.2 Where only part of Premises is affected by a revocation or proposed revocation the Council undertakes to consult with the Contractor and the Contractor undertakes to consult with the Council to determine if an agreement under Section 109(3) can be reached for the continuation of this Deed in respect to that part of the Premises not affected by the revocation.

22.3 The Contractor expressly acknowledges that as provided by Section 109(5) of the CL Act, no compensation is payable in respect of the termination of this Deed by the operation of Section 109 and no compensation shall be payable.

23 TERMINATION OF LEASE ON DEFAULT

23.1 The Council may terminate the Lease and this Deed in the manner set out below in the following circumstances:

- (a) if the Lump Sum or any part of it or any other moneys owing to the Council under the Deed is or are in arrears for one month, whether formally demanded or not;
- (b) if the Contractor breaches an essential condition of this Deed or any rule or regulation made under this Deed;
- (c) if defects notified under a provision of this Deed are not remedied within the time specified in the notice;
- (d) if the Contractor is a natural person, becomes bankrupt or is served with a bankruptcy notice or makes an assignment for the benefit of creditors or executes any deed of assignment or arrangement;
- (dA) if the Contractor is a corporation and an order is made or a resolution is passed for its winding up including for reconstruction or amalgamation;
- (e) if the Contractor is a company and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (f) if the Contractor is a company and is placed under official management under the corporations law or enters a composition or scheme of arrangement;
- (g) if the interest of the Contractor under this Deed is taken in execution; or
- (h) if the Contractor or any person claiming through the Contractor conducts any business from the Premises after the Contractor has committed an act of bankruptcy.

23.2 Deleted.

23.2A In the circumstances set out in sub clause 23.1(a), (b) and (c):

- (a) the Council may give notice to the Contractor to remedy the default (either immediately or within a specified period of time reasonable in the circumstances) ("Default Notice");

- (b) If the Contractor fails to comply with the Default Notice within the time period stipulated in it, the Council may, without prejudice to any other rights that it may have under this Deed, at law and/or in equity, against the Contractor;
- (i) suspend payments under this Deed; or
 - (ii) terminate this Deed;

in either case by giving written notice to that effect to the Contractor ("Suspension Notice" and "Termination Notice" respectively).

- (c) The suspending of payments by the Council under this Deed:
- (i) will not in any manner affect the continuing obligations of the Contractor under this Deed; and
 - (ii) can continue until the default complained of in the Default Notice has been rectified.

23.2B In the circumstances set out in sub clause 23.1(d), (dA) (e), (f), (g) and (h) and in clause 23.2A(b), the Council may terminate the Deed by:

- (a) notifying the Contractor that it is terminating this Deed; or
- (b) re-entering the Premises, with force if necessary, and ejecting the Contractor and all other persons from the Premises and repossessing them; or
- (c) doing both.

23.3 If the Council terminates the Deed under this clause, the Contractor will not be released from liability for any prior breach of this Deed and other remedies available to the Council to recover arrears of Lump Sum or for breach of this Deed will not be prejudiced.

23.4 If the Council terminates the Deed under this clause or under clause 22, it may remove the Contractor's property and store it at the Contractor's expense without being liable to the Contractor for trespass, detinue, conversion or negligence. After storing it for at least one month, the Council may sell or dispose of the property by auction or private sale. It may apply any proceeds of the auction or sale towards any arrears of Lump Sum or other moneys or towards any loss or damage or towards the payment of storage and other expenses.

23.5 Deleted.

23.5A If the Council terminates this Deed under this clause:

- (a) it may either by itself or by employing any other person, complete the delivery of any Services, or such parts of the Services as the Council considers it desirable to complete, which, so far as is practicable, will be carried out in accordance with this Deed, provided that the Council will not be required to use the least expensive means of completing the delivery of the Service;
- (b) the Council will be liable to make payments to the Contractor in respect of any portion of the Services, which have been properly executed and not paid for at the date of determination;

- (c) the Contractor must pay to the Council the amount of any loss and expenses incurred arising out of or resulting from the termination;
- (d) the amounts payable by the Contractor and the Council pursuant to this clause will be determined by the Contractor supervisor who must give notice of his determination to the Contractor and any amounts payable under this clause will be paid by the Contractor within fourteen (14) days of receipt of that notice failing which they can be deducted from any money due to the Contractor.

24 ACCEPTANCE OF LUMP SUM NOT WAIVER

Demand for, or acceptance of Lump Sum or any other moneys due under this Deed by the Council after forfeiture does not operate as a waiver of forfeiture.

25 HOLDING OVER BY CONTRACTOR

The Contractor is not entitled under the Lease or this Deed to hold over or remain in occupation of the Premises after the Terminating Date.

26 CONTRACTOR TO YIELD UP

26.1 The Contractor will forthwith upon the expiry or determination of this Deed or any extension of it peaceably vacate the Premises at the Contractor's expense.

26.2 The Contractor must:

- (a) deleted;
- (aA) unless otherwise provided for in this Deed, remove the Contractor's Fixtures and must remove any signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon, to or within the Premises by or on behalf of the Contractor (other than a sign or notice displayed by or on behalf of the Council or a sign or notice relating to the swimming pool and associated facilities); and
- (b) unless otherwise provided for in this Deed, rehabilitate the Premises, (to the extent to which it has been altered or affected by the Contractor's occupation and use of the Premises) as nearly as practicable to the original condition before the installation of the Contractor's Fixtures to the reasonable satisfaction of the Council; and
- (c) ensure that when it vacates the Premises, the Premises comply with any Environmental Law to the extent that it did so at the time of granting of this Deed; and
- (d) leave the Premises in a clean and tidy condition.

26.3 Sub-clause 26.2 does not apply unless the Council permits the Contractor to carry out any works on the Premises reasonably required in order to comply with the clause.

OBLIGATIONS AND RESTRICTIONS RELATING TO PREMISES**27 ADDITIONS AND ALTERATIONS**

The Contractor shall not make any additions or alterations to the Premises without first obtaining the written consent of the Council, the Minister and the local Council (in its role as the statutory planning authority). Any additions or alterations consented to by the Council and the Minister shall be carried out at the Contractor's expense and in a workmanlike manner.

27A CAPITAL IMPROVEMENTS

Notwithstanding any clause to the contrary in this Deed, the Contractor must not make or suffer or permit to be made any alterations or additions of a capital, structural or other nature to any part of the premises without the Council's prior written approval (which may be given or withheld in the Council's absolute discretion) and the Contractor will keep the Council indemnified from and against all losses and expenses which the Council may suffer or incur in consequence of any breach or non-observance of this covenant.

28 MAINTENANCE OF PREMISES AND ENCLOSED AREAS

The Contractor will keep the Premises clean and tidy and in good order and condition.

29 CONTRACTOR TO ERECT BARRICADES ETC.

Where the Premises or any part of the Premises become to the knowledge of the Contractor (or which ought reasonably to be in the knowledge of the Contractor) unsafe, hazardous or dangerous the Contractor will forthwith erect such warning signs, fences and barricades as may be necessary until the Premises are rendered safe.

30 CONTRACTOR NOT TO REMOVE MATERIALS

- (a) The Contractor will not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell or similar substance from, on or in the Premises or permit any other person to undertake such action without the prior consent in writing of the Council and the Minister and subject to such conditions as the Council or the Minister may determine.
- (b) Sub clause 30(a) does not apply to any removal, digging up or excavation as may be necessary to construct or undertake any improvement authorised by or under this Deed provided that any such removal, digging up or excavation is undertaken in accordance with the requirements of that authorisation.
- (c) A failure by the Contractor to comply with any condition imposed pursuant to sub clause 30(a) constitutes a failure by the Contractor to comply with a provision or covenant of this Deed.

31 ADVERTISING

- (a) The Contractor must not permit to be displayed or placed on the Premises or any part of them any sign, advertisement or other notice without first obtaining the Council's written consent other than safety signs, in respect of which the Council's consent will not be required.
- (b) The Council may at any time by notice in writing require the Contractor to discontinue to use any piece or mode of advertising to which the Council has granted consent under sub-clause 31(a) which in the opinion of the Council has ceased to be suitable or has become unsightly or objectionable and the Contractor on receipt of the notice must comply accordingly.

32 NOTIFICATION OF ACCIDENT

The Contractor will give to the Council prompt notice in writing of any serious accident to any person or accident to the Premises or serious defect at or to the Premises unless that defect or accident is capable of being and is promptly remedied by the Contractor.

33 RODENTS AND VERMIN

The Contractor will take all reasonable precautions to keep the Premises free of rodents, vermin, insects and pests and will in the event of failing to do so if required by the Council but at the cost of the Contractor employ from time to time a duly certified pest exterminator approved by the Council whose approval will not be unreasonably withheld. In performing its obligations pursuant to this clause the Contractor and any person acting on the Contractor's behalf will not use any substance or undertake any activity prohibited by any law.

34 CONTRACTOR NOT TO BURN OFF

If applicable, the Contractor will not carry out any burning off on the Premises except with the prior consent of the Council in writing, which consent shall not be unreasonably withheld, and after compliance with the requirements of the Rural Fires Act 1997. Any consent granted in accordance with this condition shall be subject to such reasonable conditions as the Council may impose.

35 CONTRACTOR NOT TO COMMIT NUISANCE ETC

The Contractor will not:

- (a) carry on or permit to be carried on at the Premises any noxious, nuisance or offensive trade or business; or
- (b) do or permit to be carried on at the Premises any act, matter or thing which results in nuisance damage or disturbance to the Council or owners or occupiers of adjoining or neighbouring lands or buildings; or
- (c) use the Premises for any illegal activity.

36 HAZARDOUS SUBSTANCES

Deleted

36A HAZARDOUS SUBSTANCES

The Contractor must not bring on to the Premises or keep any Hazardous Substance on the Premises without the prior consent of the Council, which consent shall not be unreasonably withheld. The Council acknowledges that the use of chemicals in the conduct of the Contractor's business is both necessary and in the interests of the Council. The ordinary use of chemicals will not be considered dangerous or offences for the purposes of this Deed.

37 RELICS

- (a) Unless authorised to do so by a permit under section 87 or a consent under section 90 of the National Parks and Wildlife Act 1974 and subject to observance and compliance with any conditions imposed on the grant of such permit or consent the Contractor will not knowingly disturb, destroy, deface or damage any aboriginal relic or place or other item of archaeological significance within the Premises and will take reasonable precautions in drilling excavating or carrying out other operations or works on the Premises against any such disturbance, destruction, defacement or damage.
- (b) If the Contractor becomes aware of any aboriginal relic or place or other item of archaeological significance within the Premises the Contractor will within 24 hours notify the Council and the Director-General of the Department of Environment Conservation and Climate Change of the existence of such relic, place or item.
- (c) The Contractor will not continue any operations or works on the Premises likely to interfere with or disturb any relic, place or item referred to in sub clause 37(b) without the approval of the Director-General of the Department of Environment Conservation and Climate Change and the Contractor will observe and comply with all reasonable requirements of the said Director-General in relation to carrying out the operations or works.

38 ARTEFACTS

All fossils, artefacts, coins, articles of value, articles of antiquity, structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall be deemed to be the absolute property of the Council and the Contractor will as authorised by the Council watch or examine any excavations and the Contractor will take all reasonable precautions to prevent such articles or things being removed or damaged and will as soon as practicable after discovery thereof notify the Council of such discovery and carry out the Council's orders as to the delivery up to or disposal of such articles or things at the Council's expense.

IMPROVEMENTS AND PLANT**39 OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND CONTRACTOR'S FIXTURES**

- (a) Upon expiry or sooner determination of this Deed, all Improvements undertaken by the Contractor become the property of the Council.
- (b) During the Term and any extension of it, ownership of Contractor's Fixtures vests in the Contractor. Notwithstanding anything contained in this Deed, so long as any Lumps Sum or other moneys are due by the Contractor to the Council or if the Contractor has committed any breach of this Deed which has not been made good or remedied and whether the Contractor is still in possession or not, the Contractor shall not be entitled to remove any of the Tenant Fixtures, fittings or equipment from the premises.

40 GENERAL REQUIREMENT TO REPAIR

Without prejudice to any specific obligations contained in this Deed, the Contractor will to the satisfaction of the Council at all times keep the Premises in good repair and properly maintained in all respects.

41 BREAKAGES

The Contractor will immediately at the Contractor's expense make good any breakage defect or damage to the Premises (including but not limited to broken glass) or to any adjoining premises or to any facility or appurtenance of the Council occasioned by want of care, misuse or abuse on the part of the Contractor, the Contractor's agents, servants, invitees or licensees.

42 COUNCIL'S RIGHT TO ENTER INSPECT AND REPAIR

The Council, the Council's agents, the Minister and the Minister's delegates may at all reasonable times upon giving to the Contractor reasonable notice (except in the case of emergency when no notice shall be required) and accompanied by the Contractor or an employee or agent of the Contractor enter upon the Premises and view the state of repair of the Premises and may serve upon the Contractor a notice in writing of any defect (the repair of which is the Contractor's obligation under this Deed to undertake) requiring the Contractor within two months to repair the same.

43 INDEMNITIES AND INSURANCE

Definition

For the purposes of clauses 44, 45, 46, 47, 48, 49, 57 and 58 –

Council means the Council, Her Majesty the Queen Her Heirs and Successors, the State of New South Wales, the Minister and the agents, servants, employees and contractors of Her Majesty, Her Majesty's Heirs and Successors, the State of New South Wales and the Minister.

Claim/s means actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, legal costs, charges and expenses.

44 INDEMNITIES

44.1 Indemnity for use of Premises

- (a) The Contractor will indemnify and keep indemnified the Council from and against all Claims whatsoever to which the Council shall or may be or become liable for or in respect of the Contractor's occupation operation and use of the Premises or for or in respect of all Claims of whatsoever nature or kind and howsoever arising (and whether to any property or to any person resulting in the destruction or damage of any property or the death or injury of any person) at or upon the Premises or originating on the Premises, although occurring or sustained outside the Premises, except to the extent that any such Claims:
- (i) arise from or are contributed to by the negligence or wilful act or omission on the part of the Council; or
 - (ii) arise from the occupation, operation or use of the Premises by any other occupier, or the acts of any person who has access to the Premises with the consent of another occupier, and the Council is adequately indemnified by that other occupier in respect of the relevant Claim or demand, and the Council will use its reasonable endeavours to ensure that an indemnity in or to the effect of this form is contained in any agreement with any other occupier of the Premises.

44.2 Indemnity Continues After Expiry of Deed

The obligations of the Contractor under this clause continue after the expiration or other determination of this Deed in respect of any act, deed, matter or thing happening before such expiration or determination for the period limited by the Statute of Limitations.

44.3 Exclusion of Consequential Loss

Despite any other provision of this Deed, the Parties exclude, (and agree that they will have no rights against the other for) liability for consequential or indirect loss arising out of this Deed including (without limitation) in respect of loss of profits or loss of business. This clause does not apply in respect of wilful acts by any Party.

45 RELEASE OF COUNCIL FROM LIABILITY

- (a) The Contractor shall occupy, use and keep the Premises at the risk of the Contractor and hereby releases to the full extent permitted by law the Council from all Claims resulting from any accident, damage or injury occurring therein (but excluding such Claims to the extent that such Claims arise out of the negligent or wilful acts omissions or default of the Council) and the Council shall have no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Contractor or any agent or servant of the Contractor or of any member of the public whilst in or upon the Premises (but excluding such Claims to the extent that such Claims arise out of the negligent acts or wilful omissions or default of the Council).

- (b) The obligations of the Contractor under this clause shall continue after the expiration or other determination of this Deed in respect of any act, deed, matter or thing happening before such expiration or determination for which the Contractor is responsible. Such obligation is to be governed by the Statute of Limitations.

46 NO LIABILITY FOR FAILURE OF SERVICES

The Council will not be under any liability for any loss, injury or damage sustained by the Contractor or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Council or enjoyed by the Contractor in conjunction with the Premises or this Deed provided that such failure is not due to the negligent or wilful act or omission of the Council its servants or agents.

47 CONTRACTOR NOT TO IMPOSE LIABILITY ON COUNCIL

Subject to any other provision of this Deed, the Contractor will not without the written consent of the Council or Minister by any act, matter or deed or by failure or omission cause or permit to be imposed on the Council or Minister any liability of the Contractor under or by virtue of this Deed even though the Contractor is entitled to do so under any law present or future or otherwise.

48 INSURANCE - PUBLIC RISK

The Contractor will effect and maintain with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises public risk insurance (with the policy noting the Council (as the owner and as the Manager of the Reserve) as an interested party) for an amount not less than the amount set out in Column 2 of Item 12 of Schedule 1 (or such other amount as the Council may from time to time reasonably require) as the amount payable in respect of liability arising out of any one single accident or event. The Council acknowledges that the Contractor may effect the public risk insurance pursuant to an insurance policy which is not specific as to the location of risk.

49 PROVISIONS RE POLICIES

- (a) All insurance policies required to be effected by the Contractor pursuant to this Deed are specified in Clause 48 and Schedule 3 - Additional Clauses and shall be in place prior to occupying the Premises.
- (b) The Contractor will produce to the Council, once per calendar year or once per period of insurance (whichever first occurs), a certificate of insurance and/or a certificate of currency in respect of the insurance policies required to be effected by the Contractor pursuant to this Deed.
- (c) The Contractor will not at any time during the Term do any act or omit to do any act which it ought reasonably believe may render void or voidable any policy of insurance. If the Contractor does any act or fails to do any act whereby the rate of premium on such insurance shall be liable to be increased, the Contractor will obtain insurance cover for such increased risk

and pay all additional premiums required on account of the additional risk caused by the use to which the Premises are put by the Contractor.

- (d) The Contractor will use all reasonable endeavours to ensure that full, true and particular information is given to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys there under.

COUNCIL ' S WARRANTIES AND COVENANTS

50 HAZARDOUS CHEMICALS

The Council warrants that it has not received any notice pursuant to the Environmentally Hazardous Chemical Act, 1985 (NSW).

51 QUIET ENJOYMENT

The Council warrants that subject to:

- (a) the Council's rights under this Deed;
- (b) the Contractor complying with its obligations under this Deed;

the Contractor may hold and occupy the Premises without undue interference by the Council.

COUNCIL'S POWERS AND FUNCTIONS

52 APPROVAL BY THE COUNCIL

- (a) This clause does not apply to a consent or approval under clause 20.
- (b) In any case where pursuant to this Deed the doing or executing of any act, matter or thing by the Contractor is dependent upon the approval or consent of the Council such approval or consent will not be effective unless given in writing and may be given or withheld (unless the context otherwise requires) by the Council and may be given subject to such conditions as the Council may determine unless otherwise provided in this Deed provided such consent or approval is not unreasonably withheld or such terms and conditions are not unreasonable.
- (c) Any failure by the Contractor to comply with a condition imposed by the Council pursuant to sub-clause 52(b) constitutes a failure by the Contractor to comply with a condition of this Deed.

53 OPINION OF THE COUNCIL

Any opinion to be formed by the Council for the purposes of this Deed may be formed by the Council on such grounds and material as the Council determines to be sufficient. If the Council deems it necessary, such opinion will be formed after consultation with any New South Wales Government Department, the Local Council or other public authority or the Standards Association of Australia or any other body whose objects and functions are relevant. In forming any such opinion the Council is deemed to be exercising merely administrative functions.

COMPLIANCE WITH STATUTES AND OTHER INSTRUMENTS**54 CONTRACTOR TO COMPLY WITH ALL COMMONWEALTH AND NSW STATE LAWS**

- (a) The Contractor will comply with the requirements of all statutes, regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the Premises to the extent to which the Contractor is bound at law to comply with the same and nothing in this Deed affects this obligation.
- (b) The Contractor will forthwith on being served with a notice by the Council comply with any notice or direction served on the Council by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs alterations or works on or to the Premises.

55 CONTRACTOR TO COMPLY WITH ENVIRONMENTAL LAWS

In relation to its use of the Premises, the Contractor must, during the Term, and in relation to the Premises:

- (a) comply with relevant Environmental Law;
- (b) use its best endeavours to prevent a breach of any Environmental Law;
- (c) report any breach even if accidental; and
- (d) provide to the Council as soon as reasonably practicable details of notices received by or proceedings commenced against the Contractor pursuant to an Environmental Law:
 - (i) relating to a breach or alleged breach by the Contractor of an Environmental Law; or
 - (ii) requiring the Contractor to carry out works to decrease the affectation of the Premises by any Hazardous Substance.

56 CONTRACTOR'S FAILURE TO COMPLY WITH STATUTORY REQUIREMENTS

Where the Contractor breaches any law in relation to its use of the Premises it is taken to breach a condition of this Deed, provided that:

- (a) the Contractor has been found guilty of the breach, and
- (b) the Council determines that the breach warrants the Termination of this Deed.

57 INDEMNITY FOR NON-COMPLIANCE WITH LEGISLATION

The Contractor will indemnify and keep indemnified the Council from and against any Claims arising from the non-compliance by the Contractor with any New South Wales or Commonwealth legislation that may apply to the Contractor's use and occupation of the site and access thereto and the Contractor's operation of their business from the site and access thereto.

This clause shall not merge on the expiration or other determination of this Deed in respect of any act, deed, matter or thing happening before such expiration or determination.

58 INDEMNITY FOR BREACH OF ENVIRONMENTAL LAW

Without prejudice to any other indemnity granted by this Deed, the Contractor shall indemnify and keep the Council indemnified against all Claims arising from a breach by the Contractor of any Environmental Law which breach is in relation to the Premises. This clause shall not merge on expiration or other determination of this Deed in respect of any act, deed, matter or thing happening before such expiration or determination.

DISPUTE RESOLUTION

59 PROCEDURE - DISPUTE RESOLUTION

- (a) In the event that the Council and the Contractor are in dispute regarding any matter relating to or arising under this Deed or in respect of any approvals or consents to be granted by the Council (except those approvals or consents where the Council has an obligation to act reasonably) to the Contractor hereunder, then either the Council or the Contractor may give notice and particulars of such dispute to the other Party.
- (b) Where a notice of dispute is served pursuant to this clause the Parties agree to enter into informal negotiations to try and resolve the dispute in good faith and in an amicable manner.
- (c) If the dispute is not resolved informally within 21 days of service of written notice, the Parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the dispute. The Parties agree to provide all information and assistance reasonably requested by such third party, including access to any accounting or other business records relating to or arising out of the Deed.
- (d) A third party appointed in accordance with this clause may decide in which proportions any fees will be borne by the respective Parties. In the absence of any such decision by the third party fees shall be borne equally by the Parties.
- (e) Neither Party shall be entitled to commence or maintain any proceedings in any court or tribunal until negotiations or mediations have taken place

pursuant to this clause except where either Party seeks urgent interlocutory relief.

- (f) Either Party may at any time bring negotiations or mediation to an end by serving upon the other Party written notice stating that the dispute has failed to be resolved. Upon service of such notice both Parties shall be entitled to pursue any legal remedies available to them in relation to the dispute. This sub-clause does not in any way limit a mediator's power to apportion fees under sub-clause 59(d).
- (g) Notwithstanding the existence of a dispute being dealt with under this clause the Parties must, unless acting in accordance with an express provision of this Deed, continue to perform their obligations under this Deed.

60 NOTICES

60.1 Service of Notice on Contractor

Any notice served by the Council on the Contractor and the Guarantors must be in writing and will be sufficiently served if:

- (a) served personally or left addressed to the Contractor at the address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Contractor notifies in writing to the Council; or
- (b) ~~sent by email to the Contractor's email address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Contractor notifies in writing to the Council;~~
- (bB) served personally or left addressed to the Guarantors at the address stated in column 2 of Item 18 of Schedule 1 or such other address at the Guarantors notifies in writing to the Council;
- (c) sent by facsimile to the Contractor's facsimile number stated in Column 2 of Item 10 of Schedule 1 or such other number as the Contractor notifies in writing to the Council; or
- (d) forwarded by prepaid security mail addressed to the Contractor at the address stated in Column 2 of Item 10 of Schedule .

~~and every such notice must also be served on the Contractor's solicitors, as they may be nominated from time to time, or such other address or facsimile number as the Contractor's solicitors notify in writing to the Council, by any methods identified in clauses 60.1 (a), (b) and (c).~~

60.2 Service of Notice on Council

Any notice served by the Contractor on the Council must be in writing and will be sufficiently served if:

- (a) served personally or left addressed to the Council at the address stated in Column 2 of Item 11 of Schedule 1 or such other address as the Council notifies in writing to the Contractor; or

- (b) ~~sent by email to the Council's email address stated in Column 2 of Item 11 of Schedule 1 or such other address as the Council notifies in writing to the Contractor;~~
- (c) sent by facsimile to the Council's facsimile number stated in Column 2 of Item 11 of Schedule 1 or such other number as the Council notifies in writing to the Contractor; or
- (d) forwarded by prepaid security mail addressed to the Council at the address stated in Column 2 of Item 11 of Schedule 1.

~~and every such notice must also be served on the Council's solicitors, as they may be nominated from time to time, or such other address or facsimile number as the Council's solicitors notify in writing to the Contractor, by any methods identified in clauses 60.1 (a), (b) and (c).~~

60.3 Notices

- (a) Any notice served by the Council or the Contractor under this Deed will be effective if signed by a director or secretary or the solicitors for the Party giving the notice or any other person or persons nominated in writing from time to time respectively by the Council or by the Contractor to the other.
- (b) Any notice sent by prepaid security mail will be deemed to be served at the expiration of 2 Business Days after the date of posting.
- (c) Any notice sent by facsimile machine will be deemed to be served on the first Business Day after the date of transmission (provided that the sending Party receives a facsimile machine verification report indicating that the notice has been transmitted).

MISCELLANEOUS

61 NO MORATORIUM

Any present or future legislation which operates to vary obligations between the Contractor and the Council, except to the extent that such legislation is expressly accepted to apply to this Deed or that its exclusion is prohibited, is excluded from this Lease.

62 NO WAIVER

No waiver by a Party of any breach of any covenant obligation or provision in this Deed either express or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Deed contained or implied. None of the provisions of this Deed shall be taken either at law or in equity to have been varied waived discharged or released by a Party unless by express consent in writing.

63 NO MERGER

Nothing in this Deed merges, postpones, extinguishes, lessens or otherwise prejudicially affects the rights and remedies of the Parties under this Deed or under any other agreement.

64 COUNTERPARTS

A Party may execute this Deed by signing any counterpart.

All counterparts constitute one document when taken together.

65 CONTACT PERSON

Deleted.

66 APPLICABLE LAW

This Deed shall be construed and interpreted in accordance with the law of New South Wales.

67 NO HOLDING OUT

The Contractor will not in connection with the Premises or otherwise directly or indirectly hold out or not permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises or the business conducted or operated thereon or any parts or parts thereof are or is being carried on or managed or supervised by the Council nor shall the Contractor act as or represent itself to be the servant or agent of the Council.

68 WHOLE AGREEMENT

- (a) The provisions contained in this Deed expressly or by statutory implication cover and comprise the whole of the agreement between the Parties.
- (b) No further or other provisions whether in respect of the Premises or otherwise will be deemed to be implied in this Deed or to arise between the Parties hereto by way of collateral or other agreement by reason or any promise representation warranty or undertaking given or made by any Party hereto to another on or prior to the execution of this Deed.
- (c) The existence of any such implication or collateral or other agreement is hereby negated.

69 SECTION 174 OF THE CL ACT TO APPLY

The Contractor acknowledges that the provisions of Section 174 of the CL Act apply.

70 ADDITIONAL CLAUSES

The Additional Clauses set out in Column 2 of Item 16 of Schedule 1 apply and form part of this Deed.

Schedules 1 to 8 inclusive attached.

EXECUTED AS A DEED

The COMMON SEAL OF BYRON SHIRE COUNCIL was hereunto affixed pursuant to resolution No. of Council at a meeting held on 2013 in the presence of:

Signature Mayor

Signature witness

Signature General Manager

Signature witness

The COMMON SEAL of FISHHEADS @ BYRON PTY LTD was hereunto Affixed by authority of its Directors:

)
)
)
)

.....
Director

.....
Secretary

Signed sealed and delivered by Raffaele Mamone in the presence of:

)
)
)
)

.....
Witness

.....
Raffaele Mamone

Signed sealed and delivered by Mark Sims in the presence of:

)
)
)
)

.....
Witness

.....
Mark Sims

SCHEDULE 1

Item	Clause	Column 1	Column 2
1	7	Commencing Date	1 July 2013
2	7	Term	Twenty-four (24) calendar months
3	21	Terminating Date	30 June 2015
4	8	Permitted Use	Swimming pool, kiosk/café and retail shop.
5	9	INITIAL RENT	\$206,389.00 excluding GST
5A	9	MANAGEMENT FEE	\$184,634.34 excluding GST
6	9	RENT REBATE	Nil.
7	9	DUE DATE	Quarterly instalments on the first day of the following months September, December, March, and June, commencing September 2013
8	9	LUMP SUM REVIEW DATE	1 July 2013
9	18	ADDRESS FOR PAYMENT OF RENT [OPTIONAL] Electronic Funds Transfer details for payment of rent	Byron Shire Council 70-90 Station Street PO Box 219 Mullumbimby NSW 2484 Name of financial institution: [INSERT name] BSB: [INSERT BSB number] Acc no: [INSERT account number] Account in name of: [INSERT name]
10	60	Contractor's address for Service of Notices	Unit 4, 7 Moon Street, Ballina 2478 Phone: 02 6685 6011 Facsimile: 02 6685 6011 Email: Not Applicable.

11	60	Council's address for Service of Notices	70-90 Station Street, Mullumbimby 2482 Attention: General Manager Phone: 02 6626 7000 Facsimile: 0266 84 3018 Email:Not Applicable.
12	48	PUBLIC RISK INSURANCE AMOUNT	\$30 Million
13	65	Contract Supervisor	Manager Property, Contracts and Information Systems of Byron Shire Council appointed from time to time. Contact: (02) 6626 7000 Email: council@byron.nsw.gov.au
1 4	65	Contractor's Representative	Ralph Mamone or Mark Sims Contact: (02) 6685 6011 Email: mark@fishheadsbyron.com.au
15	5	Essential Conditions	7, 7A, 7B, 8, 8A, 9, 11, 12 19, 20, 21, 27, 27A, 28, 40, 43, 44, 47, 48, 49, 54, 55, 56, 57, 58, Schedule 3. Clause AA and Clause BB, Schedule 4 and Schedule 7.
16	70	Additional Clauses	AA Security Deposit BB Contractor's Additional Obligations CC Insurance DD Council's Additional Obligations EE Rejection of Services FF Termination by Contractor GG Variation HH Confidentiality of Data and Conflict of Interest
17	7A	Guarantors	Raffaele Mamone (aka Ralph Mamone) and Mark Sims
18	60	Guarantors' Address for Service of Notices	Raffaele Mamone Lot 2 Lawlers Lane, Bangalow; Mark Sims – Unit 2/36 Alcorn Street, Suffolk Park

End of Schedule 1

SCHEDULE 2

Part 1
Particulars of the Reserve

Part Byron Coast Reserve, being Reserve No 82000.

Part 2
Description of the Premises

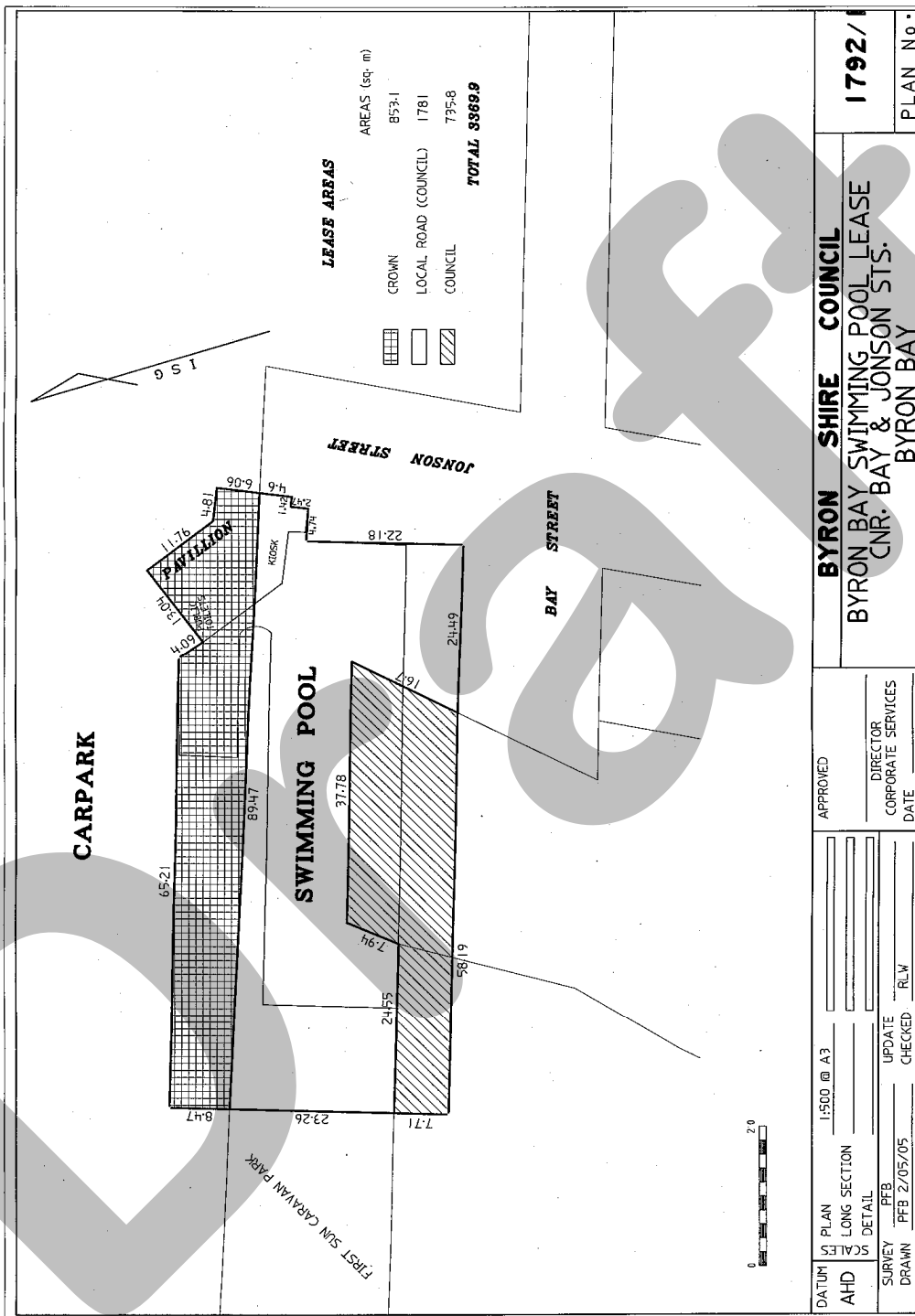
Byron Bay Memorial Swimming Pool Complex.

As shown on the two (2) plans attached to this Deed and as described in Part 3 of this Schedule 2.

Part 3
Description of the Land

Part Council owned Operational Land part Lot 5 DP 827049 and part Lot 4 DP 827049, part Crown Reserve R82000 part Lot 10 DP 1049827, and part Council owned Road Reserve as shown on the two (2) plans attached to this Deed.

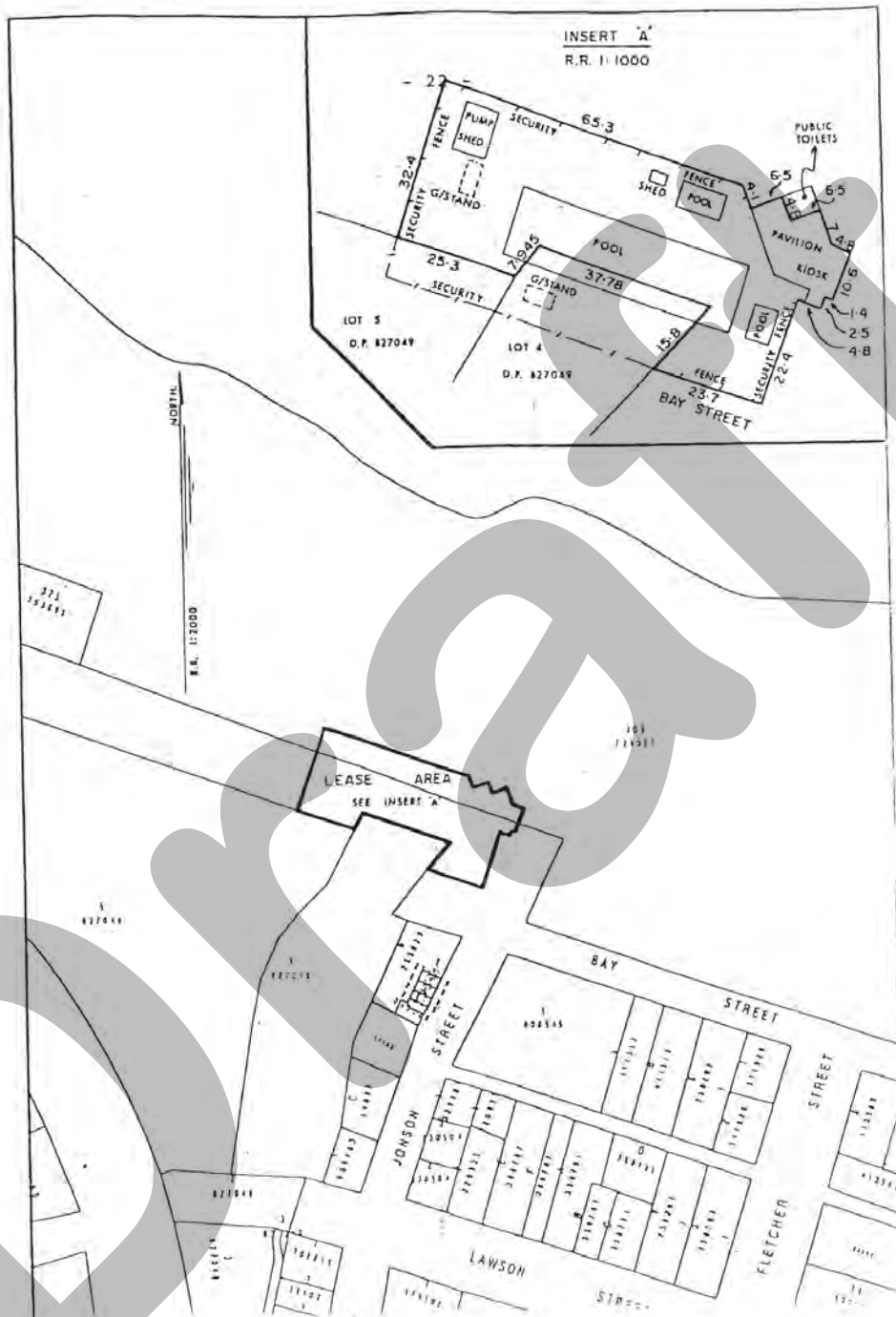
PLAN OF THE DEMISED PREMISES



DATUM	PLAN	SCALE	DATE	APPROVED	BYRON SHIRE COUNCIL BYRON BAY SWIMMING POOL LEASE CNR. BAY & JONSON STS. BYRON BAY	1792/1	PLAN No.
AHD	LONG SECTION	DETAIL	SURVEY	DIRECTOR CORPORATE SERVICES			
			DATE				
			UPDATE				
			CHECKED				
			RLW				

LOCATION PLAN

BYRON BAY POOL / KIOSK LEASE



End of Schedule 2

SCHEDULE 3 – ADDITIONAL CLAUSES**AA. Security Deposit**

- (a) The Contractor has lodged with the Council an unconditional undertaking given by the ANZ Bank, 57 Jonson Street, Byron Bay or such other financial institution or insurance company as approved by Council in the amount of \$5,000.00.

BB. Contractor's Additional Obligations

In addition to obligations provided for in other parts of this Deed the Contractor covenants with the Council as follows:-

- (a) To provide all management, administration, labour, plant, equipment, materials and overheads for carrying out all the activities and providing all the Services and work set out herein to ensure the Services are carried out to the satisfaction of the Contract Supervisor.
- (b) To pay the Lump Sum as set out herein and as varied from time to time in accordance with the Deed.
- (c) Not to hold any auction, bankruptcy or fire sale in the demised premises.
- (d) Not to display signs or advertisements on the outside of the demised premises unless the prior written consent of the Council is obtained.
- (e) Not to allow the consumption of alcohol or drugs on the demised premises, except to permit BYO alcohol consumption in the café/kiosk area only.
- (f) Meet the cost of repairs to buildings, plant, equipment including equipment specified in clause 5(i) of Schedule 4 hereto and other appurtenances used pursuant to the Deed if such damage is caused by the careless or negligent use by the Contractor, its agents, employees or sub-contractors.
- (g) To conduct the business of the Kiosk/Cafe and Retail Shop in a proper and efficient manner and keep part of the Kiosk/Cafe open to the public during all periods that the adjoining pool is open to the public for the purposes of providing change for turnstiles, supervision of admission and passage of season ticket holders and shall further keep such Kiosk/Cafe open for business at all reasonable times as shall be requested by the Council.
- (h) At the Contractor's own expense do all things necessary to comply with any notice relating to disinfecting or cleaning the demised premises or abating any nuisance thereupon which may be served by the Council upon the Contractor or which maybe received by the Contractor or left upon the premises or served upon the Council by or from any other municipal or shire council or authority or by any public health or other public authority at any time during the currency of the term hereby granted within the time specified in such notice or otherwise provide by law.
- (i) At all times throughout the term to pay and be responsible for all, insurance premiums charged upon the demised premises or upon the Contractor on account thereof AND the Contractor hereby indemnify and save harmless the

Council and its Contractor from and against all and any actions, claims, demands or proceedings for or in respect of any such items or any loss that may be occasioned by Council in respect of any or either of the same.

- (j) At all times throughout the term to pay all electricity charged upon the demised premises when they fall due. Nothing in this clause detracts from the Contractor's rights to seek a refund of such charges as may be allowed in clause 16.2A(c);
- (k) Be responsible for;
 - i. All vehicle and transport costs, office costs, secretarial and clerical work, salary, salary on-costs, overheads, stationery, printing, photocopying, postage and telephone costs (except telephone line rental charges referred to in Clause 16.2A(c));
 - ii. Advising the Contract Supervisor immediately of any matters that may require attention, be unsafe or place the Council in a position that may lead to potential liability of the Council.
 - iii. Acting at all times in a professional and responsible manner and not exposing the Council to risk of legal action.
 - iv. Responding to requests from the Contract Supervisor.
 - v. Deliver the Services in accordance with this Deed.
- (l) To adhere to its Mission Statement and Aims and Objectives as set out in Schedule 5 to this Deed.
- (m) As much as possible, to engage local labour, use local produce and input in meeting obligations and providing the Services under this Deed.
- (n) Produce timetables and event diaries for circulation amongst the Contractor's staff and pool users.
- (o) To comply with the requirements of the "Plan of Management Byron Bay War Memorial Swimming Pool" as regards the operation of the swimming pool as set out in Schedule 6 (as amended from time to time by the Council and notified by the Council to the Contractor in writing) provided that if there is any inconsistency between any requirement set out in Schedule 6 and any other requirement of this Deed, the other requirement shall prevail;
- (p) To comply with the "Byron Bay War Memorial Swimming Pool – Procedures and Operating Manual" prepared by the Contractor and dated October 2000 and to deliver all Services set out therein.
- (q) To provide the Services set out in Schedule 4 and Schedule 7 to this Deed.
- (r) To permit the Council, its employees and agents entry to the demised Premises at all reasonable times without notice.
- (s) To employ sufficient employees with appropriate qualifications/licences, skills and training to effectively and efficiently carry out the Services. The

Contractor will be responsible for maintaining the required levels of expertise throughout the term of this Deed.

- (t) To ensure that all employees, sub-contractors and Contractor's agents:
 - (i) Conduct themselves towards Councillors of the Council, the Council employees and all members of the public in a civil and inoffensive manner; and
 - (ii) Carry out their duties at all times with as little inconvenience and disturbance to others as possible and without causing any nuisance.
- (u) To ensure that its employees, sub-contractors and the Contractor's agent:
 - (i) Are appropriately attired having regard to the nature of their duties;
 - (ii) Comply with any directions of the Contract Supervisor in respect of their personal appearance or attire concerned with matters of health or safety.
- (v) To ensure that no employee or Contractor's Agent, consume any alcoholic beverage, is intoxicated or is under the influence of any drug which could impede his/her ability to safely or efficiently deliver the Services, while engaged in the delivery of the Services or any related activity.
- (w) To closely monitor operational expenses at the swimming complex as part of a good management practice.

CC. Insurance

In addition to obligations provided for elsewhere in this Deed:

- (a) The Contractor shall do all things necessary and pay all charges and premiums required to comply with the requirements of the State Government WorkCover regarding Workers Compensation insurance. It will also ensure that its sub-contractors comply with this clause.
- (b) To effect and keep in force at the Contractor's own expense at all times during the currency of this agreement a Workers Compensation Insurance Policy in respect of all persons employed upon the demised premises (other than workman or servants of Council) with an Insurance Company approved by the Council and will whenever called upon by the Council so to do give to the Council a renewal certificate or other sufficient evidence to establish that the said Workers Compensation Insurance Policy is current.
- (c) In the event the Contractor fail to fulfil their obligations in relation to any of the Insurance policies, referred to anywhere in this Deed, then the Contractor consents that the Council shall take out all necessary policies, pay the premiums and debit those amounts from any monies due to the Contractor or issue a Notice of Default.

DD. Council's Additional Obligations

In addition to obligations provided for in elsewhere in this Deed:

- (a) The Council shall:
 - i) Administer this Deed based on the outcomes achieved by the Contractor;

- ii) Supply the equipment set out in paragraph 5(i) of Schedule 4 hereto.
- (b) The Council unless provided otherwise in this Deed shall not be unreasonable in determining the manner of the delivery of the Services by the Contractor.
- (c) The Council may enter and carry out requirements of public authorities and repair under the Deed and keep the demised premises clean and dispose of waste properly.
- (d) Any services provided by the Contractor in addition to those contemplated in Schedules 4 and 7 will be paid for by Council based on rates as submitted by the Contractor and agreed by the Contract Supervisor. These rates are to be agreed prior to any additional services being undertaken.
- (e) Where the Contractor can identify and maintain reduced operating costs (such as reduce usage of sodium hypochlorite while maintaining water quality), Council will return 50% of the fees collected on behalf of the Council over a figure proposed by the Contractor and agreed by Council.
- (f) As part of the annual review of the contract for the season commencing September 2013 the Council, in its absolute discretion, will entertain a proposal to pay to the Contractor an amount being 50% of the fees collected on behalf of the Council over a figure agreed between the Contractor and agreed by the Council.
- (g) The Council shall maintain and clean the toilets which are open to the non-paying Public.

EE. Rejection of Services

- (a) The Contract Supervisor may determine if Services supplied by the Contractor comply with the requirements of this Deed.
- (b) If the Contract Supervisor determines that any Services do not comply with this Deed under Clause EE(a), the Contract Supervisor may accept or reject the Services.
- (c) The Contractor shall immediately remedy any faults, which have been rejected by the Contract Supervisor under Clause EE(b), if directed to do so by the Contract Supervisor.
- (d) Any acceptance of services by the Contract Supervisor under Clause EE(b), shall only relieve the Contractor from the obligation to remedy faults in the Services concerned and shall not relieve the Contractor from any other obligations under this Contract or negate any express or implied warranty or condition in respect of the Services.
- (e) If any Services, which do not comply with Schedules 4 and 7 are accepted by the Contract Supervisor under Clause EE(b), the Contract Supervisor shall determine if the quality of the Service is superior, inferior or the same as that specified.
- (f) If the level of the Service is inferior to that specified, and amount determined by the Contract Supervisor as reflecting the difference in the value between the Service supplied and the Service specified shall be deducted from any

payments to the Contractor or shall be paid on demand by the Contractor to the Council if payment has already been made for the Services concerned.

- (g) If the Service is the same or is superior, no additional amount shall be payable by the Council to the Contractor unless otherwise agreed by the Council.
- (h) The Contractor shall pay to the Council on demand the amount of any loss or damage caused to the Council or for which the Council may become liable due to any Service not being in accordance with any of the requirements of Schedules 4 and 7. The Contract Supervisor shall determine the amount of any loss, damage or liability incurred by the Council for the purposes of this clause.

FF. Termination by Contractor

- (a) If the Council has failed to pay to the Contractor any amount due under this Deed, other than an amount being the subject of a dispute or difference under this Deed or any legal proceedings commenced in respect of this Deed, within fourteen (14) days of any period for payment set out in this Deed, the Contractor may give notice in writing to the Council stating that notice of termination under this Deed may be served if payment is not made within a further fourteen (14) days. If the Council fails to make payment within fourteen (14) days of the receipt of such notice, then the Contractor may by notice to the Council either suspend delivery of the Service or terminate this Contract. Any suspension of the Services by the Contractor under this clause shall not prevent the Contractor terminating this Deed during the period that the Services are suspended.
- (b) In the event of termination of this Deed by the Council or the Contractor, the Council shall be liable to make payments to the Contractor only in respect of any portion of the Services which have been properly executed and not paid for at the date of termination.
- (c) The Contract Supervisor shall determine the amount payable by the Council pursuant to this clause. The Contract Supervisor shall give notice of his or her determination under this clause to the Contractor.

GG. Variation

- (a) The Contract Supervisor may direct the Contractor to alter the extent of the Services.
- (b) The value, if any, of any material variation will be added or subtracted from any payment due to the Contractor under this Deed and the value of any variation will be determined by reference to similar rates for similar services and by agreement between the parties prior to the commencement of any agreed variations.
- (c) In the event that the parties are unable to agree upon the value or scope of any variation, the matter will be determined in accordance with the Dispute Resolution procedure set out in this Deed.

HH. Confidentiality of Data and Conflict of Interest

- (a) In the process of providing the Services, the Contractor may have access to sensitive Council information and to business and private information concerning residents and/or staff. All data accessed by the Contractor shall at all times be kept confidential and not disclosed to any party without the prior approval of this Council. The information must not be used for any personal gain by the Contractor or the Contractor's business.
- (b) If, at any time the Contractor, its employees or representatives of the Contractor have any potential, or actual, conflict of interest, personal or business, in any part of the service, then the interest shall be declared in writing to the Contract Supervisor for direction and the Contract Supervisor's direction shall be binding.

End of Schedule 3

SCHEDULE 4 SERVICES**1 SCOPE OF SERVICES**

- i. This Deed is for the management and operation of the Byron Bay War Memorial Swimming Pool and facilities (hereafter called “the complex”) during the Council approved swimming pool season (hereafter called “the season”) with a provision to organise off–season and breakdown maintenance as directed by the Contract Supervisor.
- ii. The land occupied by the general pool area and the War Memorial Pavilion is part Crown Reserve, part Council owned freehold land, and part Council owned road reserve, the contract will be for the management of all areas included in the pool complex.
- iii. The Contractor will be responsible for the supervision and maintenance of the complex, which includes, but is not limited to the following:
 - a. Operate and manage the complex and provide supervision of all pool activities to ensure the safety and well being of patrons and in accordance with relevant Federal, State and Local Laws;
 - b. Operation and minor maintenance of all plant, equipment, fixtures and assets;
 - c. Operation of all water purification and associated plant and equipment;
 - d. The purchase and use of all chemicals necessary to maintain the water quality to the required standard;
 - e. Keeping the pools clean and free of all falling debris, including leaves, twigs, dust and any other foreign matter;
 - f. Keeping the pools free from any algae growths and keeping the pool tiles free from any scum and grime;
 - g. Maintain change rooms, showers and toilets in a clean and disinfected manner, free from rubbish, dirt and build up of debris; and
 - h. Maintenance of lawns, edges, grounds and pool surrounds (including trees) in a neat and tidy condition, including removal and disposal of materials and provision of security monitoring services.
- iv) The Contractor will have sole and exclusive rights during the season to conduct at the complex, swimming classes and the coaching of swimmers for reward with the following exceptions:
 - a The Byron Bay Amateur Swimming Club;
 - b The New South Wales Department of Education and Training; and
 - c The New South Wales Department of Sport and Recreation.

- v) If the Contractor wishes to advertise to make potential users of the pool aware of specific programs that are running, then the Contractor will be responsible for the costs.
- vi) During the first week immediately following the end of the season, the Contractor will be required to use the most cost effective and appropriate method to prepare the pools and equipment for the winter period. This will include closing down the filtration and water purification systems, properly store unused chemicals and materials and generally prepare the equipment for re-activation in the following season.
- vii) During the winter period the pool surrounds are to be maintained in a neat and tidy condition, this will include the mowing of grass, edging of concrete and removal of litter from the surrounds. As the pool is highly visible to the general public, the Council requires that the water is retained in the pool and the quality is such that the water clarity is maintained and algal growth is minimal.
- viii) The Contractor will be responsible for all works required to prepare the pool for re-activation prior to the commencement of the season each year.
- ix) The Contractor will be responsible for undertaking all maintenance at the complex:
 - a. Where maintenance is required urgently, the Contractor will organise the maintenance and inform the Council of the circumstance.
 - b. Where maintenance is identified as of a non-urgent nature, the Contractor will provide details as part of the normal monthly report to the Contract Supervisor and shall obtain approval prior to proceeding with the work.
 - c. Subject to e. below, where the maintenance is of a minor nature, up to \$250.00 in value, the Contractor must bear the cost of the maintenance. All other maintenance costs must be billed to the Council on a monthly basis.
 - d. The Contractor shall prepare a list of maintenance required in the winter period and submit the list to the Contract Supervisor and shall organise and supervise the execution of the maintenance. The cost of the maintenance shall be borne by the Council within budget provisions as determined by Council.
 - e. Council will only reimburse maintenance expenditure on items owned or controlled by Council.
- x. The Council will be responsible for the payment of telephone rental in respect to the telephone installed at the complex. The Contractor will be responsible for the payment of all other charges relating to the telephone service.
- xi. Council will be responsible for the payments of water, sewer and electricity charges, however the Council must approve any emptying of the swimming pools.

- xii. The Contractor will invoice the Council each month in arrears for the purchase of chemicals and maintenance (maintenance over \$250.00 in value and approved by the Council), undertaken during the preceding month. Copies of invoices are to be provided for all amounts claimed.

2 WATER QUALITY

- i. The Contractor will be required to ensure that the water quality in all the swimming pools meets the requirements of the New South Wales Department of Health and Byron Shire Council.
- ii. The Contractor will be required to undertake basic water testing at two (2) separate locations from the main pool and one location from each of the other two (2) pools at least three (3) times each day to verify chlorine and pH levels within the pools. A log of the results is to be kept and reported in the monthly report to the Council.
- iii. Once a month during the season the water quality will be tested to ensure compliance with Bacteriological Standards. The Contractor will be required to arrange for an independent body to take the water sample and undertake testing at a registered laboratory. Results will be reported in the monthly report to the Council.
- iv. The Contractor will be responsible for all costs associated in the maintenance of water quality, including water quality testing chemicals.

3 FEES AND CHARGES

- i. The Contractor will be responsible for the collection of all entrance fees and charges, and will be responsible for the issue of season tickets and all documentation associated with this task.
- ii. Gate takings and incomes derived from admissions, inclusive of GST, are to be collected and banked into a bank account nominated by the Council, at a minimum on a weekly basis. The Council will retain these monies, except for GST, which will be forwarded by the Council to the Australian Taxation Office in accordance with law.
- iii. The Contractor is to provide details regarding the accounting for fees collected and the Council will be entitled to audit the Contractor accounts to verify the accuracy of the value of fees collected in the performance of this Deed.
- iv. The fees and charges for entry into the complex are set by the Council annually and for the 2012/2013 season the fees are as follows:

Swimming Pools – Byron Bay and Mullumbimby	2012/13	GST
Per admission		
Spectator	\$1.80	Y
Infant (from 12 months of age)	\$2.20	Y
Infant (under 12 months)	No charge	
Adult	\$3.10	Y
Child	\$2.70	Y
Handicapped child – non swimmer	No charge	
Pensioner (with pension card)	\$2.70	Y
School children at school sessions (use by school children of season tickets in these circumstances is recognised)	\$1.60	Y
Season tickets		
Adult	\$115.00	Y
Child	\$80.00	Y
Pensioner (with pension card)	\$73.00	Y
Family season tickets (Sept – April)	\$200.00	Y
Pensioner family pass (with pension card)	\$150.00	Y
Discount books		
25 ticket book – Adult	\$65.00	Y
15 ticket book – Adult	\$40.00	Y
25 ticket book – Child	\$55.00	Y
15 ticket book – Child	\$35.00	Y
Pensioner (with pension card) – 25 tickets	\$49.00	Y
Pensioner (with pension card) – 15 tickets	\$34.00	Y
Hire charges		
Per hour (providing own lifeguard)	\$65.00	Y
Per hour (lifeguard to be provided by pool manager)	POA	Y
Pool hire – (outside normal operating hours & providing own lifeguard)	\$80.00	Y
Per hour (outside normal pool operating hours & lifeguard to be provided by pool managers)	POA	Y
Lane hire – (p/hour + normal admission fee – during normal operating hours only)	\$18.00	Y

The Council will determine the fees and charges for entry into the complex on an annual basis in consultation with the Contractor and in accordance with the provisions of the Local Government Act.

- iv) The Contractor has sole and exclusive rights during the season to all monies/revenue generated from pool and lane hire charges.

4 OPERATING TIMES

- i. The complex will be open to the public, at a minimum from the first Monday in September to the first Sunday in May on an annual basis.
- ii. Opening hours will be at a minimum from 6.00am to 5.00pm (or 6.00pm during daylight savings) weekdays and from 8:00am to 5:00pm every Saturday, Sunday and Public Holiday.
- iii. In addition to the above the Contractor will be required to work in with the following groups:
 - The Byron Bay RSL Swimming Club conducts training sessions three mornings per week between 6.00am and 7.00am (2 – 3 lanes) and four afternoons per week between 4.00pm and 6.00pm (1 – 2 lanes). Time trails are conducted each Friday evening between 6.00pm and 8.30pm.
 - The Byron Bay Water Polo Club conducts training sessions on Sunday afternoons between 5.00pm and 6.00pm with junior training also conducted on Wednesday between 7.00pm and 8.00pm. The pool is used for competitions on a Monday night between 6.30pm and 9.00pm.
 - All schools in Byron Bay use the pool for curriculum activities.
- iv. The complex may be closed for various special functions agreed upon by the Council and the Contractor.

5 FACILITIES AND EQUIPMENT

- i. The complex consists of the following major facilities and equipment:
 - a. 50 metre x 6 lane outdoor pool (unheated);
 - b. Outdoor learners pool (unheated);
 - c. Outdoor wading pool (unheated);
 - d. Administration building, incorporating entrance, Kiosk/Cafe, manager's lounge and store room;
 - e. Male and female change rooms and toilets;
 - f. Pump/Filtration/Chemical storage building;
 - g. Filtration Plant
 - h. Sodium Hypochlorite dosing plant;
 - i. Minor grandstands.
- ii. The Contractor will be required to provide minor equipment for maintenance such as lawn mowers, automatic pool cleaners, etc.

6 KIOSK/CAFE

6.1 General

- i. War Memorial Pavilion incorporates the main entrance, Kiosk/Cafe, manager's office, change rooms and fast food outlets to the general public outside the pool area.
- ii. The Contractor will be responsible for the operation of the Kiosk/Cafe, including the purchase of all supplies and will retain all profits associated with the operation of the Kiosk/Cafe.
- iii. The Contractor will ensure that any goods, wares or merchandise sold from the Kiosk/Cafe or from within any other part of the complex are approved in writing from the Contract Supervisor. The following items are currently approved for sale:
 - a. Swimming and coaching equipment and aids;
 - b. Souvenirs and novelty items; and
 - c. Foodstuffs including hot and cold foods, snacks, softdrinks and confectionery normally sold in Kiosk/Cafe. It should be noted, any items contained in glass are not allowed within the swimming pool areas of the complex and the sale of all foodstuffs prepared on the premises must comply with all relevant legislation.
- iv. The service of BYO alcohol will be allowed in the Kiosk/Café. Alcohol will not be allowed within the enclosed pool area at any time.

6.2 External Food Outlets

- i. As part of the demised premises there are two (2) food outlets and public toilets, which are open to the general public throughout the entire year.
- ii. The Contractor shall:
 - a. Be responsible for all equipment other than the equipment detailed in Clause 5.i. of this Schedule
 - b. The food outlets shall be entitled to open until midnight or other times by agreement with Council, separate and apart from the complex and pool Kiosk/Cafe.
- iii. The public toilets are currently maintained by the Council staff and do not form part of this Deed, although alternative offers to clean and maintain the toilets will be considered.

6.3 Capital Improvements

Nil. – refer Clause 27A.

End of Schedule 4

SCHEDULE 5**MISSION STATEMENT**

“To professionally manage the Byron Bay War Memorial Swimming Pool, thereby providing a pleasant, healthy and safe facility/environment in keeping with the expectations of the Byron Shire Council and general public.”

AIMS AND OBJECTIVES**Byron Bay War Memorial Swimming Pool**

1. To increase the level of service, including professional management and supervision, and facilities to establish the pool as a safe, clean and modern alternative to the beach and other similar competitors.
2. To increase local commitment and sponsorship with the goal of increasing opportunity for the region's youth, elderly and disabled.
3. To increase the range of recreational services the pool provides to support its market position as outlined in 1.

Pavilion Kiosk/Cafe

1. To establish a profitable retail food outlet supporting the identity of the Pool.
2. To be a market leader in customer service and value for money products.
3. To be a strong advocate of progressive marketing and best proactive strategy.
4. To maintain a clean and functional place of work that conforms to and exceeds and future legislation.
5. To maintain a strong commitment to environmentally friendly practice, in accordance to the values and ideals of the Byron Shire area.

End of Schedule 5

SCHEDULE 6**APPLICABLE REQUIREMENTS OF THE PLAN OF MANAGEMENT
BYRON BAY WAR MEMORIAL SWIMMING POOL AS REGARDS THE
OPERATION OF THE SWIMMING POOL****1. Contractor's Responsibility**

- To operate and supervise the swimming pool complex in accordance with *The Guidelines for Safe Pool Operations* prepared by the Royal Life Saving Society Australia.
- To meet water quality and testing standards as detailed in the *Guidelines for Safe Pool Operation and Public Swimming Pool and Spa Pool Guidelines* produced by The Department of Health.
- To ensure the complex operates in accordance with all occupational health and safety guidelines as detailed in the *Guidelines for Safe Pool Operation* and the *Public Swimming Pool and Spa Pool Guidelines*, and other Local, State or Commonwealth Government workplace guidelines and regulations.

The contractor will have the option to close the swimming pool to the public for the exclusive use of schools, subject to the pool being closed for no more than two hours on any one day and the public being given at least seven days notice of any closure.

- To pay the costs of all utilities including power, water and telephone, subject to Clause 16.2A, and be responsible for maintaining the grounds, buildings, plant and equipment in the condition on which they are taken over at the commencement of the contract.
- To employ all staff engaged at the swimming pool and in the pavilion kiosk and pay all costs associated with employment, such as workers compensation, superannuation, uniforms and PAYE tax deductions.

2. Contractors Rights

- Exclusive rights to conduct all aquatic programs at the Byron Bay Swimming Centre including learn to swim lessons and swim coaching.

3. User Group Rights

A number of clubs and groups use the Byron Bay Swimming Pool on a regular basis.

- Byron Bay Swimming Club will have the right to conduct one club night per week on payment of a pool hire fee (which may be based on the number of people attending and paying the casual entry prices).
- Byron Bay Swimming Club will also have the right to conduct training sessions in the morning during public hours as agreed with the contractor, and in the evening will have the right to one lane for one hour on four nights per week during normal public swimming sessions.

- Adult swim squads (or adult swim club) will have the right to use at least three lanes on three nights per week after 6pm on days negotiated with the contractor.
- Byron Bay Water Polo Club will have the right to conduct club training sessions on two days per week after normal public swimming hours on payment of a swimming pool hire fee which may be based on costs of individual entry to the pool by its members.
- Schools will have the right to use the Byron Bay Swimming Pool for swimming lessons during term time. Hours and days of use will be negotiated on a season by season basis, with the contractor having the right to schedule school use.

End of Schedule 6

SCHEDULE 7**A. Quality Systems**

- a. All work and services shall be carried out to industry best practice standards and services shall also be to the approval of the Contract Supervisor.
- b. The Contractor has submitted a Quality Plan prior to the commencement of this Deed called "Byron Bay War Memorial Swimming Pool – Procedures and Operating Manual" and such must be complied with by the Contractor at all times.

B. Occupational Health & Safety

- a. The Contractor shall have in place a safety program and systems which demonstrate compliance with the employer duties section of the Occupational Health and Safety Act (NSW) 2000 and the Occupational Health and Safety Regulation (NSW) 2001.
- b. The Contractor shall at all times take all necessary precautions for the safety of his/her employees appropriate to the nature of the services and the conditions under which the Deed is to be performed and comply with all statutory requirements.
- c. The Contractor shall adopt and pursue a safety plan for the duration of the deed which shall contain the following minimum standards:
 - i. Workshop:
 - Such measures as are practicable to ensure that workplace and the means to and egress from the workplace are safe and without risks to health;
 - An outline of workplace hazard identification and control programmes; and
 - A listing of documentation, which would be available on-site to Council's auditors.
 - ii. Safety Training/Induction:
 - Evidence of safety induction programmes and procedures, that is "Safety Handbooks";
 - An outline of safety training which has been or will be provide to managers, supervisors and employees who will be employed on the sites;
 - The maintenance of a current site inductions records/register which will be available for audit by the Contract Supervisor; and
 - Procedures for ensuring sub-contractors engaged to undertake work on the sites are adequately trained and/or experienced.
 - iii. Management of Sub-contractors:
 - Outline of the controls undertaken by the Contractor in managing sub-contractors, including training induction, close supervision, safe plant, use, assessment of qualifications and

relevant licences.

- iv. Responsibility and Accountability:
 - Copy of site Statement of Safety Policy for display at prominent positions on the sites, for example, site offices, notice boards;
 - An outline of site safety organisation and structure, including the names and/or positions of those with specific safety responsibilities (for example, in the form of a flow chart); and
 - Documentary evidence confirming that the Contractor's management and supervisory staff are properly trained in OH&S matters, for example, training records, course outlines.
- v. Site Safety:
 - Workplace safety procedures proposed for the site, such as checklist formats, frequency of inspections, action taken as a result of inspection findings;
 - Inspection checklists and/or reports to be available for audit; and
 - Outline any hazard reporting procedures or instructions; for example dangerous goods, electric equipment, etc.
- vi. Post Accident Procedures:
 - A copy of accident reporting and investigation system and procedures to be used on "site"; and
 - Summary of "on-site" accidents and accident reports to be maintained and available for audit, this to include sub-contractors and third party accidents.
- vii. Emergency Procedures:
 - The provision of emergency equipment, first aid supplies, fire extinguishers in accordance with the relevant Code of Practice;
 - The listing of current qualified First Aiders with copy certificates available for audit purposes by the Council;
 - An outline of the site emergency plan and the procedure for the induction of the employees into the site emergency plan/structure; and
 - Details of any other emergency procedure to be adopted on-site.
- viii. Dangerous Goods/Chemicals:
 - A register of chemicals or dangerous goods to be maintained on-site and made available for audit by the Contract Supervisor;
 - Material Safety Data sheets (MSDS) shall be available for each chemical product used or stored on-site and shall be available for audit by the Contract Supervisor; and
 - Ensure appropriate warning signs are displayed.
- ix. Specific Safety Reference:
 - First Aid;
 - Electrical Equipment;
 - Plant Room;
 - Workshops/storage Areas; and

- Codes of Practice.
- x. Protective Clothing and Equipment:
- Ensure all workers are issued and wear/use all necessary clothing and equipment.

C. Industrial

- a. Rates of Pay and Conditions of Employment:
- i. The Contractor shall comply with all relevant industrial legislation including industrial awards to which the Contractor are bound, any certified agreements and/or enterprise flexibility agreements to which the Contractor are parties.
- b. Work Bans and Limitations:
- i. The Contractor shall keep the Contract Supervisor informed concerning any industrial matter, which could affect the provision of services under the Deed.
 - ii. The Contractor shall inform the Contract Supervisor immediately if bans are applied to the work under the Deed or if work under the Deed ceases due to industrial action and shall also inform the Contract Supervisor of measures being taken to resolve such action.
 - iii. The Contractor shall make no claim against the Council for any costs, loss, expense or damage arising from any industrial action, resulting in a strike, work stoppage, work ban or work limitations of any kind.
 - iv. The Contract Supervisor, at his/her absolute discretion, may grant extensions of time for completion of anything required to be done by the Contractor under this Deed for lost time arising from industrial action outside the control of the Contractor.

D. Work Adjacent to Demised Premises

The Council reserves the right to perform work or award contracts for work on or adjacent to the demised premises. The Contractor must co-operate with Council and all successful tenderers and other work forces so as to avoid delay or hindrance to their work and to ensure that all work is performed expeditiously.

E. Contractor's Performance

During the course of the contract, the Contractor's performance will be monitored and the Council may prepare an annual report. These report(s) will be forwarded to the Contractor and substantiated reports of unsatisfactory performance may result in future opportunities for the Council work being curtailed.

F. Human Resources

- a. Skills:
All personnel employed by the Contractor to work as a lifeguard at the complex shall have:
- i. excellent verbal and written communication skills, in order to be able to liaise with the different users of the pool and supervise the pool with a minimum of fuss in a quiet and efficient manner; and
 - ii. the ability to deal with cash from gate receipts and Kiosk/Cafe takings.
- b. Qualifications:
- i. any person employed by the Contractor to work as a lifeguard at the complex must have a current Royal Lifesaving Society Australia (“RLSSA”) Pool Lifeguard Award and a current Resuscitation Award;
 - ii. any lifeguard who is assisting must be under the direction of a fully qualified lifeguard as above at all times and must have a current RLSSA Australian Bronze Medallion or Surf Life Saving Australia Bronze Medallion;
 - iii. the Contractor must ensure that the pool plant and equipment is maintained by a qualified swimming pool plant operator;
 - iv. any person employed to work as a swimming teach must have as a minimum a current AUSTSWIM Teach of Swimming and Water Safety Certificate, in accordance with the RLSSA guideline for “Standard of Swimming Teacher Education”;
 - v. all staff responsible for the issue of First Aid must hold an appropriate and recognised First Aid Certificate; and
 - vi. evidence of qualifications held by relevant staff of the Contractor must be produced to Council prior to commencement of duties at the complex.
- c. Training:
All persons employed by the Contractor to work as lifeguards at the complex, shall be instructed in the proper use of:
- i. first aid equipment;
 - ii. protective equipment and clothing for the use with water treatment chemicals; and
 - iii. oxygen equipment, the minimum qualifications for operators of oxygen equipment is as follows:
 - RLSSA Oxygen Resuscitation Award; or
 - RLSSA Pool Lifeguard Award; or
 - RLSSA Oxygen Equipment Award; or
 - A qualification of an equivalent standard offered by a recognised oxygen equipment teaching organisation.

G. Reporting Requirements

- a. The Contractor shall submit a monthly report to the Contract Supervisor which will include the following:
- i. admissions and gate takings from adults, juniors, school groups and any other groups;
 - ii. accidents/injuries/near misses report to staff or of which supervising staff were aware of during the previous month;

- iii. activities and promotions undertaken during the pervious month;
 - iv. emergency maintenance undertaken during the previous month;
 - v. maintenance required by the Council;
 - vi. liaison undertaken with regular user groups and potential user groups;
 - vii. water testing results; and
 - viii. customer complaints.
- b. The Contractor shall provide an annual report and balance sheet to the Contract Supervisor, within one month of the completion of the season. The report will be similar to the monthly reports, except that totals will be provided for the entire season. In addition, the report shall contain totals of all water treatment chemicals used, water usage and recommendations for off-season maintenance works for the Council to consider.

H. Customer Characteristics

- a. The characteristics of the customers of the swimming pools are as follows:
- i. Members of the public;
 - ii. School Groups;
 - iii. Various Community Club/Groups;
 - iv. Water Polo Groups;
 - v. Swimming Clubs;
 - vi. Various Government learn to swim programs; and
 - vii. Tourists.

I. Public Image and Identification

- a. All personnel employed to act as lifeguards at the complex must be dressed in accordance with RLSSA guidelines on “Lifeguard Clothing and Equipment”.

J. Risk Assessment for Maintenance

The Contractor will be required to complete a minimum of two risk assessments at each pool during the swimming season, in conjunction with the Contract Supervisor.

K. Supervision

The Contractor will be required to provide appropriately qualified staff in sufficient numbers and at such notice as to be able to meet the Royal Life Saving Society of Australia (RLSSA) “Guidelines for Safe Pool Operations” in respect to supervision of recreational swimming pools. Appropriate levels of supervision will be maintained at all times, including during the hire of the pool to special interest groups, including but not limited to Swimming Club, Schools, Social groups, etc. Lifeguard duty periods will be in accordance with the RLSSA guidelines “Lifeguard Duty Periods”.

End of Schedule 7

SCHEDULE 8

RETAIL LEASE CERTIFICATE

I certify that I have advised the Contractor that as the Lease requires the premises to be used predominantly as a public swimming pool complex, the premises is not a retail shop and the Lease is not a retail shop lease within the meaning of the Retail Leases Act 1994 and that therefore Section 16 of the Act does not apply to the Lease.

I certify that I am a solicitor not acting for the Council and that at the request of the Contractor I explained to the Contractor before the Contractor entered into the Lease:

- the effect of Sections 16(1) and (2); and
- that the giving of this certificate will result in Section 16 not applying to the Lease.

.....
Date 2013

.....
Signature

Name
Solicitor

End of Schedule 8

