

# **DEED OF LEASE**

---

**between**

**NORTH SHORE CITY COUNCIL**

**and**

**AUCKLAND AUSTRALIAN FOOTBALL LEAGUE INC**

**DRAFT**

## TABLE OF CONTENTS

### REFERENCE SCHEDULE

### SCHEDULE OF TERMS

1.	INTERPRETATION.....
2.	TERM AND RIGHT OF RENEWAL.....
3.	RENT.....
4.	REVIEW OF RENTAL.....
5.	RENT REVIEW.....
6.	OUTGOINGS.....
7.	GOODS AND SERVICES TAX.....
8.	REQUIRED USE.....
9.	CONDUCT ON THE LEASED PREMISES.....
10.	LIQUOR LICENCES.....
11.	MAINTENANCE OF LEASED AREA, BUILDINGS/IMPROVEMENTS.....
12.	BUILDING AND OTHER LESSEE'S WORKS.....
13.	OWNERSHIP AND REMOVAL OF IMPROVEMENTS.....
14.	SIGNS AND ADVERTISING.....
15.	NO ASSIGNMENT OR SUBLETTING.....
16.	ACTS, REGULATIONS AND BY-LAWS.....
17.	LESSEE'S ANNUAL REPORT.....
18.	RESERVES ACT AND MANAGEMENT PLAN.....
19.	INSPECTION.....
20.	INDEMNITY.....
21.	PUBLIC LIABILITY INSURANCE.....
22.	BUILDINGS INSURANCE.....
23.	DAMAGE TO OR DESTRUCTION OF THE BUILDING/IMPROVEMENTS.....
24.	OPEN MEMBERSHIP.....
25.	RULES FOR MANAGEMENT OF LEASED AREA.....
26.	SPORTS GROUNDS POLICY.....
27.	DEFAULT.....
28.	DISPUTE RESOLUTION.....
29.	IMPLIED PROVISIONS.....
30.	COSTS.....
31.	LAND TRANSFER TITLE.....
32.	EARLY TERMINATION.....
33.	NATURE OF THE COUNCIL.....



---

**THE COMMON SEAL of  
AUCKLAND AUSTRALIAN  
FOOTBALL LEAGUE INC**  
as Lessee was affixed in the presence of:

---

Full name of chairman/secretary

---

Signature of chairman/secretary

---

Full name of committee member

---

Signature of committee member

DRAFT

## REFERENCE SCHEDULE

<b>LEASED AREA:</b>	Part Lot 1 DP 113616 as outlined in red on the attached plan being part of Onepoto Domain, together with the Building and Improvements owned by Council and situated on that land.								
<b>RESERVE:</b>	Onepoto Domain, 24 Tarahanga Street, Northcote.								
<b>TERM:</b>	Ten (10) years								
<b>COMMENCEMENT DATE:</b>									
<b>EXPIRY DATE:</b>									
<b>RENEWAL TERMS (IF ANY):</b>	One Right of renewal of ten years								
<b>FINAL EXPIRY DATE:</b>									
<b>ANNUAL RENT:</b>	One Dollar (\$1.00) (Plus Goods and Service tax).								
<b>RENT REVIEW DATES:</b>	Refer to Clause 4 and 5								
<b>REQUIRED USE:</b>	<p>The premises are to be used as clubrooms by the Lessee in accordance with the conditions stated in the Onepoto Domain Management Plan dated August 1997 and the Recreation 4 zoning in the North Shore City District Plan. The premises may also be used to provide community meeting space when not required by the Lessee for its normal activities.</p> <p>The hours of operation shall be:</p> <table><tr><td>Monday – Thursday</td><td>10.00am - 9.00pm</td></tr><tr><td>Friday</td><td>10.00am - 9.30pm</td></tr><tr><td>Saturday</td><td>7.30am - 9.30pm</td></tr><tr><td>Sunday</td><td>10.00am - 7.30pm</td></tr></table> <p>On no more than 6 occasions in any calendar year the hours of operation of the Lessee from the premises are permitted to be extended to midnight. These extended hours must be on a Friday, Saturday or public holiday.</p>	Monday – Thursday	10.00am - 9.00pm	Friday	10.00am - 9.30pm	Saturday	7.30am - 9.30pm	Sunday	10.00am - 7.30pm
Monday – Thursday	10.00am - 9.00pm								
Friday	10.00am - 9.30pm								
Saturday	7.30am - 9.30pm								
Sunday	10.00am - 7.30pm								
<b>MINIMUM PUBLIC RISK INSURANCE COVER:</b>	One Million Dollars								

## SCHEDULE OF TERMS

### 1. INTERPRETATION

- 1.1** In this lease unless the context indicates otherwise:
- "Act" means the Reserves Act 1977;
- "Building" means any building on the land comprised in the Leased Area whether owned by the Council or the Lessee;
- "Building Work" means work for or in connection with the construction, alteration, demolition or removal of a building or any fixtures or improvements and includes earthworks preparatory to or associated with that construction, alteration, demolition or removal and any work of a structural or retaining nature, and services associated with that work;
- "Council" means North Shore City Council and its successors and assigns;
- "Leased Area", "Reserve", "Term", "Commencement Date", "Expiry Date", "Final Expiry Date", "Renewal Terms" and "Required Use" have the meanings given to them in the Reference Schedule;
- "Lessee" means the original Lessee named in this lease and the Lessee's successors and permitted assignees and includes the staff, agents, contractors and invitees of the Lessee;
- 1.2** **Headings:** section, clause and other headings are for ease of reference only and will not affect this lease's interpretation;
- 1.3** **Management Committee:** a body comprising representatives from the Lessee's organisation, the Onepoto Residents Association and the Birkenhead Northcote Community Facilities Trust.
- 1.4** **Negative Obligations:** any obligation not to do anything will include an obligation not to suffer, permit or cause that thing to be done;
- 1.3** **Parties:** references to parties are references to parties to this lease;
- 1.4** **Persons:** references to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- 1.5** **Plural and Singular:** words importing the singular number will include the plural and vice versa;
- 1.6** **Schedules:** the schedules to this lease and the provisions and conditions contained in these schedules will have the same effect as if set out in the body of this lease;
- 1.7** **Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this lease's sections, clauses and schedules;

- 1.8 Statutes and Regulations:** references to any statutory provision will include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

## **2. TERM AND RIGHT OF RENEWAL**

- 2.1** The Term will start on the Commencement Date and end at midnight on the Expiry Date.

- 2.2** If:

**2.2.1** the Reference Schedule provides for a Renewal Term; and

**2.2.2** the Lessee is not in breach of this lease both at the time it gives notice under clause 2.2.3 and at the end of the Term and has not breached its obligations during the Term; and

**2.2.3** the Lessee has given the Council written notice that it wishes to renew the lease not less than three (3) months and not more than six (6) months before the end of the Term; and

**2.2.4** in the opinion of the Council there is sufficient need for the Required Use and, in the public interest, the Leased Area or any part of it is not required for any other purpose;

then the Council will, at the Lessee's cost, grant the Lessee a lease of the Leased Area for the next further term specified in the Reference Schedule, to run from the end of the Term of this lease.

The further lease will be on the same terms as set out in this lease except that:

**2.2.5** the rent payable under the further lease will be the amount determined under clause 4; and

**2.2.6** its term, plus any further rights of renewal, will not extend beyond the Final Expiry Date.

- 2.3** The Lessee will execute Deed of Renewal of Lease under clause 2.2 in the form prepared by the Council's solicitor at the Lessee's cost.

## **3. RENT**

The Lessee must pay to the Council, without deduction or setoff, the annual rent in advance on each anniversary of the Commencement Date. If the annual rent is reviewed to a current market rent for the Leased Area, or a proportion of the current market rent, the Lessee will pay the annual rent by equal monthly instalments in advance on the first day of each month by automatic bank payments or otherwise as the Council may direct.

#### 4. REVIEW OF RENTAL

**4.1** The Council has a policy of reduced or concessionary rentals applying to leases of reserve land and other public land to community organisations that are “not for profit”. Under this policy, the rent for the property shall be \$1.00 per annum (plus GST). This rental shall be subject to the approval, where required of the Minister of Conservation. The Council will charge the rent at this nominal rental provided that the property is sufficiently used for community purposes and outcomes described in the Lessees founding documentation, Trust Deed or Charter as at the commencement of the lease.

**4.2** If in the opinion of the Council the proportion of community use of the property by the Lessee is insufficient or the property or any part thereof is being used for commercial purposes then the Council may require the Lessee to pay a rental for the property which is higher than the rent originally provided for in the lease.

**4.3** If the Council has exercised its rights under clause 4.2 to charge a rent higher than that originally provided for in the lease the Lessee may cancel this lease on giving three months written notice to the Council but this will not release the Lessee from any of its outstanding obligations under this lease up to the time of the cancellation.

**4.4** The Council and the Lessee shall agree on the appointment of an independent registered valuer to determine the market rent appropriate for the property.

**4.5** Should the parties not agree on the appointment of a suitable independent registered valuer within 15 working days of notice being given by Council to the Lessee that it requires the rental to be determined in accordance with this provision then the appointment of the said valuer will be left to the sole unfettered decision of the President of the Auckland District Law Society.

**4.6** The market rent when assessed by the appointed valuer should be final and not subject to arbitration at the request of either party and

Where the Lessee has not previously been paying a market rent the revised rental shall be payable from the date that is one year after the date of the notice referred to in clause 4.2:

At all other times the market rent shall be payable as from the date that the Council is entitled to review the rent pursuant to clause 5

**4.7** The cost of the said valuer shall be shared equally by the parties

**4.8** The said valuer will take the following factors into account in assessing the market rent:

The terms of this lease:

The market rental for comparable accommodation for similar uses within North Shore City:



The current value of any contribution made during the term of the lease to improvements on the property by the Lessee and in particular where the Lessee has constructed at its own cost or owns the improvements on the property then the valuer is to assess the rental on the basis that the lease is a ground lease only.

## **5. RENT REVIEW**

If the Council has exercised its rights under clause 4 to charge a current market rent, or a proportion of the current market rent, for the Leased Area then the annual rent thereafter during the Term will be reviewed on each third anniversary of the date of the Council's Notice to the intent that the annual rent, notwithstanding a renewal of the Lease, shall be reviewed no more frequently than every three years throughout the Term and any renewed term. The reviewed rent on each review shall be determined in accordance with the procedure set out in clause 4.

## **6. OUTGOINGS**

**6.1** The Lessee must punctually pay all rates, all charges for electricity, gas, and other service and utility charges and all other outgoings from time to time during the Term levied rated or charged against either the Council or the Lessee on or for the Leased Area in respect of the Required Use including any penalties for late or non-payment.

**6.2** If any rate or other levy is payable for the Reserve of which the Leased Area forms part the Council may apportion it on a fair basis.

## **7. GOODS AND SERVICES TAX**

**7.1** The Lessee must pay to the Council on demand or as the Council directs the Goods and Services Tax on the annual rent and other payments made by the Lessee under this lease.

**7.2** If the Lessee defaults in payment of any money due under this lease and the Council becomes liable to pay additional Goods and Services Tax or penalty then the Lessee must on demand pay to the Council the additional tax or penalty.

## **8. REQUIRED USE**

The Lessee may only use the Leased Area for the Required Use. If at any time the Council is of the opinion that the Leased Area is not being used or is not being sufficiently used for that purpose the Council, after making enquiries as it thinks fit and giving the Lessee an opportunity of explaining the usage of the Leased Area, and if satisfied that the Leased Area is not being used or is not being sufficiently used for that purpose, may terminate this lease. Any termination under this clause will be without prejudice to the rights of either party against the other.

## **9. CONDUCT ON THE LEASED PREMISES**

**9.1** The Lessee must not allow any riotous or disorderly conduct to take place on the Leased Area and must not do or allow anything that is or

may become dangerous, offensive, noisy, illegal or immoral or a nuisance or source of damage or annoyance to the Council or to the owners or occupiers of any neighbouring property.

**9.2** The Lessee acknowledges that the premises are on a reserve that is secured by Council's contractors at the seasonal opening/closing times. If the premises are used outside of these times, in accordance with the approved operating hours stated in this document, the Lessee will ensure that appropriate management procedures regarding the locking and unlocking of the gate and the conduct of visitors and users of the premises are in place. A responsible person is to be appointed by the Lessee to implement these procedures and ensure that the gates are not left open or unattended after the official Council closing times.

**9.3** The Lessee must at all times observe and comply with the Council's Policy Guidelines for Parks and Reserves ("Policy Guidelines"). The Council may vary or amend these from time to time by written notice to the Lessee. A certificate signed by an officer of the Council shall be conclusive evidence of the then current Policy Guidelines.

## **10. LIQUOR LICENCES**

The Lessee may not apply for a club licence in respect of the leased premises during the term of the lease.

The Lessee and its affiliates may apply for special licences for their own activities for up to 36 occasions each calendar year.

The Lessee and its affiliates may apply for additional special licences following unanimous, prior agreement of the Management Committee.

Any other casual users may apply for a special licence following unanimous prior agreement of the management Committee.

Council's written consent as Landlord will be required prior to any liquor licence application being made.

## **11. MAINTENANCE OF LEASED AREA, BUILDINGS AND IMPROVEMENTS**

**11.1** The Lessee must to the satisfaction of the Council keep and maintain, and at the end of the Term hand back, the Leased Area and any Buildings (both exterior and interior) or Improvements in good, clean and substantial order, condition and repair and free of vermin, fair wear and tear or damage by fire, earthquake, tempest or other inevitable accident excepted.

**11.2** The Lessee must to the satisfaction of the Council maintain all grassed planted and landscaped areas within the Leased Area in a tidy and attractive condition, regularly mowing grassed areas and replacing plants and shrubs where appropriate. The Lessee must not cut down, destroy or damage any trees growing on the Leased Area at the Commencement Date or during the Term without the prior written consent of the Council.

**11.3** The Lessee must to the satisfaction of the Council keep and maintain all

gulleys, drains and drainage pipes located within the Leased Area or on the Reserve which run to or from the Leased Area or serve the Leased Area, in good and substantial repair and regularly cleared.

## **12. BUILDING AND OTHER LESSEE'S WORKS**

**12.1** The Lessee must not carry out any Building Work on the Leased Area without in each case first obtaining the written consent of the Council as landowner. The Council may place conditions on any approvals as it considers appropriate.

**12.2** For the purposes of obtaining consent under clause 12.1, the Lessee must:

**12.2.1** submit to the Council plans and specifications, a project programme, and anything else which the Council may reasonably require for approval as landowner;

**12.2.2** demonstrate to the satisfaction of the Council that the Building Work will be carried out under the supervision of an architect, project manager, engineer or other suitably qualified person approved by the Council in its sole discretion; and

**12.2.3** before and as a precondition of undertaking any Building Work, obtain all building and resource consents required to enable the relevant work to be carried out, if demanded supply the Council with a copy of all those consents, and thereafter comply with the conditions of those consents.

**12.3** The Council will not arbitrarily or unreasonably withhold or delay its consent under clause 12.1 if:

**12.3.1** the conditions of clause 12.2 are complied with;

**12.3.2** the proposed Building Work complies with any reasonable standards which the Council may from time to time set as to the design, quality, materials and colour of any buildings and improvements on the Leased Area; and

**12.3.3** the proposed Building Work will not in the opinion of the Council overload, endanger, or prejudice the proper working of any services, utilities or amenities.

**12.4** In granting consent or approval under this section 12 the Council will not be deemed to have warranted that the plans or specifications are suitable for the Lessee's purposes or that any person involved in the work is suitable or adequately qualified.

**12.5** During the construction of the Building Work the Lessee must maintain, in the joint names of the Council and the Lessee for their respective interests, builders' risk and public liability insurance for amounts approved by the Council and will provide the Council with a copy. All Building Work is at the sole risk of the Lessee.

**12.6** If during the course of the Building Work the Council reasonably

considers the Lessee is failing to adhere to the approved plans or specifications, the project programme, the standards referred to in clause 12.3.2, or reasonably considers that the project is not being properly managed, the Council may by notice in writing to the Lessee require that all work in the Leased Area stop immediately, or require it to take other action as necessary to mitigate the Council's concerns.

**12.7** The cost of all construction, alterations and additions to the Leased Area and the services, utilities or amenities contained in the Leased Area together with all consultants' fees and other fees or expenses incurred either by the Lessee or by the Council will be payable by the Lessee.

**12.8** The Lessee must carry out the Building Work in strict compliance with the applicable building or resource consent(s) as well as any conditions imposed by the Council as landowner, and on completion of the works the Lessee must forthwith obtain the appropriate code compliance certificate and supply the Council with a copy.

**12.9** Following the completion of any works the Lessee must provide the Council with a complete set of drawings accurately showing Buildings and Improvements on the Leased Area as constructed or altered.

### **13. OWNERSHIP AND REMOVAL OF IMPROVEMENTS**

**13.1** On termination of this lease by expiry, surrender, breach of conditions or otherwise the Leased Area together with all Buildings and Improvements on the Leased Area will revert to the Council without any compensation being payable to the Lessee by the Council.

**13.2** Despite clause 13.1, at the end of the lease the Council will have the following rights:

**13.2.1** The Council may make the Leased Area available to another community group approved by the Council, in which case the Council may require the incoming lessee to pay to the Lessee the value of the Lessee's improvements. If this value cannot be agreed by the parties it will be determined in accordance with clause 13.2.4.

**13.2.2** Where the Lessee's improvements are of value to the Council, the Council may pay the Lessee the value of those improvements as agreed by the parties. If this value cannot be agreed by the parties it will be determined in accordance with clause 13.2.4.

**13.2.3** The Council may require the Lessee, on written notice, to remove from the Leased Area some or all of the Lessee's improvements in which case the Lessee will, within a reasonable time as stipulated in the notice, and in the manner (if any) stipulated in that notice, remove the improvements. If the Lessee does not comply with the terms of the notice within the stipulated time or in the stipulated manner the Council may remove the same at the Lessee's cost in all respects.

**13.2.4** Where under clause 13.2.1 or 13.2.2 the parties cannot agree on

the value of the improvements within 14 days of commencing negotiations the value to be recommended to the Minister, in accordance with clause 13.2.4(f), will be determined by an independent registered valuer agreed upon by the parties acting as an expert. If the parties cannot agree on the appointment of an independent registered valuer within a further 14 day period then:

- (a) each party will appoint a valuer and will give written notice of the appointment to the other party within 14 days;
- (b) if the party receiving a notice does not appoint a valuer within that 14 day period then the valuer appointed by the other party will decide on the value of the improvements and forward a recommendation to the Minister to determine the final value of the Buildings and Improvements;
- (c) as soon as the valuers are appointed they must appoint an umpire who need not be a registered valuer;
- (d) the valuers will then jointly recommend the current value of the improvements;
- (e) the value will be decided by the umpire if the valuers do not agree on it within one month of the date of the appointment of the last of them to be appointed;
- (f) the recommendation of the valuers, if agreed, or the recommendation of the umpire if the valuers cannot agree to the value, will be forwarded to the Minister to determine the final value of the improvements.

**13.2.5** The Council may require payment from the Lessee sufficient to pay the cost to Council of remedying the non-compliance by the Lessee with the terms of the Resource Management Act 1991.

**13.3** If at the end of this lease the Lessee has not done so, the Council may remove from the Leased Area any chattels in the apparent possession of the Lessee and place them outside the Leased Area. The Council shall not be answerable for any loss resulting from the exercise of the power of re-entry.

## **14. SIGNS AND ADVERTISING**

The Lessee must not erect on or paint on or affix to or otherwise display on the Leased Area or Buildings or structures any signs, notices or advertising material provided that the Lessee may display its name and emblem on the Leased Area or Building together with any sponsorship signs in such position and in such size, colour, shape and style which has the Council's prior written consent. The Lessee must observe and comply with any current Council policy on signs.

## **15. NO ASSIGNMENT OR SUBLETTING**

- 15.1** The Lessee must not assign, transfer, sublet, mortgage, charge or part with possession of the Leased Area or any part of the Leased Area except that the Lessee may, with the prior written consent of the Council, which may be granted or withheld at the Council's discretion, allow the Leased Area to be used by responsible and respectable groups and clubs for sporting or community purposes to further the Required Use.
- 15.2** If the Lessee is an incorporated society or an association or trust (whether incorporated or not), any amalgamation, or any change in the Lessee's constitution or rules which affects the objects or purposes of the Lessee, will be deemed to be an assignment of this lease unless the Lessee has obtained the Council's prior written approval to the change, which may be granted (with or without conditions) or withheld at the Council's discretion.

## **16. ACTS, REGULATIONS AND BY-LAWS**

- 16.1** The Lessee must comply in all respects with all Acts, Regulations and By-laws including but not limited to the Resource Management Act 1991, the Building Act 1991, the Health and Safety in Employment Act 1992, the Fire Safety and Evacuation of Buildings Act 1992, the District Plan, and any applicable regulations and by-laws so far as they relate to the Leased Area and the Buildings and structures erected on it and the Lessee's use and occupation of it.
- 16.2** If a compliance schedule under section 44(1) of the Building Act 1991 has issued or during the term of this lease issues for any building on the Leased Area, the Lessee will be responsible (at its own cost) for supplying the annual warrant of fitness and obtaining any reports for that purpose under section 45 of that Act.

## **17. LESSEE'S ANNUAL REPORT**

- 17.1** If required by the Council, the Lessee will, within 3 months after the end of each of its financial years, provide the following information to the Council:
- 17.1.1** a set of its financial accounts for that financial year;
  - 17.1.2** a copy of the Lessee's chairman's or president's report of the Lessee's activities during that financial year;
  - 17.1.3** a copy of any changes to its constitution that have not been previously approved under clause 15.2;
  - 17.1.4** an up to date list of the Lessee's chairman or president, secretary and other committee members, together with their addresses and other contact details.
- 17.2** The Council will be entitled at any time on reasonable notice for its auditors to inspect and audit all of the books of the account statements,

documents, records, returns, papers and files of the Lessee relating to the Required Use and the Lessee at the request of the Council must make the same available for inspection or audit at the Leased Area or at such other place as the Council may reasonably require.

## **18. RESERVES ACT AND MANAGEMENT PLAN**

**18.1** The Lessee acknowledges that this lease is granted subject to the Reserves Act 1977 and the Lessee must comply with that Act or any Act in substitution for that Act.

**18.2** The Lessee must also comply with any Management Plan under the Reserves Act 1977 from time to time applying to the Reserve.

## **19. INSPECTION**

**19.1** Any person authorised by the Council may at all reasonable times on reasonable notice enter on the Leased Area or any Building on the Leased Area and view and inspect the same.

**19.2** On receipt by the Lessee of a written notice from any officer of the Council of any defect apparent in the Leased Area or disrepair of any Building or other Improvement which requires the Lessee within a reasonable time, as specified in the notice, to remedy the defect or carry out repairs, the Lessee must with all reasonable speed remedy the defect and/or carry out the repairs.

## **20. INDEMNITY**

The Lessee must not do or allow anything to be done on the Leased Area that may prejudice the Council in its tenure or control of the Reserve or which may make the Council liable to any action, claim, demand or proceedings. The Lessee will indemnify the Council against all costs, claims and demands in respect of any loss injury or damage arising out of any act or omission of the Lessee or as a result of the Lessee's use or occupation of the Leased Area.

## **21. PUBLIC LIABILITY INSURANCE**

The Lessee must take out and keep in full force and effect at all times a public liability insurance policy in respect of the Leased Area in the joint names of the parties with an insurance company approved by the Council to indemnify the Council from all claims against damage to property for the minimum sum specified in the Reference Schedule or other sum as may be nominated from time to time by the Council.

## **22. BUILDINGS INSURANCE**

**22.1** The Council is not required to insure the Leased Area or any Buildings or Improvements or effect any other type of insurance. Any insurance that Council does effect will only be to the extent, with the excess, under the type of policy and on the terms and conditions that Council from time to time considers appropriate at its absolute discretion.

**22.2** The Lessee will also maintain the following insurances during the Term:

**22.2.1** Replacement of all glass in the Buildings; and

**22.2.2** The indemnity value of the Lessee's Improvements.

**22.3** The Lessee's insurances will be on terms and conditions and with a reputable insurer of which the Council reasonably approves. The Lessee will provide the Council with proof of the insurance and the terms of it on the Commencement Date, and every 12 months from the Commencement Date. The insurance will be in the joint names of Council and the Lessee for their respective interests.

**22.4** Whenever the Council requests it to, the Lessee will provide the Council with a copy of the insurance policy for the insurances it must maintain, plus evidence that the Lessee has paid the premium.

### **23. DAMAGE TO OR DESTRUCTION OF THE BUILDING/IMPROVEMENTS**

**23.1** If any Building or Improvement is destroyed or so damaged:

**23.1.1** so as to render the Leased Area untenable, then the Lease shall at once terminate; or

**23.1.2** in the reasonable opinion of the Council as to require demolition or reconstruction, then the Council may within 3 months of the date of damage give the Lessee 1 month's written notice to terminate this lease. A fair proportion of the Rent and outgoings will cease to be payable from the date of damage.

Any termination under this clause will be without prejudice to the rights of either party against the other.

**23.2** If any Building or Improvement is damaged, but not so as to render the Leased Area untenable, and:

**23.2.1** Council's policy or policies of insurance have not been invalidated or payment of the policy moneys refused in consequence of some act or default of the Lessee; and

**23.2.2** all the necessary permits and consents are obtainable,

the Council with all reasonable speed will expend all the insurance moneys it receives in respect of such damage towards repairing such damage.

**23.3** The Council is not liable under clause 23.2 to expend any sum of money greater than the amount of the insurance money that the Council receives.

**23.4** The Council may carry out any repair or reinstatement using such materials and form of construction and according to such plan as the Council thinks fit. The repair and reinstatement will be sufficient so long as the Council considers it is reasonably adequate for the Lessee's occupation and use of the Leased Area.



**23.5** Until the completion of the repairs or reinstatement a fair proportion of the rent and outgoings will cease to be payable as from the date of damage.

**23.6** If any necessary permit or consent cannot be obtained, or the insurance money referred to in clause 23.2 is inadequate for the repair or reinstatement, then this lease shall at once terminate. Any termination under this clause will be without prejudice to the rights of either party against the other.

## **24. OPEN MEMBERSHIP**

**24.1** The constitution of the Lessee shall at all times permit membership to any person who can legitimately take part in the activities of the Lessee and no-one shall be excluded from membership provided they pay the necessary fees and comply with the usual rules of the Lessee.

**24.2** Without limiting the generality of clause 24.1 the Lessee must ensure that it complies with the provisions of the Human Rights Act 1993 so far as applicable.

**24.3** Notwithstanding anything to the contrary in the rules of the Lessee, if any person applies for membership of the Lessee and that application is refused, the Lessee must if so requested by the Council call a special meeting of members of the Lessee and a vote must then be taken among the members at the meeting for the election of that person as a member of the Lessee. If a majority of two-thirds of the voters are in favour of that person's admission then that person will immediately be entitled to all privileges and be subject to all duties incidental to membership of the Lessee.

**24.4** The Lessee acknowledges that clause 24 is an essential term of this lease and a breach will entitle the Council to immediately terminate this lease.

## **25. RULES FOR MANAGEMENT OF LEASED AREA**

The Lessee may make rules for the management and control of the Leased Area and for the conduct of persons using it as may be proper and necessary and not inconsistent with this lease.

The rules may be prepared by the Management Committee that will be formed as a condition of this lease agreement, comprising representatives from the Lessee's organisation, the Onepoto Residents Association and the Birkenhead Northcote Community Facilities Trust

Before coming into force the rules must be submitted and approved by the Council and if a dispute arises between the Lessee and the Council as to the appropriateness of any proposed rule then that dispute will be dealt with in accordance with the provisions relating to the resolution of disputes in this lease. All rules when approved and adopted must be posted on some conspicuous place within the Leased Area for the information and guidance of all persons entering on or using it.

## 26. SPORTS GROUNDS POLICY

The Lessee must at all times comply with the policy of the Council from time to time as to the hiring, charges and other conditions of sports grounds or facilities.

## 27. DEFAULT

**27.1** The Council may enter the Leased Area and distrain for rent or other money payable by the Lessee under this lease, which remains unpaid for 28 days after the due date.

**27.2** The Council may re-enter the Leased Area and terminate this lease if the Lessee:

**27.2.1** fails for 28 days after the due date to pay any instalment of the rent or any other money payable under this lease; or

**27.2.2** fails for 28 days to observe or perform any other obligation under this lease; or

**27.2.3** being a company or incorporated body:

(a) is or is deemed to be unable to pay its debts under section 287 of the Companies Act 1993; or

(b) goes into liquidation (other than voluntary liquidation for the purpose of reconstruction or amalgamation approved in writing by the Council); or

(c) is wound up or dissolved; or

(d) enters into any assignment or other compromise or scheme of arrangement with its creditors or any class of its creditors; or

(e) has a receiver, manager or receiver and manager appointed in respect of any of its assets.

**27.2.4** being an unincorporated association or trust, is wound up, dissolved or becomes defunct.

**27.3** The Council may without being under any obligation to do so remedy at the Lessee's cost any default by the Lessee under this lease.

**27.4** Without prejudice to any other remedies of the Council, interest at the rate of the Council's overdraft interest rate will be payable from the due date until payment of any rent or other money due by the Lessee to the Council under this lease, whether or not formally demanded.

## 28. DISPUTE RESOLUTION

**28.1** Except where the Council has a discretion under any statutory provision or under any term of this lease, if any dispute arises between the Council and the Lessee concerning this lease or any matter arising from it, the parties will try in good faith to settle the matter by negotiation.

**28.2** If the dispute cannot be settled by negotiation, then if requested by either party the dispute will be referred to an arbitrator appointed by the then President of the Auckland District Law Society. The arbitration will be governed by the Arbitration Act 1996 and the arbitral award will be final and binding on the parties.

**28.3** Notwithstanding 28.2 the parties may agree to refer a particular dispute difference or question to informal mediation by senior solicitor or barrister practicing in the district in which the Leased Area is located. The mediator shall be agreed on by the parties, or failing agreement nominated on the application of either party by the then President of the Auckland District Law Society or his/her nominee. The decision of such solicitor or barrister on any matter so referred shall be final and binding on the parties.

## **29. IMPLIED PROVISIONS**

The covenants and provisions implied in leases by the Property Law Act 2007 and the Land Transfer Act 1952 where inconsistent with or contrary to the terms in this lease will not be implied in this lease and are expressly negated.

## **30. COSTS**

The Lessee will pay the Council's legal costs and expenses in respect of the preparation and completion of this lease and any renewal or variation of it and all costs incurred by the Council in exercising any rights and remedies exercisable by reason of any default by the Lessee under this lease.

## **31. LAND TRANSFER TITLE**

The Council will not be required to do any act or thing to enable this lease to be registered and the Lessee will not register this lease or a caveat in respect of the Lessee's interest under this lease against the Council's title to the Reserve.

## **32. EARLY TERMINATION**

**32.1** The Council may revoke this lease at any time on six months' written notice to the Lessee to this effect if in the Council's sole and absolute discretion it resolves that it is necessary or desirable to do so. If the Council exercises this right the Lessee shall be compensated as if the Public Works Act 1981 compensation provisions were applicable.

**32.2** The Lessee may terminate this lease on no less than six months' written notice to the Council to this effect.

**32.3** Early termination by either party under this clause will be without prejudice to the rights of either party against the other.

## **33. NATURE OF THE COUNCIL**

**33.1** The Council has signed this lease as the owner of the Leased Area. The Council is also the territorial authority for the area in which the Leased Area is situated. Nothing in this lease limits or affects the duties and obligations of the Council as a regulatory authority under the Resource

Management Act 1991, the Building Act 1991 or any other relevant statute. The Council will not be liable for any expense, costs, loss, or damages the Lessee or any person claiming through the Lessee suffers or incurs because of the Council lawfully carrying out its statutory duties.

- 33.2** Where this lease requires the Lessee to obtain any consent or approval of the Council, the Council will grant that consent or approval in its capacity as the owner of the Leased Area only. The Lessee must separately obtain through the relevant department of the Council any consent or approval it requires from the Council acting as regulatory authority. Similarly, any consent or approval the Lessee obtains from Council acting as territorial authority, does not constitute the consent of the Council in its capacity as the owner of the Leased Area.
- 33.3** Where the Lessee wants to give a notice to or otherwise communicate with the Council, the Lessee must address the notice to, or otherwise deal with the department of the Council from time to time charged with administering this lease. A notice the Lessee sends that has not been addressed to that department will have no effect and will not have been given, until it has been actually received by that department. Any consent, approval or other permission obtained from any other department will not be binding on the Council.
- 33.4** The Council will advise the Lessee in writing at the Commencement Date which department of the Council is charged with administering this lease. The Council will advise the Lessee of any change as soon as practicable after the change comes into effect.