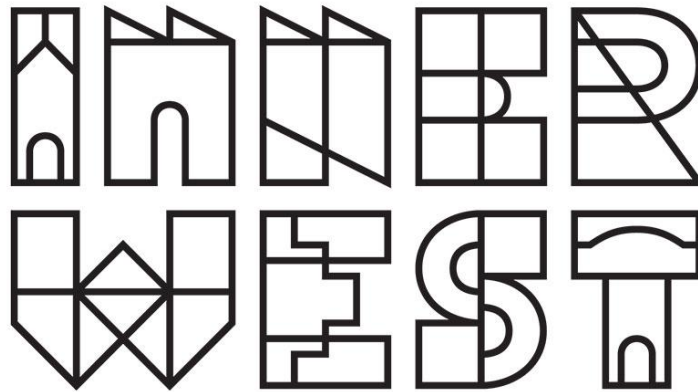


# **SUPPLEMENTARY AGENDA 1**

---

Distributed on 16 June 2023



**COUNCIL MEETING  
TUESDAY 20 JUNE 2023**

**6.30pm**

The following reports appear as late items as information required for the preparation of the reports was not available at the time of distribution of the Business Paper.

## 1 Reports for Council Decision

ITEM	Page
C0623(1) Item 57    Henson Park - Public Private Partnership - Licences - Supplementary Information	3

## 2 Reports with Confidential Information

Reports appearing in this section of the Business Paper contain confidential information in attachments.

The confidential information has been circulated separately.

ITEM	Page
C0623(1) Item 58    Henson Park Development Agreement - Supplementary Information	78

**Item No:** C0623(1) Item 57

**Subject:** HENSON PARK - PUBLIC PRIVATE PARTNERSHIP - LICENCES -  
SUPPLEMENTARY INFORMATION

**Prepared By:** Matthew Pearce - General Counsel

**Authorised By:** Peter Gainsford - General Manager

## RECOMMENDATION

1. That Council confirms that the outcomes and deliverables of the Henson Park Grandstand Redevelopment Project as outlined in the Henson Park PPP Final Assessment are acceptable;
2. That Council continue to proceed with the Henson Park Grandstand Redevelopment Project as a Public Private Partnership with the AFL (NSW/ACT) Commission Limited;
3. That Council authorise the General Manager to:
  - a) certify that the Henson Park Licence for Use and Construction Licence, as part of the Henson Park Grandstand Redevelopment Project, has been prepared in accordance with the Public Private Partnership Guidelines 2022;
  - b) confirm that there have been no material change to the Public Private Partnership of the Henson Park Grandstand Redevelopment Project or its cost since the full assessment by the Office of Local Government;
4. That Council seek approval from the Office of Local Government to execute the Henson Park Licence for Use and Construction Licence in respect of the Henson Park Grandstand Redevelopment Project.
5. That Council delegate to the General Manager the authority, if approval is provided by the Office of Local Government, to execute the Henson Park Licence for Use and Construction Licence in respect of the Henson Park Grandstand Redevelopment Project.
6. That Council delegate to the General Manager (or his delegate) the authority to execute the Henson Park Deed of Agreement for Use in respect of the Newtown Jets with a term of 21 years noting that the AFL Henson Park Licence for Use also has a term of 21 years.

## DISCUSSION

This report is to be read in conjunction with Item 12 *Henson Park - Public Private Partnership – Licences*.

### Background

On 13 December 2022, Council resolved, at an Extraordinary meeting, to proceed with the Henson Park Redevelopment Project as a Public Private Partnership with the AFL (NSW/ACT) Commission Limited and referred an executed Heads of Agreement to the OLG for consideration (**refer to the attachment**).

On 22 December 2022, the PPP submission was forwarded to the OLG for full assessment and on 1 March 2023 Council received a response from OLG, (**refer to the attachment**).

### **The AFL Licence for Use**

The detailed terms of the AFL Licence for Use between Council and the AFL (**refer to the attachment**) are as follows:

(a) Term - 21 years (this is the maximum period for a Licence of Community Land under the Act);

(b) Licence - A non-exclusive licence to use Henson Park in the following terms:

- (i) 20 days for match games annually for ticketed community and elite Australian football (limited to 5 hours per day) over the Winter and Summer seasons (Match Days);
- (ii) A seasonal licence for the Winter season (April to September) for community football; and
- (iii) Non-ticketed match games and training will be booked in accordance with the with principles and criteria in Council's Allocation Policy.

(c) Licence Fee – The fee will be charged in accordance with Council's Annual fees and charges for Henson Park:

(d) Mandatory Use - The licence to use Henson Park will be subject to the following ongoing mandatory use:

- (i) use by the Newtown Jets;
- (ii) a minimum amount of community use of the facilities;
- (iii) the facilitation of junior sports; and
- (iv) public access outside the playing surface during non-ticketed community match days that includes but is not limited to local residents and dog walkers.

Further, Council and the AFL have reached an agreement in respect of the Match Days for the Sydney Swans AFLW at Henson Park. Clause 2.1(c) ensures that the AFL has a discretion to determine play home matches at Henson Park during annual competitions but is also required to consult Council concerning the allocation of match days for the Sydney Swans AFLW. In addition, the use of Henson Park by the Sydney Swans AFLW has been mandated for the playing seasons up to 2026.

The NSW Office of Sport grant, made by the AFL, states that the Project will "lead to a projected 14% increase in women's community sporting use". The Commonwealth Funding Application, made by Council, states that an outcome of the Project is that "the new facilities will also be utilised as the home ground for the Sydney Swans AFLW competition team" and that "Inner West Council is committed to increasing access and opportunities for quality recreation experiences for diverse community members, including women and girls."

It is expected that the Licence will achieve such objectives and outcomes.

### **The AFL Construction Licence**

Henson Park is community land and is subject to a Plan of Management. The POM requires that a Construction Licence is required if works are to be undertaken at the Park. The Council, through the Construction Licence, grants the AFL occupation and use of a construction area to enable the AFL to undertake the Henson Park Grandstand Redevelopment Project. The parties have reached an agreement in respect of the construction of the Project and the Construction Licence is ready to be executed (**refer to the attachment**).

### **The Newtown Jets Deed of Agreement**

The term of the Deed is 21 years whereby the Newtown Jets along with the ALF are the primary users of Henson Park with other formal use requests by the Jets to be considered with regards to the ongoing management of the grounds as a premier sporting venue. The 2016 Deed currently in place with the Jets will be replaced with this new Deed (and when the construction works in respect of the PPP are completed).

The parties have reached an agreement in respect of the Newtown Jets use of Henson Park and as such the Newtown Jets Licence is ready to be executed (**refer to the attachment**).

### **ATTACHMENTS**

1. [↓](#) Heads of Agreement
2. [↓](#) OLG Letter
3. [↓](#) AFL Henson Park Licence for use
4. [↓](#) AFL Construction Licence
5. [↓](#) Newtown Jets Henson Park – Deed of Agreement

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



## INNER WEST COUNCIL AND AFL (NSW/ACT) COMMISSION LIMITED

### HENSON PARK DEVELOPMENT

### HEADS OF AGREEMENT

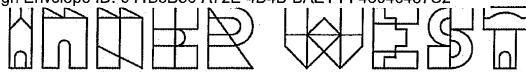
#### 1. Background

- (a) AFL (NSW/ACT) Commission Limited ABN 53 086 839 385 (**AFL NSW/ACT**) has approached Inner West Council ABN 19 488 017 987 (**Council**) regarding Henson Park. AFL NSW/ACT proposes to upgrade the grandstand known as the King George V Memorial Grandstand (**Grandstand**) to ensure compliance and inclusive amenities for players, officials and spectators. AFL NSW/ACT also propose to construct a new multipurpose building (**Multipurpose Building**) to support match day operations, broadcast and media. The proposed improvements will enhance the facilities and amenity of Henson Park for current users and the broader community, and allow Henson Park to be used for elite women's AFL games.
- (b) The concept designs submitted by AFL NSW/ACT will cater for female use of the facilities and major improvements are also planned for the spectator environments which will include improved and safer circulation and accessibility, canteen and toilet facility upgrades. The value of works for the Grandstand upgrades and Multipurpose Building are estimated between \$10 – 11 million.
- (c) In 2021, Council upgraded the playing field at Henson Park at a cost of approximately \$2.6 million. Given its recent investment in Henson Park, Council has resolved to cap its contribution to any future upgrade of the Grandstand to \$500,000 ex GST.
- (d) The Sydney Swans FC (**Swans**) were recently successful in being granted entry into the NAB AFL Women's Competition from Season 7 in 2022 (**Women's Competition**). Inclusion of the Swans into the Women's Competition will significantly lift the profile of girl's and women's AFL in NSW.
- (e) Season 7 of the Women's Competition is scheduled to commence in the last weekend of August and conclude with the Grand Final on weekend of 25-27 November 2022. The Swans will request Council allocate Henson Park for match play in Season 7 for the Women's Competition. This request is to be made regardless of the status or progress of the Project Works contemplated by these Heads of Agreement.
- (f) AFL NSW/ACT is seeking to host elite women's Australian football match play and training at Henson Park for a period of 21 years. This will be in addition to community Australian football and rugby league matches by Newtown Jets RLFC (**Newtown Jets**).
- (g) AFL NSW/ACT and the Newtown Jets have agreements for non-exclusive use of Henson Park for match play and training during the winter season until 31 March 2025. These agreements followed upgrading the lighting at Henson Park for match play including a \$75k contribution by AFL NSW/ACT.
- (h) Council resolved on 13 September 2022 that the proposal by AFL NSW/ACT to undertake the Project Works and host elite women's Australian football match play and training at Henson Park for a period of 21 years is a Public Private Partnership under the *Local Government Act 1993 (NSW)*.

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



- (i) AFL NSW/ACT and Council wish to enter into this Heads of Agreement (**Heads of Agreement**) to record the proposed core commercial terms for a more formal agreement to facilitate the Project Works and an arrangement for AFL NSW/ACT to host elite women's Australian football match play and training at Henson Park for a period of 21 years (**Development Agreement**).

## 2. Development Agreement - Core Commercial Terms

The parties anticipate that the following items will be core commercial terms of the Development Agreement between the parties.

### 2.1 Project Works

The project works to be carried out by AFL ACT/NSW are to comprise of the following:

- (a) Grandstand - repairs to the first-floor seating area, providing DDA lift access to upper levels and complete upgrades to meet regulatory access requirements;
- (b) Player amenities in Grandstand - upgrade and reconfigure, providing change areas suitable for female players, accessible toilets, increase storage areas for sporting equipment;
- (c) Grandstand extension – new building at the rear of the grandstanding providing female friendly player and officials change rooms, amenities, gym, clubroom, and a lift providing wheelchair access to the upper levels of the grandstand;
- (d) Multipurpose Building – new building providing public amenities including baby change facilities, accessible toilets, game day canteen, coaches boxes, media broadcast facilities and solar panels on the roof; and
- (e) Upgrade the areas surrounding the Grandstand, including interchange and official bench areas, paving and drainage requirements,

(Project Works).

### 2.2 Media and Communications

- (a) Neither party will make any public communications or undertake any promotional activity regarding the Project Works or the future use of Henson Park by the AFL NSW/ACT without the prior approval of the other party.
- (b) The restriction on public communications does not apply to the Mayor or the Councillors considering matters in Council meetings or otherwise making comments as elected representatives.
- (c) All activities to promote the Project Works by the AFL NSW/ACT must be undertaken in consultation with Counciland, where appropriate, provide for the attendance of the Mayor and the Councillors.
- (d) The parties agree to work co-operatively on all activities relating to the Project Works.

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

Error! Unknown document property name.

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



## 2.3 Development Application

- (a) AFL NSW/ACT has engaged architects, engineers and consultants for the development application and prepared the development application for the Project Works.
- (b) Council to provide landowner's consent for the development application.
- (c) AFL NSW/ACT to submit development application for satisfactory development consent with all parties to review and confirm application is acceptable prior to submission.
- (d) Development Application to be reviewed by external planning consultants and determined by external Planning Panel.
- (e) Modifications/appeals are subject to agreement of all parties.

## 2.4 Designs

- (a) AFL NSW/ACT to be responsible for and undertake the design of the Project Works in consultation with Council.
- (b) AFL NSW/ACT to submit designs to Council on a progressive basis for review and comment. Council to provide comment/approval in a timely manner.
- (c) The designs must comply with the Development Consent, Council's policies and technical requirements as set out in the Development Agreement and any other reasonable requirements of Council.
- (d) AFL NSW/ACT to undertake construction according to final designs approved in writing by Council and certified in writing by the Independent Certifier as complying with the requirements of the Development Agreement.
- (e) Any design modifications must be resubmitted for review and approval in writing by Council and certified in writing by the Independent Certifier as complying with the requirements of the Development Agreement.
- (f) Approval in writing from Council of designs at each review stage for the purposes of the Development Agreement shall not be construed as approval or consent by Council as a regulatory authority.

## 2.5 Project Control Group (PCG)

The Development Agreement to:

- (a) establish and identify the participants of the PCG comprising representatives of each party and, where appropriate, including consultants;
- (b) set out the roles of the participants, meetings and decisions; and
- (c) set out the functions of the PCG.

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

Error! Unknown document property name.



DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



## 2.6 Funding

The Project Works will be funded as follows:

- (a) Council to contribute up to a maximum of \$500,000 (ex GST) to be expended by Council as set out in the Development Agreement (**Council's Contribution**);
- (b) AFL NSW/ACT to contribute up to \$2,500,000 (ex GST) to the Project Works;
- (c) AFL NSW/ACT has applied for and received approval for grant funding from the NSW Office of Sport for \$5,000,000.00 (ex GST); and
- (d) Council to apply for grant funding from the Commonwealth for \$2,500,000.00 (ex. GST).

## 2.7 Value Management

AFL (NSW/ACT) will arrange for a quantity surveyor to prepare a budget for completing the Project Works and provide this to Council (**Project Budget**).

The parties will provide for value management adjustments in the Development Agreement.

## 2.8 Guarantee

The obligations of AFL NSW/ACT will be guaranteed by its parent company the Australian Football League.

## 2.9 Council's Project Manager, Quantity Surveyor and Consultants

- (a) Council will engage a project manager to have oversight of Council's rights and responsibilities with respect to the Development Agreement and the Project Works (**Council's Project Manager**).
- (b) Council's Project Manager is to have quality control sign-off at key milestones during design and construction.
- (c) Project Works are not to be continued until Council's Project Manager has signed off on the key milestones as set out in the Development Agreement, with milestones to be agreed between the parties. Council's Project Manager will act reasonably and with all reasonable speed in providing the quality control sign-offs.
- (d) Council may engage their own quantity surveyor to provide a pre-tender estimate for the Project Works (**Council's QS**).
- (e) Council will have the right to engage its own consultants to provide advice on the Project Works (**Council's Consultants**). AFL NSW/ACT and its contractors are to respond to reasonable requests for information and enable access to the site to Council's Consultants.
- (f) Council's Contribution will not be expended on Council's Project Manager, Council's QS and Council's Consultants.

## 2.10 Construction Contractor

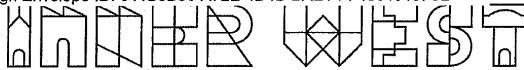
- (a) AFL NSW/ACT must in consultation with Council prepare a tender for the Project Works.

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

Error! Unknown document property name.

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



- (b) Council's Project Manager to review the Project Budget for the Project Works prior to tender.
- (c) AFL NSW/ACT must conduct a competitive tender complying with industry standard tender requirements to appoint a contractor to undertake the Project Works (**Construction Contractor**).
- (d) Council (by its nominated representative) will have an opportunity to comment on the tender assessment. AFL NSW/ACT must have regard to Council's comments on the tender assessment when selecting and appointing the Construction Contractor.
- (e) The tender will seek value management opportunities or alternative methodologies from the Construction Contractor noting these are to be provided separately to the confirming tender for consideration.
- (f) AFL NSW/ACT must provide evidence to Council that it has sufficient funds (taking into account funds to be allocated by Council to from its Commonwealth grant) prior to entering into a contract with the Construction Contractor for the Project Works. AFL NSW/ACT must not enter into a contract with the Construction Contractor for the Project Works if there is insufficient funding held by the AFL NSW/ACT to pay for the Project Works.
- (g) AFL NSW/ACT must ensure that the Construction Contractor is:
  - (i) suitably qualified with sufficient experience to undertake the Project Works; and
  - (ii) solvent and reputable.
- (h) The Construction Contractor will be appointed by AFL NSW/ACT to undertake the Project Works.

## 2.11 Independent Certifier

- (a) AFL NSW/ACT must in consultation with Council engage an independent certifier approved in writing by Council to certify the designs and practical completion of the Project Works according to the requirements of the Development Agreement (**Independent Certifier**).
- (b) AFL NSW/ACT will provide Council with three candidates for the Independent Certifier. Council will within 10 business days of being notified of the candidates and reasonable detail as to their qualifications, provide written confirmation of whether, acting reasonably, it approves any or all of the candidates. If Council does not approve any or all of the candidates, it will provide reasons.
- (c) AFL NSW/ACT must ensure that the candidates presented to Council for Independent Certifier are:
  - (i) capable of acting independently of both AFL NSW/ACT and Council;
  - (ii) suitably qualified with sufficient experience to undertake the Project Works; and
  - (iii) solvent and reputable.
- (d) The Independent Certifier will be appointed by AFL NSW/ACT to undertake the independent certifier services under a contract acceptable to Council.

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

Error! Unknown document property name.

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



## 2.12 Conditions Precedent to Construction

Before commencing construction of the Project Works:

- (a) AFL NSW/ACT must obtain development consent and a construction certificate for the Project Works and provide a copy of all related documents to Council;
- (b) AFL NSW/ACT must obtain Council's written approval of the final designs to be used for construction and certified by the Independent Certifier;
- (c) AFL NSW/ACT must provide Council evidence and confirmation that it has approvals in place and sufficient funds to complete the Project Works;
- (d) AFL NSW/ACT must provide to Council confirmation from its quantity surveyor of adequate escalation and contingency provisions being captured within the Project Budget, which will require review to accommodate any protracted planning and/or PPP processes;
- (e) AFL NSW/ACT must provide to Council a certificate of currency evidencing all insurances required under the Development Agreement (see clause 2.15); and
- (f) AFL NSW/ACT must provide Council with a copy of the executed contract appointing the Construction Contractor to undertake the Project Works.

## 2.13 Construction Licence

- (a) Council will grant the AFL NSW/ACT a non-exclusive licence to access designated areas of Henson Park (to be identified in the Development Agreement) (**Construction Area**) necessary to complete the Project Works (**Construction Licence**).
- (b) The term of the Construction Licence is for a period to be agreed based on the Construction timetable for the Project Works with reasonable extensions due to Force Majeure and other agreed extension of time events.
- (c) The term of the Construction Licence will expire on the earlier date of the period specified in subclause (b) or the date AFL NSW/ACT achieves Practical Completion of the Project Works and Handover to Council.
- (d) A nominal licence fee of \$1.10 (GST Inclusive) will be payable for the grant of the Construction Licence if demanded by Council.
- (e) The Construction Licence is subject to the existing occupancy rights in place with respect to Henson Park (including existing lease and licence arrangements). During the Construction Licence AFL NSW/ACT must cause as little interference as reasonably practicable to the other occupants of Henson Park.
- (f) During the Construction Licence Council must not authorise or allow any person to do anything in the Construction Area likely to impede AFL NSW/ACT's use of the Construction Area for the construction of the Project Works.
- (g) While access of the Construction Area will be under the terms of the Principal Contractor as the holder of all WHS responsibility, during the Construction Licence AFL NSW/ACT must ensure

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

Error! Unknown document property name.

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



Council is permitted to access the Construction Area reasonably required by Council to:

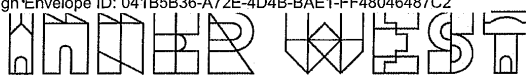
- (i) inspect the progress of the Project Works and compliance with the Development Agreement; and
- (ii) attend to matters as part of Council's day to day operation and management of Henson Park.
- (h) During the demolition and construction phase of the Project Works:
  - (ii) the playing fields are to remain open;
  - (iii) AFL NSW/ACT will provide temporary facilities (such as a demountable) to be provided at Henson Park for use by AFL NSW/ACT and Newtown Jets only. Details of any demountables required are to be agreed and set out in the Development Agreement;
  - (iv) AFL NSW/ACT must provide to Council construction bonds for the amounts as determined by Council's Planning Panel through various stages of the development and set out in the Development Agreement; and
  - (v) If the AFL NSW/ACT fails to comply with the terms or remedy any breach of the Development Agreement within 14 days of a notice by Council, then Council may step in to rectify the non-compliance or remedy the breach and recover all reasonable costs and expenses incurred from the AFL NSW/ACT on a full indemnity basis.
- (i) If Practical Completion of the Project Works is not achieved within the term of the Construction Licence (as extended) AFL NSW/ACT (and its contractors) must:
  - (i) comply with Council's directions with respect to removal, disposal or retention of:
    - (A) the Project Works (included any aspects partially completed or incomplete, but not including any aspects which have been fully completed); and
    - (B) any building materials and equipment located in the Construction Area used for the construction of the Project Works (**Project Materials**);
  - (ii) if requested by Council do all things necessary to assign its right title and interest to Council free of any encumbrances with respect to:
    - (A) the Project Works (included any aspects completed, partially completed or incomplete); and
    - (B) the Project Materials,
 to be retained by Council;
  - (iii) comply with all repair obligations; and
  - (iv) comply with all Handover obligations with respect to those aspects of the Project Works completed.

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

Error! Unknown document property name.

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



- (j) Following the expiration of the Construction Licence under subclause (h), Council may elect to complete all or any part of the Project Works and satisfy any outstanding repair obligations and recover all costs and expenses incurred from the AFL NSW/ACT on a full indemnity basis.

## 2.14 Construction of Project Works

- (a) AFL NSW/ACT must carry out the Project Works:
  - (i) at AFL NSW/ACT cost (subject to Council's Contribution, to be expended according to the requirements of the Development Agreement and payments pursuant to the Commonwealth grant obtained by Council for the Henson Park redevelopment);
  - (ii) in compliance with all laws, approvals, applicable standards, including the conditions and plans approved under the Development Consent and Construction Certificate, and the final designs as accepted by Council; and
  - (iii) by properly qualified and experienced contractors.
- (b) The AFL NSW/ACT must maintain a comprehensive record of the matters relevant to the construction of the Project Works including all plans, drawings, reports, applications to and consents from any relevant authority, licences and certificates and evidence of all payment and make this record available to Council on request (**Construction Records**).
- (c) Council will provide the funding obtained from the Commonwealth to AFL NSW/ACT by way of instalments corresponding to phases of construction, in accordance with a schedule to be set out in the Development Agreement. Funding will be provided at the completion of each phase of construction corresponding to key milestones signed off on by Council's Project Manager.

## 2.15 Project Works Time Frame

The parties acknowledge the following broad indicative time frames:

- (a) Development application to be lodged with Planning Panel January 2022;
- (b) Issue of public notifications for the licence within 3 months after the Licence is agreed by the parties and the Development Agreement is signed;
- (c) Following Development Consent application for Grants, funding approval and determination of Grants by 12 December 2022;
- (d) Design review process in consultation with Council commenced on 21 July 2022 and is anticipated to be completed by 21 October 2022;
- (e) Construction Certificate to be issued by 31 January 2023;
- (f) Construction to commence by 31 March 2023 for a duration of 12 months; and
- (g) Practical Completion and Handover compliance by 31 March 2024.

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

Error! Unknown document property name.

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



## 2.16 Insurance

AFL NSW/ACT will ensure that the Head Contractor must maintain the following insurances noting the interest of Council during the Construction Licence:

- (a) Public liability and Products liability insurances for an amount not less than \$20 Million for any one occurrence endorsed to indemnify Council against any accident, injury or damage resulting from, or incidents arising from the use of Council property or facilities by AFL NSW/ACT;
- (b) Workers Compensation insurance for each person who is or may be engaged in the construction of the Project Works; and
- (c) Contractors all risk insurance for the value of the Project Works.

## 2.17 Project Works Liability and Indemnity to Council

- (a) AFL NSW/ACT must indemnify Council against:
  - (i) any loss damage or destruction to Council's property (including the Construction Area) caused by the Project Works;
  - (ii) any claim or liability against the Council in connection with any illness, injury or death, loss, damage or destruction to property arising from or in connection with:
    - (A) accessing the Construction Area;
    - (B) the Project Works; or
    - (C) any failure by AFL (or its Contractor) to comply with the Development Agreement,

except to the extent the loss, damage, destruction, illness, injury or death is caused or contributed by Council.

- (b) AFL NSW/ACT must not cause or permit any contamination and must comply with Environmental Protection laws;
- (c) AFL NSW/ACT will require its appointed contractors or their representatives not to store or use hazardous materials in the Construction Area and to comply with all work, health and safety legislation as the principal contractor (for the purposes of WH&S Legislation) and the occupier of the Construction Area; and
- (d) AFL NSW/ACT occupies the Construction Area at its risk and releases Council from all loss or claims except to the extent that the loss or claim is caused or contributed by Council.

## 2.18 Practical Completion and Handover Obligations

- (a) Practical Completion of the Project Works is achieved on the later date upon which:
  - (i) the Independent Certifier certifies in writing to Council that the Project Works have

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

Error! Unknown document property name.

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



been completed in accordance with the requirements of the Development Agreement;  
and

- (ii) an Occupation Certificate and Compliance Certificate issued with respect to the completed Project Works by the certifying authority are provided to Council,

**(Practical Completion).**

- (b) As soon as reasonably practicable following Practical Completion AFL NSW/ACT must:
  - (i) hand over and deliver up possession of the completed Project Works to Council free of any encumbrances;
  - (ii) provide as built drawings of the completed Project Works to Council;
  - (iii) provide a copy of all Construction Records to Council;
  - (iv) provide a copy of all maintenance manuals with respect to the completed Project Works to Council; and
  - (v) assign the benefit of all product, manufacture and contractor warranties to Council (including entering into a deed in a form and according to terms acceptable to Council and AFL NSW/ACT, both acting reasonably, to give effect to the assignment),
- (c) Council becomes the owner of the Project Works on Handover.

**2.19 Defect Liability Period**

- (a) AFL NSW/ACT must (and procure its Contractor to) provide a defects warranty period as set out in this clause.
- (b) An initial defects warranty period extends 12 months from the date of Practical Completion of the Project Works.
- (c) During the defect warranty period AFL NSW/ACT must rectify any defects notified in writing by Council.
- (d) Any rectified defects will be subject to a further defects warranty period of 12 months extending from the date of rectification.

**2.20 Agreement for Licence**

- (a) Licence Agreement to be attached to the Development Agreement prepared according to the core commercial terms set out in clause 3 with the commencement and expiry dates left blank.
- (b) The Licence Agreement is to commence on the date upon which Council notifies AFL NSW/ACT in writing that the Preconditions to Licence (set out in clause 2.20), Practical Completion and Handover have been satisfied (**Licence Commencement Notification**).

**2.21 Preconditions to Licence**

- (a) The parties acknowledge that Council cannot grant a licence over community land until after:

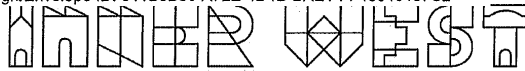
**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

Error! Unknown document property name.



DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



- (i) it has given public notice in the form prescribed;
- (ii) it has considered any submissions with respect to the proposal;
- (iii) where an objection is raised it has obtained the Minister's consent (where the licence exceeds 5 years). **(Preconditions to Licence)**
- (b) Council must use all reasonable endeavours to satisfy the Preconditions to Licence following the entry of the Development Agreement.
- (c) Council must notify AFL NSW/ACT in writing as soon as reasonably practical upon the Preconditions to Licence being satisfied.
- (d) If Council notifies AFL NSW/ACT in writing that the Preconditions to Licence cannot be satisfied (for example where Minister's consent is required but refused) then either party may terminate the Development Agreement by notice in writing. If the Development Agreement is terminated under this clause neither party may make a claim against the other arising from the termination.

### 3. Licence Agreement - Core Commercial Terms

The following items are the core commercial terms of the Licence Agreement between the parties.

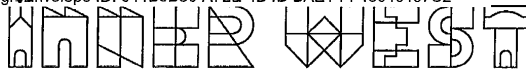
- 1. **Term** 21 years
- 2. **Licence Grant** A non-exclusive annual seasonal licence to use Henson Park for up to 20 days for ticketed match games in the summer and winter seasons for the Women's Competition, during the term of the licence agreement.  
On each match day, AFL NSW/ACT can:
  - (a) restrict access to Henson Park for up to 5 hours; and
  - (b) further restrict access to parts of Henson Park (but not the oval and seating) for set up and dismantling.
- 3. **Mandatory Use** The licence to use Henson Park will be subject to the following ongoing mandatory use, in accordance with Council's adopted Sporting Grounds Allocation Policy:
  - (a) use by the Newtown Jets;
  - (b) a minimum amount of community use of the facilities as provided in Council's adopted Sporting Grounds Allocation Policy;
  - (c) the facilitation of junior sports, as provided in Council's adopted Sporting Grounds Allocation Policy; and
  - (d) public access outside the playing surface during non-ticketed community match days that includes but is not limited to local residents and dog walkers.

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000  
Error! Unknown document property name.

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049



DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



- 4. Allocation Process**
  - (a) Each year the AFL NSW/ACT must submit to Council its intended seasonal use of Henson Park.
  - (b) Council and the AFL NSW/ACT will consult with each other with respect to the preferred exclusive use days.
  - (c) Following consultation, Council is to allocate the days and times for AFL NSW/ACT's use of Henson Park for that year for the specified number of days as set out in the Licence Agreement and otherwise in accordance with Council's adopted Sporting Grounds Allocation Policy.
- 5. Licence Fees** In accordance with the schedule of fees and charges adopted Council for Henson Park at the time of allocation
- 6. Insurance** AFL NSW/ACT to maintain Public liability and Products liability insurances for an amount not less than \$20 Million for any one occurrence endorsed to indemnify Council against any accident, injury or damage resulting from, or incidents arising from the use of Council property or facilities by AFL NSW/ACT.
- 7. Terms and Conditions** The standard terms for seasonal licences in Council's application form.
- 8. Licence Conditional on Ongoing Participation Level**

AFL NSW/ACT must each year as part of the allocation process provide the following:

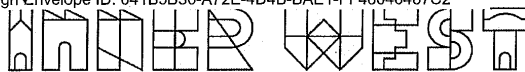
  - (a) a summary of the members, players, officials and spectators and their location within or outside the Inner West Council area with changes from previous years ;
  - (b) confirmation of the status of AFL NSW/ACT as a not-for-profit governing body of the sport of Australian Rules Football in New South Wales and the Australian Capital Territory, and its ties to the local community; and
  - (c) outline of demonstrated programs to support increased participation of girls; women; people from lower socio economic backgrounds; people with disabilities; seniors and/ or people from culturally and linguistically diverse backgrounds.
- 9. Maintenance Schedule** Detailing the ongoing maintenance responsibilities of the AFL NSW/ACT and Council.

In addition to the terms of this Licence Agreement, the parties acknowledge that ticketed and non-ticketed community level match games and training for Australian Rules Football can be booked in accordance with the Council's adopted Sporting Grounds Allocation Policy.

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000  
Error! Unknown document property name.

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



## 4. Negotiations

### 4.1 Parties to negotiate

- (a) The parties acknowledge and agree that in entering into this Heads of Agreement and any subsequent conduct will not amount to an offer capable of acceptance by either party, and the parties must enter into separate definitive agreements to proceed with the proposal.
- (b) The Development Agreement and Licence Agreement are intended to document, and be consistent with this Heads of Agreement.
- (c) The parties must use best endeavours to implement this Heads of Agreement effectively, efficiently and as soon as practicable.

## 5. Public Authorities

This Heads of Agreement, the rights granted by it or anything done or to be done under it:

- (a) is not to be taken as approval or consent by the Council as a regulatory authority; and
- (b) does not in any way inhibit, deter or prejudice the Council in the proper exercise of its statutory functions, duties or powers,

pursuant to any laws including the *Local Government Act 1993 (NSW)* or the *Environmental Planning and Assessment Act 1997 (NSW)*.

## 6. Confidentiality

- (a) Each party otherwise agrees to keep confidential any confidential information disclosed to it by the other party (subject to disclosures permitted or required by law, or made to a party's professional adviser (including legal) provided the advisor keeps the information confidential or for a legitimate Local, State or Federal government purpose).

## 7. Expiry

This Heads of Agreement will expire upon the earlier of:

- (a) AFL NSW/ACT and Council entering into the binding Development Agreement; or
- (b) 18 months after the date of this Heads of Agreement.

## 8. Representatives

- (a) The representative of AFL NSW/ACT for the purposes of this Heads of Agreement is:

Anthony Brooks  
0404 022 104  
Anthony.Brooks@afl.com.au

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

Error! Unknown document property name.

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



- (b) The Council's representative for the purposes of this Heads of Agreement is:

Matthew Pearce

02 9392 5491

matthew.pearce@innerwest.nsw.gov.au

## 9. Miscellaneous

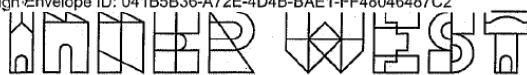
- (a) This Heads of Agreement is binding in respect of clauses 5, 6, 7 and 8.
- (b) Except as otherwise provided in this Heads of Agreement, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Heads of Agreement and the negotiation, preparation and execution of the Development Agreement and Licence Agreement.
- (c) This Heads of Agreement may only be amended in writing signed by each party.

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000

Error! Unknown document property name.

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049

DocuSign Envelope ID: 041B5B36-A72E-4D4B-BAE1-FF48046487C2



Dated 22 December 2022

**Executed** for and on behalf of **Inner West Council**  
**ABN 19 488 017 987** by its duly authorised  
representative:

Signature

Peter Gainsford

Full name of authorised representative (print)

Date: 22.12.22

**Executed** by **AFL (NSW/ ACT) Commission**  
**Limited ABN 53 086 839 385** in accordance with  
section 127(1) of the *Corporations Act 2001* (Cth)  
by:

Signature of Director

Tiffany Robertson

Full name (print)

19-Dec-2022 | 17:11 AEDT

Date

Signature of Director/Company Secretary

Rob Auld

Full name (print)

20-Dec-2022 | 06:48 AEDT

Date

**Inner West Council**  
innerwest.nsw.gov.au  
02 9392 5000  
Error! Unknown document property name.

council@innerwest.nsw.gov.au  
PO Box 14, Petersham NSW 2049



## Office of Local Government

5 O'Keefe Avenue NOWRA NSW 2541  
Locked Bag 3015 NOWRA NSW 2541

Mr Peter Gainsford  
General Manager  
Inner West Council  
PO Box 14  
PETERSHAM NSW 2049

Via email: [matthew.pearce@innerwest.nsw.gov.au](mailto:matthew.pearce@innerwest.nsw.gov.au)

Our Reference: A847394  
Contact: Jodie Turner  
Phone: 02 4428 4196

1 March 2023

Dear Mr Gainsford

I refer to documents submitted by Council's General Counsel on 22 December 2022, providing final review documents for the Henson Park Upgrade Redevelopment Public Private Partnership (PPP) Project.

This proposal underwent an initial assessment by the Office of Local Government (OLG) in October 2022 and was considered not significant and not high risk, as defined by OLG's Guidelines on the Procedures and Processes to be followed by Local Government in Public Private Partnerships (the Guidelines) and Council was notified of this outcome in writing on 21 October 2022.

OLG acknowledges the receipt of further documents received in December 2022 relating to this proposal and confirm a further assessment has been carried out based on these documents. There appears to be no material changes to the proposal and, as such, OLG's assessment remains that the project is not significant and is not high risk. Accordingly, the project does not require referral to the Project Review Committee (PRC).

Consistent with the advice given in 2022, this further assessment by OLG does not constitute either support for, or approval of the project by OLG. It simply provides an assessment of risk or significance of the project based on Council's assertions. It is also important to note that, although the project is not being referred to the PRC, Council must still adhere to the requirements as outlined in the Guidelines and relevant legislation.

The Minister for Local Government has the power to refer any PPP project for review to the PRC where a council has not complied with the Guidelines in relation to entering into a PPP or the carrying out of the project.

T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209  
E [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au) W [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au) ABN 20 770 707 468



2

Should there be any major changes in project scope or cost that may place the project into the significant and/or high-risk category, Council is required to refer these variations back to OLG for re-assessment.

Yours sincerely



**Gail Connolly**  
A/Deputy Secretary, Local Government

Item 57

Attachment 2

## Licence - Henson Park

**Inner West Council**

*(Council)*

**AFL (NSW/ACT) Commission Limited**

*(Licensee)*

Date:

Licence - Henson Park (16 June 2023)(1080139223.1)  
Error! Unknown document property name.

## Licence - Henson Park

### Table of contents

Part	Title	Page No
	<b>Commercial Terms Schedule</b>	<b>2</b>
	<b>Introduction</b>	<b>3</b>
1.	<b>Definitions and interpretations</b>	<b>3</b>
2.	<b>Seasonal Licences</b>	<b>7</b>
3.	<b>Costs and Expenses</b>	<b>10</b>
4.	<b>Goods and Services Tax</b>	<b>11</b>
5.	<b>Use of Licensed Area</b>	<b>11</b>
6.	<b>Damage and abatement</b>	<b>13</b>
7.	<b>Maintenance and repair</b>	<b>14</b>
8.	<b>Assignments, sub-licences and mortgages</b>	<b>15</b>
9.	<b>Insurance, release and indemnity</b>	<b>16</b>
10.	<b>Term</b>	<b>17</b>
11.	<b>Default</b>	<b>18</b>
12.	<b>Notices and Service</b>	<b>20</b>
	<b>Signing page</b>	<b>21</b>

Error! Unknown document property name.



Licence - Henson Park

Details

Parties		
Council	Name	Inner West Council
	ABN	19 488 017 987
	Address	2-14 Fisher Street Petersham NSW 2049
Licensee	Name	AFL (NSW/ACT) COMMISSION LIMITED
	ABN	53 086 839 385
	Address	'Building' Level 1, 220 Bent Street Moore Park NSW 2021
Date of Agreement		

Error! Unknown document property name.

## Licence - Henson Park

### Commercial Terms Schedule

<u>Term</u>	<u>Meaning of Term</u>
<b>Henson Park:</b>	The park at 22 Centennial Street Marrickville on the Land.
<b>Land:</b>	Lot 423 in Deposited Plan 1035319.
<b>Sporting Field:</b>	The sporting field at Henson Park as shown on the Henson Park Plan.
<b>Grandstand:</b>	The grandstand at Henson Park as shown on the Henson Park Plan including the toilets, change rooms and kiosk.
<b>Sporting Facilities:</b>	The media facilities, coaching boxes and match operations areas in the multipurpose building as shown on the Henson Park Plan.
<b>Licensed Area:</b>	The Sporting Field, Grandstand and Sporting Facilities
<b>Henson Park Plan:</b>	The plan of Henson Park attached.
<b>Term:</b>	21 years from (Commencing Date) to (Terminating Date).
<b>Match Days</b>	20 days annually for ticketed community and elite Australian football use in each year of the Term which, for the avoidance of doubt, may be over both the Winter and Summer seasons.
<b>Allocations Policy:</b>	The Sporting Grounds Allocations Policy adopted by Council on 27 November 2018 as updated and varied from time to time.
<b>Fees and Charges Schedule:</b>	The schedule of fees and charges determined by Council under the <i>Local Government Act 1993 (NSW)</i> from time to time.
<b>Plan of Management:</b>	The Plan of Management for Henson Park adopted by Inner West Council in September 2021 as amended from time to time.
<b>Maintenance Schedule:</b>	The Maintenance Schedule attached

Error! Unknown document property name.

## Licence - Henson Park

### Terms

#### Introduction

- A. Henson Park is land owned by Council and classified as community land to be used as a sports ground, park and for general community use in accordance with the Plan of Management.
- B. The Licensee has requested Council grant the Licensee a licence to use the Licensed Area on certain days for elite and community Australian football, including by the Sydney Swans AFLW team home games, by way of a licence for Match Days and a seasonal licence for all other such use.
- C. Council has agreed to grant the Licensee the licences during the Term to use the Licensed Area on the terms of this Agreement.

It is agreed as follows:

#### 1. Definitions and interpretations

---

##### 1.1 Definitions

In this Agreement, unless the contrary intention appears:

- (a) **Authority** means any governmental, statutory, public, local government or other authority or body having jurisdiction over any part of the Land or relating to its use.
- (b) **Car Spaces** means the car spaces at Henson Park available for public use.
- (c) **Claims** means all or any claims, proceedings, actions, rights of action, liabilities, damages, losses, remedies, expenses, fines and penalties (including associated expenses and legal costs on a party party basis).
- (d) **Common Areas** means those parts of Henson Park from time to time intended for common use including entrance, foyer, passageways, Car Spaces and those parts of Henson Park from time to time reasonably designated for common use by Council but excluding the Licensed Area.
- (e) **Agreement** means this document including all attachments as varied from time to time.
- (f) **Environmental Protection Legislation** means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or

Error! Unknown document property name.

## Licence - Henson Park

subordinate legislation, past, present or future, relating to contaminants, use of land, human health and safety or protection of the environment.

- (g) **GST** means the goods and services tax payable under the GST Legislation and notional GST payable by a State entity under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW).
- (h) **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related Acts and Regulations.
- (i) **Insolvency Event** means in relation to a corporation:
  - (A) Where an order made or a resolution is passed for the winding up, insolvency, administration, reorganisation, reconstruction or dissolution of that corporation; or
  - (B) where a liquidator, provisional liquidator, receiver or receiver and manager, trustee, agent for a mortgagee in possession or similar officer is appointed in respect of all or any part of the assets or undertaking of that corporation and such appointment is not rescinded or revoked within a reasonable time; or
  - (C) where pursuant to the provisions of the *Corporations Act 2001* (Cth), the corporation enters or executes a deed of company arrangement; or
  - (D) where that corporation is unable, or admits its inability to pay its debts as they fall due or enters into or seeks to enter into any composition or other arrangement with its creditors; or
  - (E) anything analogous or having a substantially similar effect to any of the events in the preceding paragraphs of this definition,

but excludes in the case of the Licensee (if a corporation) the occurrence of any of the events specified where undertaken as part of a solvent corporate restructure of the Licensee or any corporate group to which the Licensee belongs and the Licensee obtains Council's prior consent.
- (j) **Licensee's Invitees** means the Licensee's employees, agents, contractors, clients, customers, visitors and other persons on the Licensed Area with the consent of the Licensee including spectators, players, match officials, media and members of the participating clubs.
- (k) **Match Days Licence** means a non-exclusive licence for the use of the Licensed Area for the Match Days in each year of the Term granted by Council to the Licensee under this Agreement.
- (l) **Prescribed Rate** means the rate prescribed from time to time under the Uniform Civil Procedure Rules 2005 as the rate of interest on judgment debts plus 2%, calculated daily and compounded on the last day of each month.

Error! Unknown document property name.

## Licence - Henson Park

- (m) **Seasonal Licence** means a non-exclusive seasonal licence for the use of the Licensed Area during the Winter season (being the months from April to September) in each year of the Term granted by Council to the Licensee for community football use under this Agreement.

### 1.2 Interpretation

(a) **Number, gender and corporation**

Words importing the singular number include the plural and vice versa, words importing a person include a corporation and vice versa and each gender includes every other gender.

(b) **Jointly and severally**

Any provision of this Agreement to be performed by two or more persons binds those persons jointly and each of them severally.

(c) **Bodies and Associations**

References to authorities, institutes, associations and bodies, whether statutory or otherwise, will in the event of any such organisation ceasing to exist, being reconstituted, renamed or replaced or the powers or functions or any such organisation being transferred to any other organisation, be deemed to refer respectively to the organisation established or constituted in lieu of any such organisation.

(d) **Statutes and Regulations**

Reference to a statute, plan, policy or regulation includes all regulations, orders, determinations or directives under and amendments to that statute, plan, policy or regulation whether by subsequent statute or otherwise and a statute, plan, policy or regulation passed in substitution for the statute plan or regulation.

(e) **Headings**

Headings and any marginal notes have been inserted for convenience only and do not in any way limit or govern the construction of the terms of this Agreement.

(f) **Monthly and Yearly**

A reference to month and year means respectively calendar month and calendar year.

(g) **Entire Agreement**

This Agreement constitutes the entire agreement of the parties on everything connected with the subject matter of this Agreement and supersedes all prior agreements, understandings and negotiations in relation to those matters. Each party agrees and represents that it has not relied on any prior

Error! Unknown document property name.

## Licence - Henson Park

representations with respect to the subject matter of this Agreement except those set out in this Agreement.

### (h) Counterparts

This document may be executed in any number of counterparts all of which taken together constitute one instrument.

### (i) Include

The word include (in any form) when introducing one or more specific items does not limit the meaning of the general words to those items or to items of a similar kind.

### (j) Rule of Construction

In the interpretation of this Agreement no rule of construction applies to the disadvantage of one party on the basis that that party put forward this Agreement.

### (k) Severance

If a term of this Agreement is or becomes wholly or partly void, voidable, or unenforceable Council may at its option either:

- (i) terminate this Agreement; or
- (ii) convert this Agreement into a tenancy which may be terminated at the will of Council but not of the Licensee; or
- (iii) sever the offending term without affecting the enforceability or validity of the remainder of the Agreement.

### (l) Defined Terms

Each term specified in the Commercial Terms Schedule has the meaning specified for it in the Commercial Terms Schedule. Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

### (m) Agreement ends

A reference to the end of this Agreement is a reference to the expiration of the Term or its earlier determination by default or otherwise.

### (n) Continuing Obligations

The obligations of the parties arising prior to the end of this Agreement continue until they are fulfilled.

### (o) Obligations and Payments of Licensee

Error! Unknown document property name.

## Licence - Henson Park

The Licensee must perform the obligations of the Licensee under this Agreement at the expense and risk of the Licensee. An amount to be paid under this Agreement is due for payment on the later of demand or the date specified in the notice or invoice.

### (p) Implied Covenants

Any present or future legislation or any implied term (including a duty of good faith or anything similar) which operates to vary the obligations of the Licensee in connection with this Agreement with the result that Council's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded, except to the extent that its exclusion is prohibited or rendered ineffective by law.

### (q) Licensed Area

The Licensed Area includes all plant and equipment (mechanical and otherwise, including airconditioning and fire services) fittings, fixtures, furniture and furnishings of any kind from time to time on or servicing the Licensed Area.

## 1.3 No Restriction on Council's powers

This Agreement or anything done or to be done under this Agreement:

- (a) is not to be taken as approval or consent by Council as a regulatory authority: and
- (b) does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,

pursuant to or under any legislation including the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979*.

## 1.4 Previous arrangements superseded

The parties had in 2016 entered into a Deed of Agreement with respect to Henson Park for a period of 8 years commencing on 1 April 2017 (**2016 Deed**). For the avoidance of doubt the parties agree to amend the 2016 Deed so that it terminates the day prior to the Commencing Date.

## 2. Seasonal Licences and Match Days Licence

### 2.1 Applications

- (a) The Licensee acknowledges and agrees that it will during the Term:
  - (i) make yearly applications to Council for a Seasonal Licence in accordance with Council's applications form (**Seasonal Licence Application**); and

Error! Unknown document property name.

## Licence - Henson Park

- (ii) make yearly applications for the dates for use of the Licensed Area in accordance with Council's applications form for Match Days (**Match Days Application**).
- (b) The application form must be properly completed with all required details and documents including player information and insurance.
- (c) AFL NSW/ACT must give preference to the Sydney Swans AFLW team in making its Match Days Application. From the Commencing Date until the AFLW season commencing in 2026, AFL NSW/ACT must ensure that not less than half the home games played by the Sydney Swans AFLW team are played at Henson Park, subject to availability of Henson Park on AFL NSW/ACT's requested days and times in the Match Days Application. Following the AFLW season commencing in 2026, AFL NSW/ACT will discuss in good faith with the Council the number of home games played by the Sydney Swans AFLW team in each season.

### 2.2 Ongoing Participation

With each Seasonal Licence Application and Match Days Application the Licensee must provide the following:

- (a) a summary of the members, players, officials and spectators and their location within or outside the Inner West Council area with changes from previous years, provided that any personal information is de-identified so that no individuals are able to be identified;
- (b) confirmation of the status of AFL NSW/ACT as a not-for-profit governing body of the sport of Australian Rules Football in New South Wales and the Australian Capital Territory, and its ties to the local community; and
- (c) outline of demonstrated programs to support increased participation of girls; women; people from lower socio economic backgrounds; people with disabilities; seniors and/ or people from culturally and linguistically diverse backgrounds.

### 2.3 Consultation

After receipt of each Seasonal Licence Application and Match Days Application each year, Council must, at the request of the Licensee, consult with the Licensee with respect to the dates of the Match Days and access rights under the Seasonal Licence.

### 2.4 Grant of Seasonal Licences

After receipt of each Match Day Application and Seasonal Licence Application and consultation with the Licensee (if requested), Council must, subject to the following clauses in this Part, during the Term grant the Licensee:

- (a) each Match Day Licence; and
- (b) each Seasonal Licence.

Error! Unknown document property name.



## Licence - Henson Park

### Agreement

#### 2.5 Terms of Licences

- (a) Each Seasonal Licences will be on the standard terms for seasonal licenses in Council's application form, or as otherwise notified by Council.
- (b) Each Match Day Licence will be on the standard terms for seasonal licenses in Council's application form, or as otherwise notified by Council, subject to the following:
  - (i) the Match Days will be for ticketed use of the Licensed Area with the ability for the Licensee to:
    - (A) restrict access to the Licensed Area for up to 5 hours for all individuals who do not hold a ticket or which the Licensee otherwise permits to access the Licensed Area; and
    - (B) further restrict access to parts of Henson Park (but not the Sports Ground and the Grandstand) for set up and dismantling.

#### 2.6 Conditions of Grant

The grant to the Licensee of the days requested in the Seasonal Licence Application and Match Days Application is subject to the Allocations Policy principles and criteria including the ongoing participation levels and financial viability of the Licensee.

Council may not grant or grant only in part the days requested in the Seasonal Licence Application and Match Days Application where the Licensee fails to comply with the principles and criteria in the Allocations Policy relevant for the use of Henson Park.

Where Council has concerns regarding the performance of the Licensee in complying with the Allocations Policy principles and criteria including the ongoing participation levels and financial viability of the Licensee, Council must notify the Licensee and consult with the Licensee to ensure that the Licensee is aware of the principles and criteria in the Allocations Policy relevant for the use of Henson Park.

#### 2.7 Mandatory Use

- (a) The Licensee acknowledges that the days and times allocated for use of the Licensed Area will be subject to other uses of Henson Park and the competing uses will be allocated in accordance with the Allocation Policy including the following ongoing mandatory uses:
  - (i) use by the Newtown Jets;
  - (ii) a minimum amount of community use of the facilities as provided in Council's Allocation Policy;
  - (iii) the facilitation of junior sports, as provided in Council's Allocation Policy; and

Error! Unknown document property name.

## Licence - Henson Park

- (iv) public access outside the playing surface during non-ticketed community match days that includes but is not limited to local residents and dog walkers.

### 2.8 Hire Fees and Charges

The Licensee must pay Council the fees and charges for the use of the Licensed Area set out in the Fees and Charges Schedule as invoiced by Council.

### 2.9 No Exclusive Use

The Licensee acknowledges that it does not have exclusive rights over the Licensed Area (other than with respect to the Licensee's right to restrict access to the Licensed Area pursuant to clause 2.5(a)) and Council will enter into seasonal licenses with other sporting organisations for the Licensed Area and may make or allow for other uses of the Licensed Area.

### 2.10 Match Day Communications

- (a) The Licensee must for each Match Day and any other ticketed event notify by mail box delivered newsletter between 14 and 7 days prior to the event all local residents within a 400m radius of Henson Park of the event.
- (b) Notwithstanding in any promotional material associated with each Match Day and any other ticketed events at Henson Park, the Licensee must advocate and promote the use of public transport by spectators attending the event.

## 3. Costs and Expenses

---

### 3.1 Agreement costs and stamp duty

- (a) Each party agrees to pay their own costs and disbursements in connection with the preparation, negotiation and execution of this Agreement.
- (b) The Licensee must pay any duty payable on this Agreement.

### 3.2 Cost of consents and litigation

The Licensee must pay Council's expenses including legal costs and disbursements on an indemnity basis, architect's fees and consultant's charges reasonably incurred in relation to any request by the Licensee for the surrender or variation of the Licence.

### 3.3 Additional services

The Licensee must pay Council's reasonable costs and expenses in providing additional services and facilities for the benefit of the Licensee in the use of the Sporting Ground, Grandstand and Sporting Facilities at Henson Park, except where the Licensee requests Council not provide the service or facility.

Error! Unknown document property name.

## Licence - Henson Park

### 4. Goods and Services Tax

---

#### 4.1 Payments Exclusive of GST

All payments or other consideration paid or payable under this Agreement are exclusive of GST.

#### 4.2 Payment of GST

In addition to payment for a supply in connection with this Agreement (including any fee, charge and outgoings contributions) on which GST is paid or payable, the Licensee must pay, at the same time and in the same manner, the amount of the GST which is paid or payable in respect of that supply.

#### 4.3 Tax invoice

Council will at the request of the Licensee provide the Licensee with a tax invoice as prescribed in the GST Legislation.

#### 4.4 Late payment

If Council becomes subject to penalties or interest resulting from late payment of GST because of the Licensee's failure to comply with this Part, then the Licensee must pay on demand an additional amount equal to the amount of those penalties and interest.

#### 4.5 Outgoings net of GST

Notwithstanding anything else to the contrary, in calculating Outgoings, any GST forming part of those Outgoings on which Council is entitled to claim an input tax credit under the relevant GST Legislation, cannot be included in the Outgoings payable by the Licensee.

### 5. Use of Licensed Area

---

#### 5.1 No warranty as to Use

Council does not warrant that the Licensed Area is suitable for or may be used for the uses permitted in a Seasonal Licence.

#### 5.2 Restrictions on Use

While the Licensed Area is occupied by the Licensee under a Seasonal Licence, the Licensee must not and must not permit the Licensee's Invitees to:

- (a) use the Licensed Area for any activity that is dangerous, offensive, noxious or illegal or that may become a nuisance for any neighbouring property or other occupants of Henson Park;

Error! Unknown document property name.

## Licence - Henson Park

- (b) overload the floors or walls of the Licensed Area, the electrical system or any other services to the Licensed Area;
- (c) damage the Licensed Area or Henson Park;
- (d) make any alterations or additions to the Licensed Area or Henson Park;
- (e) use or store inflammable or explosive materials, liquids or gas in Henson Park;
- (f) do anything that may prejudice, invalidate or increase the premium payable for an insurance policy covering the Licensed Area or Henson Park;
- (g) paint, affix or erect on the interior or exterior of the Licensed Area or Henson Park any permanent notices, advertisements or signs without the prior written approval of Council;
- (h) obstruct or otherwise improperly interfere with the use of the Common Areas;
- (i) improperly interfere with the fittings, equipment and services (including plumbing, air-conditioning and fire services) serving the Licensed Area or forming part of Henson Park or otherwise provided by Council; and
- (j) leave any waste, rubbish or debris on Henson Park.

### 5.3 Requirements of Authorities

- (a) The Licensee must comply and ensure the Licensee's Invitees comply with all laws relating to the use or occupation of the Licensed Area, obtain the consents or licences needed, comply with any conditions of consent and keep current any licences or registrations needed for the use of the Licensed Area by the Licensee.
- (b) The Licensee must provide promptly to Council a copy of any law or requirement in respect of the Licensed Area notified to the Licensee.

### 5.4 Common Areas

- (a) The Licensee and the Licensee's Invitees may use the Common Areas in common with Council, Council's employees, agents and contractors, other lessees or licensees and their employees, agents, contractors, clients, customers and visitors and other occupiers of Henson Park and persons authorised by them.
- (b) The Licensee acknowledges that the Common Areas may vary from time to time and Council may vary the Common Areas serving the Licensed Area including the entrance and of Henson Park. The Licensee cannot make a claim or otherwise object to a variation in the Common Areas.
- (c) The Licensee may only use the Car Spaces for the purpose of parking cars.

Error! Unknown document property name.

## Licence - Henson Park

- (d) The Licensee will not bring or leave in the Car Spaces any offensive, hazardous or dangerous substance or thing or anything which may be or become a danger, nuisance, annoyance or inconvenience to other occupants of Henson Park and will not use the Car Spaces for storage.

### 5.5 Licensee's Environmental Obligations

- (a) The Licensee must not carry on any activities on the Licensed Area which may cause contamination to the Licensed Area or surrounding environment.
- (b) The Licensee must, in its use of the Licensed Area, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

### 5.6 Licensee to yield up and remove its property

At the end of this Agreement the Licensee must:

- (a) return the Licensed Area to Council to a neat and tidy condition; and
- (b) have removed all rubbish property of the Licensee and the Licensee's Invitees; and
- (c) have made good any damage caused by the Licensee's use of the Licensed Area.

### 5.7 Abandoned property

Anything not removed within 14 days following the end of this Agreement becomes the property of Council who can keep it or remove and dispose of it and recover from the Licensee the cost of removal, making good and disposal.

## 6. Damage and abatement

---

### 6.1 Damage

This Part applies where for any reason the Licensed Area is damaged and as a result the Licensed Area is not suitable for its intended use or the Licensee cannot use or gain access to the whole or a significant part of the Licensed Area.

### 6.2 Licensee may terminate if no reinstatement

If this Part applies then from the date the Licensee notifies Council of the damage:

- (a) Council has 3 months to notify the Licensee that it will reinstate the Licensed Area and if that notice is not given or Council fails to carry out the reinstatement works within a reasonable time after the notice is given, then the Licensee may by not less than 1 months notice to Council terminate this Agreement; and

Error! Unknown document property name.

## Licence - Henson Park

- (b) the Licensee's obligations to repair are suspended in respect of the part of the Licensed Area damaged until the damage is reinstated.

### 6.3 Licensor may reinstate or terminate

- (a) Where this Part applies nothing in this Agreement obliges Council to reinstate the Licensed Area or the means of access to the Licensed Area. When reinstating the Licensed Area, Council is entitled to change its design, fittings and dimensions.
- (b) If Council considers the damage to the Licensed Area renders it impractical to reinstate the Licensed Area within 6 months after the damage occurs, Council may by giving not less than 1 months notice to the Licensee terminate the Agreement.

### 6.4 Termination

Termination under this clause does not affect either party's accrued rights before termination or a party's right (if any) to claim damages in respect of the termination of this Agreement when the other party's wrongful act or omission has caused or contributed to the damage giving rise to the termination.

## 7. Maintenance and repair

---

### 7.1 Licensee's obligation to repair - Grandstand and Sporting Facilities

During use by the Licensee, Licensee must keep the Grandstand and Sporting Facilities in good repair and condition subject to the condition of the Grandstand and Sporting Facilities at the Commencing Date except for:

- (a) fair wear and tear;
- (b) structural repairs unless they are required as a result of the default or neglect of the Licensee or the Licensee's Invitees; and
- (c) damage caused by third parties granted a licence to use the Grandstand or Sporting Facilities.

### 7.2 Maintenance Schedule

The Licensee and Council must undertake the maintenance and repair activities, requirements and responsibilities set out in the Maintenance Schedule to the standard and in accordance with the timeframes set out in this Maintenance Schedule.

The obligations of the Licensee under the Maintenance Schedule are in addition to the obligations of the Licensee under the other clauses in this Part.

Error! Unknown document property name.

## Licence - Henson Park

### 7.3 Licensee's further obligations

The Licensee must in addition to the Licensee's obligations under the previous clause and during periods in which the Licensee is using the Licensed Area:

- (a) keep the Licensed Area tidy, clean and free of all rubbish and debris;
- (b) keep the Grandstand and Sporting Facilities free from pests including rodents, cockroaches and termites;
- (c) repair or replace any stained, worn or damaged carpet in the Sporting Facilities;
- (d) replace broken or faulty light bulbs and tubes in the Licensed Area;
- (e) replace broken glass in the Licensed Area.

### 7.4 Licensee's obligation to maintain equipment - Grandstand and Sporting Facilities

The Licensee must maintain:

- (a) all equipment in the Grandstand and Sporting Facilities; and
- (b) all working parts of the fixtures and fittings in the Grandstand and Sporting Facilities;

in good repair and working order, clean and maintained in accordance with the manufacturer's instructions, including engaging contractors for regular maintenance where appropriate and replacing any damaged or broken parts or items.

### 7.5 Licensee's obligation to maintain fixtures and fittings

The Licensee must maintain all fixtures and fittings in the Grandstand and Sporting Facilities, including the fit-out of the Licensed Area in good repair and condition subject to fair wear and tear.

### 7.6 Interruption of services

The Licensee cannot terminate this Agreement or make any Claim against Council as a result of any failure to function properly (including an interruption by Council for inspection or repairs) of the services and facilities for the Licensed Area including airconditioning, water, electricity and blockages of sewers and drains.

## 8. Assignments, sub-licences and mortgages

---

### 8.1 Prohibited dealings

- (a) The Licensee must not:

Error! Unknown document property name.

## Licence - Henson Park

- (i) assign, sub-licence, part with possession or otherwise deal with any part of the Licensed Area or this Agreement; nor
- (ii) create or allow to come into existence any charge, mortgage or a security interest affecting the Licensee's estate or interest in the Licensed Area.
- (b) Notwithstanding the preceding sub-clause (a) the Licensee may grant a sub-licence to the Australian Football League in order to facilitate AFLW matches being held at Henson Park as Match Days provided that:
  - (i) the Licensee will not be relieved of any obligation under this Agreement as a result of any such sub-licence and the Licensee will remain liable to the Council in accordance with this Agreement;
  - (ii) the Licensee provides a copy of the sub-licence to Council (if such sub-licence is documented in writing); and
  - (iii) the terms of any such sub-licence must not be inconsistent with the terms of this Agreement.

### 9. Insurance, release and indemnity

---

#### 9.1 Licensee's insurance

- (a) The Licensee must keep current an insurance policy covering:
  - (i) public risk for at least \$20,000,000 per occurrence for the Licensee's legal liability in respect of personal injury or property damage resulting from the Licensee's use of Henson Park including the Licensed Area and Common Areas by the Licensee; and the Licensee's Invitees; and
  - (ii) the Licensee's property in the Licensed Area for its full insurable value, and must produce at the request of Council evidence of this insurance.
- (b) During the Term, should it become industry standard to have a higher level of insurance for personal or property damage than is set out at clause 9.1(a), then the Licensee must increase its personal injury and property damage insurance to bring it in line with industry standard.

#### 9.2 Insurance terms

All insurance policies must:

- (a) be with a reputable insurer; and
- (b) note the rights and interests of Council; and
- (c) have endorsed upon them the rights and interests of Council.

Error! Unknown document property name.



## Licence - Henson Park

### 9.3 Assumption of risk by Licensee

The Licensee occupies the Licensed Area at its own risk. All property of the Licensee in the Licensed Area is at the sole risk of the Licensee, except where such damage is caused by the negligent or reckless act or omission of the Council or breach by the Council of this Agreement.

### 9.4 Licensee's release and indemnity

The Licensee cannot make a Claim against Council and releases Council from and indemnifies it against all Claims for damages, loss, injury or death which directly arise out of the Licensee's use of the Licensed Area and which:

- (a) occur in or around the Licensed Area when occupied by the Licensee;
- (b) arise from the use of the Licensed Area by the Licensee or the Licensee's Invitees; or
- (c) arise from the misuse of the services in Henson Park by the Licensee,

except to the extent that it is caused by any act or omission of Council, its employees, agents or contractors, or breach by Council of this Agreement.

### 9.5 Work Health and Safety

The Licensee must comply with all professional, licensing and legislative requirements in relation to work health and safety and all rules, regulations, policies or guidelines issued by WorkCover, the Licensee's insurer or any relevant authority in respect of any activity undertaken on the Licensed Area by the Licensee.

## 10. Term

---

### 10.1 Operation

The Licensee has the benefit of the rights under this Agreement for the Term and the parties must perform their obligations under this Agreement for the Term.

### 10.2 Last Seasonal Licence

The parties acknowledge that the last Seasonal Licence to be granted under this Agreement may extend beyond the Terminating Date.

### 10.3 Termination

The rights and obligations of the parties under this Agreement end on the Terminating Date subject to either party's accrued rights before termination including to claim damages.

Error! Unknown document property name.

## Licence - Henson Park

### 11. Default

---

#### 11.1 Default and termination

The Licensee will be in default under this Agreement if:

- (a) the Licensee has repudiated this Agreement;
- (b) fees under the Seasonal Licences or any other money payable by the Licensee under this Agreement or in connection with Henson Park is more than 14 days overdue for payment; or
- (c) the Licensee fails to comply with any obligation of the Licensee under this Agreement or a Seasonal Licence within 14 days after Council gives the Licensee notice requiring compliance; or
- (d) the Licensee is unable, or admits its inability, to pay its debts as they fall due or being a corporation fails to comply with a statutory demand under the Corporations Act 2001; or
- (e) the Licensee being a corporation (including an incorporated association), becomes deregistered or a step is taken to cancel its registration; or
- (f) where the Licensee is a trustee, the trust is terminated or wound up; or
- (g) where the Licensee is a corporation, an Insolvency Event occurs to the Licensee except where the Insolvency Event is a reason that a right cannot be enforced against the Licensee under Part 5 of the Corporations Act 2001 for the period that the enforcement is stayed,

and then Council may by notice to the Licensee terminate this Agreement.

#### 11.2 Insolvency or bankruptcy

The Licensee must ensure that:

- (a) being a company, it does not resolve or enter into any arrangement for the benefit of creditors, resolve to or be wound up or internally reconstructed, take any step to obtain protection from creditors become an externally administered body corporate, become insolvent or any thing analogous or having a substantially similar effect; or
- (b) being an individual he or she does not enter into an assignment or arrangement for the benefit of creditors or become bankrupt.

#### 11.3 Damages

- (a) The essential terms of this Agreement include the Licensee's obligations:
  - (i) to pay fees under the Seasonal Licences, GST or any other amount;

Error! Unknown document property name.

## Licence - Henson Park

- (ii) concerning the use of the Licensed Area;
- (iii) to repair and maintain the Licensed Area; and
- (iv) relating to the assignment of or dealing with the Agreement.
- (b) If there is a breach of an essential term, Council can recover damages for all losses over the entire period of this Agreement up to the Terminating Date but must do every reasonable thing to mitigate those losses.
- (c) Council can recover damages even if:
  - (i) Council accepts the Licensee's repudiation of this Agreement; or
  - (ii) Council validly terminates this Agreement by notice.

### 11.4 Waiver

- (a) A provision or a right created under this Agreement may not be waived or varied except in writing signed by the party to be bound. No failure to exercise and no delay in exercising any right, power or remedy under this Agreement or any custom or practice existing between the parties in relation to this Agreement operates as a waiver. No single or partial exercise of any right, power or remedy precludes any other or further exercise of that or any other right, power or remedy. No waiver by a party of one breach of a provision under this Agreement by the other party is a waiver of another breach of that provision or any other.
- (b) The demand of or subsequent acceptance of any money under this Agreement by a party is not to be deemed a waiver of any preceding breach of this Agreement by the other party, except only in relation to the failure to make that particular payment when due.
- (c) Money tendered by the Licensee and accepted by Council may be applied in the manner Council decides.

### 11.5 Licensor may rectify

Council may remedy at any time, without notice, any breach of this Agreement by the Licensee as the agent of the Licensee and at the risk of the Licensee. The Licensee must pay all reasonable costs incurred by Council in remedying a default.

Error! Unknown document property name.

## Licence - Henson Park

### 11.6 Costs on default

The Licensee must pay Council's legal fees and disbursements on an indemnity basis in connection with any breach of a provisions of this Agreement or default by the Licensee.

### 11.7 Interest on overdue payments

The Licensee must pay interest on any money due to Council but not paid on the due date from the date payment was due at the Prescribed Rate.

## 12. Notices and Service

---

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed as to the other party as set out in this Agreement (or as otherwise notified by that party to the other party from time to time);
- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of email):
    - (A) if it is transmitted by 5.00pm (Sydney time) on a Business Day – on that Business Day; or
    - (B) if it is transmitted after 5.00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day, and (in the case of delivery by hand) on delivery.

Error! Unknown document property name.

Licence - Henson Park

Signing page

Executed as an agreement

**EXECUTED** by **Inner West Council** ABN  
19 488 017 987 by its authorised delegate  
(but not so as to incur any personal liability)  
in the presence of:

_____	_____
Signature of Delegate	Signature of Witness
_____	_____
Name of Delegate	Name of Witness
_____	_____
Position of Delegate	Address of Witness

**EXECUTED** by **AFL (NSW/ACT)**  
**Commission Limited** ABN 53 086 839 385  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth) in the presence  
of:

_____	_____
Signature of Secretary/Director	Signature of Director
_____	_____
Name of Secretary/Director	Name of Director

Error! Unknown document property name.

## Licence - Henson Park

### ATTACHMENTS

1. Henson Park Plan
2. Maintenance Schedule

Error! Unknown document property name.

## Construction Licence

**Inner West Council**

*(Council)*

**AFL (NSW/ACT) Commission Limited**

*(AFL NSW/ACT)*

Date:

Error! Unknown document property name.

## Construction Licence

### Table of contents

Part	Title	Page No
	<b>Commercial Terms Schedule</b>	<b>2</b>
	<b>Introduction</b>	<b>3</b>
1.	<b>Definitions and interpretations</b>	<b>3</b>
2.	<b>Licence</b>	<b>8</b>
3.	<b>Payment of Construction Licence Fee</b>	<b>10</b>
4.	<b>Carrying out of Works</b>	<b>10</b>
5.	<b>Use, Maintenance and repair</b>	<b>11</b>
6.	<b>Goods and Services Tax</b>	<b>12</b>
7.	<b>Assignments, sub-licences and mortgages</b>	<b>12</b>
8.	<b>Not used</b>	<b>13</b>
9.	<b>Environmental Obligations</b>	<b>13</b>
10.	<b>WH&amp;S Legislation</b>	<b>15</b>
11.	<b>Release by AFL NSW/ACT</b>	<b>16</b>
12.	<b>Indemnity by AFL NSW/ACT</b>	<b>16</b>
13.	<b>Not used</b>	<b>17</b>
14.	<b>Default</b>	<b>17</b>
15.	<b>Notices and Service</b>	<b>19</b>
	<b>Signing page</b>	<b>22</b>

Error! Unknown document property name.

Page i



## Construction Licence

### Details

Parties		
Council	Name	Inner West Council
	ABN	19 488 017 987
	Address	2-14 Fisher Street Petersham NSW 2049
Licensee	Name	AFL (NSW/ACT) Commission Limited
	ABN	53 086 839 385
	Address	'Building' Level 1, 220 Bent Street Moore Park NSW 2021
Date of Deed		

## Construction Licence

### Commercial Terms Schedule

<u>Term</u>	<u>Meaning of Term</u>
<b>Henson Park:</b>	the park at 22 Centennial Street, Marrickville on the Land.
<b>Land:</b>	Lot 423 in Deposited Plan 1035319.
<b>Construction Area:</b>	the part of the Land shown in the plan of the Construction Area attached
<b>Development Agreement</b>	the Development Agreement between Council, AFL NSW/ACT and the Guarantor and AFL for the Works dated [ ]
<b>Construction Licence Fee:</b>	\$480.00 per year if demanded by Council
<b>Term:</b>	[ 4 ] years from [ ] ( <b>Commencement Date</b> ) to [ ] ( <b>Terminating Date</b> ).
<b>Expiry Date:</b>	The date Council receives the last of the following: <ul style="list-style-type: none"> <li>a) a Certificate of Completion approved by Council; and</li> <li>b) an Occupation Certificate for the Works.</li> </ul>
<b>Works:</b>	<ul style="list-style-type: none"> <li>(a) Grandstand - repairs to the first-floor seating area, providing DDA lift access to upper levels and complete upgrades to meet regulatory access requirements;</li> <li>(b) Player amenities in Grandstand - upgrade and reconfigure, providing change areas suitable for female players, accessible toilets, increase storage areas for sporting equipment;</li> <li>(c) Grandstand extension – new building at the rear of the grandstanding providing female friendly player and officials change rooms, amenities, gym, clubroom, and a lift providing wheelchair access to the upper levels of the grandstand;</li> <li>(d) Multipurpose Building – new building providing public amenities including baby change facilities, accessible toilets, game day canteen, coaches boxes, media broadcast facilities and solar panels on the roof; and</li> <li>(e) Upgrade the areas surrounding the Grandstand, including interchange and official bench areas, paving and drainage requirements.</li> </ul>
<b>Works Completion Date</b>	[Insert date] (subject to extension by agreement in writing between the parties)

Error! Unknown document property name.

Page 2

## Construction Licence

### Terms

#### Introduction

- A. Henson Park is owned by Council and classified as community land.
- B. Council and Licensee have entered into the Development Agreement to undertake the Works at Henson Park.
- C. Council grants this Licence to give AFL NSW/ACT occupation and use of the Construction Area to enable AFL NSW/ACT to undertake the Works.

#### It is agreed

#### 1. Definitions and interpretations

---

##### 1.1 Definitions

In this Deed, unless the contrary intention appears:

- (a) **AFL NSW/ACT's Visitors** means AFL NSW/ACT's customers, clients, visitors, invitees and any other person who may at any time be on the Construction Area in connection with AFL NSW/ACT.
- (b) **Authority** means any governmental, statutory, public, local government or other authority or body having jurisdiction over any part of the Land or relating to its use.
- (c) **Certificate of Completion** means the certificate confirming completion of the Works issued under the Development Agreement.
- (d) **Claims** means all or any claims, proceedings, actions, rights of action, liabilities, damages, losses, remedies, expenses, fines and penalties (including associated expenses and legal costs on a full indemnity basis).
- (e) **Construction Certificate** has the meaning set out in the Development Agreement.
- (f) **Construction Contractor** means the building contractor with which AFL NSW/ACT contracts to construct the Works under the Construction Contract.
- (g) **Contamination** means the presence in, on or under land (including soil and ground water) of a substance above the concentration at which that substance

Page 3

Error! Unknown document property name.

## Construction Licence

is normally present in, on or under land in the same locality that presents a risk of harm to human health or any other aspect of the Environment.

- (h) **Contamination Incident** means an incident or set of circumstances during or as a consequence of which there is likely to be a leak, spill or other escape or deposit of a substance, as a result of which Contamination has occurred, is occurring or is likely to occur.

- (i) **Contaminants** mean any substance or material (whether solid, liquid or gas) which has the potential to cause Contamination.

**Council Guidelines** means the policies, procedures and requirements of Council that are in force from time to time in relation to land owned or managed by Council which may be published by Council on its website, or in such other way, if any, as Council determines appropriate, which are notified to AFL NSW/ACT or are published by Council on its website (provided that, if a policy, procedure or requirement is published by Council on its website and is directly applicable to the Project, Council will use best endeavours to notify AFL NSW/ACT of the existence of that policy, procedure or requirement).

- (j) **Council's Consultants** means any persons engaged by Council to provide advice on the Works.

- (k) **Council's Project Manager** means the project manager engaged by Council to have oversight of the Works and the Agreement.

- (l) **Development Consent** has the meaning set out in the Development Agreement.

- (m) **Environment** means the components of the earth, including:

- (A) land, air and water;
- (B) any layer of the atmosphere;
- (C) any organic or inorganic matter and any living organism;
- (D) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)-(d).

- (n) **Environmental Notice** means any direction, order, demand, licence or other requirement from a Relevant Authority in connection with any Environmental Protection Legislation to take any action or refrain from taking any action in respect of the Construction Area and any adjoining or neighbouring premises, land or waterway

- (o) **Environmental Protection Legislation** means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or subordinate legislation, past, present or future, relating to contaminants, use of land, human health and safety or protection of the environment.

## Construction Licence

- (p) **GST** means the goods and services tax payable under the GST Legislation and notional GST payable by a State entity under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW).
- (q) **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related Acts and Regulations.
- (r) **Hazardous Building Materials** means any substance used for construction purposes that has the potential to pose risks to human health or the environment including asbestos containing materials, lead based paint, synthetic mineral fibres and polychlorinated biphenyls.
- (s) **Hazardous Chemicals** has the meaning specified in the WH&S Legislation.
- (t) **Insolvency Event** means in relation to a corporation:
  - (A) where an order made or a resolution is passed for the winding up, insolvency, administration, reorganisation, reconstruction or dissolution of that corporation; or
  - (B) where a liquidator, provisional liquidator, receiver or receiver and manager, trustee, agent for a mortgagee in possession or similar officer is appointed in respect of all or any part of the assets or undertaking of that corporation and such appointment is not rescinded or revoked within a reasonable time; or
  - (C) where pursuant to the provisions of the *Corporations Act 2001* (Cth), the corporation enters or executes a deed of company arrangement; or
  - (D) where that corporation is unable, or admits its inability to pay its debts as they fall due or enters into or seeks to enter into any composition or other arrangement with its creditors; or
  - (E) anything analogous or having a substantially similar effect to any of the events in the preceding paragraphs of this definition.
- (u) **Licence** has the meaning set out in the Development Agreement.
- (v) **Loss** means any direct loss, damages, remedies, liabilities, expenses, fines, penalties and costs (including legal costs on a party party basis).
- (w) **Occupation Certificate** means an occupation certificate under Part 6 of the Environmental Planning and Assessment Act 1979 (NSW).
- (x) **PCG** has the meaning set out in the Development Agreement;
- (y) **Pollution** has the meaning specified in the *Protection of the Environmental Operations Act 1997* (NSW) other than noise pollution.

## Construction Licence

- (z) **Prescribed Rate** means the rate prescribed from time to time under the Uniform Civil Procedure Rules 2005 as the rate of interest on judgment debts plus 2%, calculated daily and compounded on the last day of each month.
- (aa) **Relevant Authority** means any federal, state or local government, semi-government, quasi government, administrative, fiscal or judicial department, or any entity agency (including Council), or other body, statutory or otherwise, and any court or tribunal having jurisdiction or power in relation to the the Land or surrounding land or activities on or use made of the Construction Area, the Land or surrounding land or any aspect of the Environment relating to the Construction Area, the Land or surrounding land.
- (bb) **WH&S Legislation** means any Laws that relates to the health and safety of employees, contractors or other persons at work places including the Work Health and Safety Act 2011 (NSW) and its regulation.

### 1.2 Interpretation

- (a) **Number, gender and corporation**  
  
Words importing the singular number include the plural and vice versa, words importing a person include a corporation and vice versa and each gender includes every other gender.
- (b) **Jointly and severally**  
  
Any provision of this Deed to be performed by two or more persons binds those persons jointly and each of them severally.
- (c) **Bodies and Associations**  
  
References to authorities, institutes, associations and bodies, whether statutory or otherwise, will in the event of any such organisation ceasing to exist, being reconstituted, renamed or replaced or the powers or functions or any such organisation being transferred to any other organisation, be deemed to refer respectively to the organisation established or constituted in lieu of any such organisation.
- (d) **Statutes and Regulations**  
  
Reference to a statute, plan, policy or regulation includes all regulations, orders, determinations or directives under and amendments to that statute, plan, policy or regulation whether by subsequent statute or otherwise and a statute, plan, policy or regulation passed in substitution for the statute plan or regulation.
- (e) **Headings**  
  
Headings and any marginal notes have been inserted for convenience only and do not in any way limit or govern the construction of the terms of this Deed.
- (f) **Monthly and Yearly**

## Construction Licence

A reference to month and year means respectively calendar month and calendar year.

(g) **Entire Agreement**

This Construction Licence and the Agreement constitute the entire agreement of the parties on everything connected with the subject matter of the Construction Licence and supersede all prior agreements, understandings and negotiations in relation to those matters. Each party agrees and represents that it has not relied on any prior representations with respect to the subject matter of this Construction Licence except those set out in this Construction Licence and the Agreement.

(h) **Counterparts**

This document may be executed in any number of counterparts all of which taken together constitute one instrument.

(i) **Include**

The word include (in any form) when introducing one or more specific items does not limit the meaning of the general words to those items or to items of a similar kind.

(j) **Rule of Construction**

In the interpretation of this Construction Licence no rule of construction applies to the disadvantage of one party on the basis that that party put forward this Construction Licence.

(k) **Severance**

If a term of this Construction Licence is or becomes wholly or partly void, voidable, or unenforceable Council may at its option either:

- (i) terminate this Construction Licence; or
- (ii) convert this Construction Licence into a tenancy which may be terminated at the will of Council but not of AFL NSW/ACT; or
- (iii) sever the offending term without affecting the enforceability or validity of the remainder of the Construction Licence.

(l) **Defined Terms**

Each term specified in the Commercial Terms Schedule has the meaning specified for it in the Commercial Terms Schedule. Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

(m) **Construction Licence ends**

## Construction Licence

A reference to the end of this Construction Licence is a reference to the expiration of the Term or its earlier determination by default or otherwise.

(n) **Continuing Obligations**

The obligations of the parties arising prior to the end of this Construction Licence continue until they are fulfilled.

(o) **Obligations and Payments of Licensee**

AFL NSW/ACT must perform the obligations of AFL NSW/ACT under this Construction Licence at the expense and risk of AFL NSW/ACT. An amount to be paid under this Construction Licence is due for payment on the later of demand or the date specified in the notice or invoice.

(p) **Implied Covenants**

Any present or future legislation or any implied term (including a duty of good faith or anything similar) which operates to vary the obligations of AFL NSW/ACT in connection with this Construction Licence with the result that Council's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded, except to the extent that its exclusion is prohibited or rendered ineffective by law.

1.3 **No Restriction on Council's powers**

This Construction Licence or anything done or to be done under this Construction Licence:

- (a) is not to be taken as approval or consent by Council as a regulatory authority: and
- (b) does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,

pursuant to or under any legislation including the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979*.

## 2. Licence

---

2.1 **Grant of Construction Licence**

Council grants AFL NSW/ACT a non-exclusive licence to occupy and use the Construction Area for the Term provided that this licence will end on the earlier of the Terminating Date and the Expiry Date. For the avoidance of doubt, to the extent Council grants any third party access to the Construction Area for the Term, Council must use best endeavours to ensure that the Works are not impacted by such access.



## Construction Licence

### 2.2 Council Obligations

Council must not authorise or allow any other person to do anything in the Construction Area that would impede AFL NSW/ACT's use of the Construction Area under this Construction Licence.

### 2.3 No Tenancy

This Deed does not create and must not be taken or construed to create a tenancy or lease or any rights or interest in the Construction Area or a relation of landlord and tenant between Council and AFL NSW/ACT.

### 2.4 Development Agreement Terminates

If the Development Agreement terminates for any reason this Licence terminates on the date the Development Agreement terminates.

### 2.5 Reservation of Rights and AFL NSW/ACT Obligations

- (a) This Construction Licence is subject to the existing occupancy rights in place with respect to Henson Park (including any existing lease and licence arrangements), provided that such existing occupancy rights will not impede AFL NSW/ACT's use of the Construction Area under this Construction Licence.
- (b) For the duration of this Construction Licence AFL NSW/ACT must:
  - (i) cause as little interference as reasonably practicable to the other occupants or users of Henson Park; and
  - (ii) upon reasonable request from Council, permit Council (including its authorised representatives, Council's Project Manager and Council's Consultants) to access the Construction Area as required by Council to:
    - A. inspect the progress of the Works and compliance with this Construction Licence and the Agreement;
    - B. attend to matters as part of Council day to day operation and management of Henson Park; and
  - (iii) use all reasonable endeavours not to impact the sports field lighting or turf, or any telecommunications cabling.
- (c) During this Construction Licence (including the demolition and construction phase of the Works):
  - (i) the sports field of Henson Park is to remain open; and
  - (ii) AFL NSW/ACT will provide temporary facilities (changing room facilities) in substitution for any changing room facilities usually provided at Henson Park which are made temporarily unavailable or unusable by the Works.

## Construction Licence

### 2.6 Holding Over

If AFL NSW/ACT continues to occupy the Construction Area after the Term with the Licensor's consent then:

- (a) AFL NSW/ACT occupies the Construction Area under a monthly tenancy which either party may end by giving 1 months notice expiring on any day; and
- (b) this licence will be on the same terms as this Deed so far as they apply to a periodic licence with the Licence Fee being the Licence Fee payable immediately prior to the Terminating Date reviewed as provided in this Deed except that Council may, acting reasonably, prior to the Terminating Date or subsequently on not less than one month's notice vary the Licence Fee.

### 3. Payment of Construction Licence Fee

---

AFL NSW/ACT must pay Council without deduction or set off the Construction Licence Fee yearly in advance during the term of the Construction Licence.

### 4. Carrying out of Works

---

#### 4.1 Construction Works

AFL NSW/ACT must carry out or ensure the Works are carried out:

- (a) in a good and workmanlike manner;
- (b) by properly qualified and experienced contractors as approved by Council;
- (c) in accordance with:
  - (i) the final design documentation as approved by Council pursuant to the Development Agreement, and certified by the Independent Certifier; and
  - (ii) the reasonable directions of Council through the PCG (and provided that the Council will be responsible for the costs of any such directions and provided that such directions to not lead to delays in the Works);
- (d) in compliance with:
  - (i) all laws;
  - (ii) the Development Consent and Construction Certificate (including the conditions of consent and plans approved) for the Works;
  - (iii) Council Guidelines; and
  - (iv) all applicable standards (including Australian Standards).

## Construction Licence

### 4.2 Time for Construction

AFL NSW/ACT must use all reasonable endeavours to complete construction of the Works by the Works Completion Date.

### 4.3 Termination

When this Licence ends AFL NSW/ACT must:

- (a) return the Construction Area to Council in the condition that this Deed requires to keep it in;
- (b) remove any property of AFL NSW/ACT (other than the Works before they are handed over to Council) and make good any damage caused by the removal;
- (c) ensure that all other parts of the Henson Park used in undertaking the Works, including any routes through Henson Park used by the Construction Contractor for vehicles and to transport materials, are in the same condition as at Commencing Date.

## 5. Use, Maintenance and repair

---

### 5.1 Permitted Use

AFL NSW/ACT must only use the Construction Area for the construction of the Works or otherwise as permitted by this Deed or any other agreements between Council and AFL NSW/ACT with respect to the Construction Area...

### 5.2 Good repair and condition

AFL NSW/ACT must keep the Construction Area in good repair and condition subject to the condition of the Construction Area at the Commencing Date except for:

- (a) fair wear and tear;
- (b) structural repairs unless they are required as a result of the default or neglect of AFL NSW/ACT or AFL NSW/ACT's Invitees; and
- (c) the Works.

### 5.3 Clean, tidy and working order

AFL NSW/ACT must in addition to AFL NSW/ACT's obligations under the previous clause:

- (a) keep the Licensed Area tidy, clean and free of all rubbish and debris;

## Construction Licence

- (b) keep the Licensed Area free from pests including rodents, cockroaches and termites;
- (c) clean, maintain in good repair and working order all plant, equipment, fixtures and fittings in the Construction Area.

### 6. Goods and Services Tax

---

#### 6.1 Payments Exclusive of GST

All payments or other consideration paid or payable under this Construction Licence are exclusive of GST.

#### 6.2 Payment of GST

In addition to payment for a supply in connection with this Construction Licence (including any fee, charge and outgoings contributions) on which GST is paid or payable, AFL NSW/ACT must pay, at the same time and in the same manner, the amount of the GST which is paid or payable in respect of that supply.

#### 6.3 Tax invoice

Council will at the request of AFL NSW/ACT provide AFL NSW/ACT with a tax invoice as prescribed in the GST Legislation.

#### 6.4 Late payment

If Council becomes subject to penalties or interest resulting from late payment of GST because of AFL NSW/ACT's failure to comply with this Part, then AFL NSW/ACT must pay on demand an additional amount equal to the amount of those penalties and interest.

### 7. Assignments, sub-licences and mortgages

---

#### 7.1 Prohibited dealings

AFL NSW/ACT must not:

- (a) assign, sub-licence, part with possession or otherwise deal with any part of the Construction Area or this Construction Licence; nor
- (b) create or allow to come into existence any charge, mortgage or a security interest affecting AFL NSW/ACT's estate or interest in the Construction Area.

## Construction Licence

### 8. Not used

### 9. Environmental Obligations

---

#### 9.1 No Contamination or Pollution

- (a) AFL NSW/ACT must not cause or permit:
  - (i) any Contamination of the Construction Area or the surrounding environment;
  - (ii) any Pollution on or from the Construction Area; or
  - (iii) a Contamination Incident or Pollution Incident.
- (b) AFL NSW/ACT must promptly remedy or procure the remediation of any breach of its obligations under this clause to the reasonable satisfaction of Council.
- (c) For the avoidance of doubt, this clause 15.1 does not apply to any Contamination or Pollution of the Construction Area or the surrounding environment that exists prior to the date that AFL NSW/ACT takes possession of the Construction Area for the purpose of commencing the Works under this Agreement.

#### 9.2 Comply with Environmental Protection Legislation

- (a) AFL NSW/ACT must, in undertaking or permitting the Works and occupation of the Construction Area, comply with or procure the Construction Contractor to comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.
- (b) AFL NSW/ACT must or must procure that the Construction Contractor to comply with every Environmental Notice issued during AFL NSW/ACT's or the Construction Contractor's (as the case may be) occupation of the Construction Area in respect of the Works.
- (c) AFL NSW/ACT must, in undertaking or permitting the Works and occupation of the Construction Area, either itself or procure the Construction Contractor to install operate and maintain all machinery, equipment and devices to monitor and control Pollution related to the Works in proper working order and in accordance with the Environmental Protection Legislation applicable.
- (d) AFL NSW/ACT must promptly remedy or procure the remediation of any breach of its obligations under this clause to the reasonable satisfaction of Council.

## Construction Licence

### 9.3 AFL NSW/ACT's inspection

- (a) AFL NSW/ACT acknowledges that prior to the date of this Construction Licence AFL NSW/ACT had access to the Construction Area and an opportunity to investigate the environmental aspects of the Construction Area.
- (b) Neither party warrants or represents that the Construction Area is free of Contamination and Pollution as at the date of execution of this Deed.

### 9.4 Hazardous Chemicals

AFL NSW/ACT must or must procure the Construction Contractor to:

- (a) not use or store any Hazardous Chemicals on the Construction Area other than those directly required for the Works except with the consent of Council;
- (b) comply with all obligations under the WH&S Legislation in respect to Hazardous Chemicals on the Construction Area in connection with the Works including the maintenance of a Hazardous Chemicals register, production of a manifest of Hazardous Chemicals, installation of signage, emergency plans and equipment; and
- (c) in relation to Hazardous Chemicals on the Construction Area in connection with the Works, where required by the WH&S Legislation provide SafeWork NSW with health monitoring reports and notify SafeWork NSW if Hazardous Chemicals exceed the quantities in the manifest of Hazardous Chemicals.

### 9.5 Hazardous Building Materials

AFL NSW/ACT must or must procure the Construction Contractor to:

- (a) identify any Hazardous Building Materials in connection with the Works and ensure such Works are maintained in order to mitigate risks to human health from the Hazardous Building Materials;
- (b) repair or replace any damaged or degraded Hazardous Building Materials in connection with the Works to ensure that no Contamination of the Construction Area is caused by the Hazardous Building Materials; and
- (c) comply with all obligations under the WH&S Legislation regarding Hazardous Building Materials in connection with the Works including identification and mitigation of risks; and
- (d) if any Hazardous Building Materials must be removed or remediated, ensure any such removal is carried out in accordance with the requirements of any authority, and is disposed of at an appropriately licensed facility. AFL NSW/ACT must procure the Construction Contractor to produce evidence of the disposal of the Hazardous Building Material is required by Council.

## Construction Licence

### 10. WH&S Legislation

#### 10.1 AFL NSW/ACT's acknowledgments

AFL NSW/ACT acknowledges that:

- (a) as the owner of the Construction Area, Council has obligations under the WH&S Legislation; and
- (b) as occupier of the Construction Area, AFL NSW/ACT or the Construction Contractor (as the case may be) has obligations under the WH&S Legislation and, in particular, AFL NSW/ACT or the Construction Contractor (as the case may be) will have control of:
  - (i) the Works;
  - (ii) the Construction Area in connection with the Works; and
  - (iii) plant and substances of AFL NSW/ACT or Construction Contractor (as the case may be) in the Works site,

for the purposes of the *Work Health and Safety Act 2011* (NSW).

#### 10.2 AFL NSW/ACT to perform obligations

AFL NSW/ACT must or must procure the Construction Contractor to, in respect of the Works:

- (a) put in place emergency procedures for invitees, licensees and employees of AFL NSW/ACT or the Construction Contractor (as the case may be) and adequate provisions with regard to:
  - (i) information for invitees and licensees of AFL NSW/ACT or the Construction Contractor (as the case may be); and
  - (ii) information and training for employees of AFL NSW/ACT or the Construction Contractor (as the case may be),

in relation to the emergency procedures; and
- (b) minimise risk to the general public from its occupation by the Construction Area.

#### 10.3 Council's obligations

AFL NSW/ACT must not, and must ensure that the Construction Contractor does not, by any act or omission cause Council to be in breach of Council's obligations under the WH&S Legislation.

## Construction Licence

### 10.4 Principal contractor

Council acknowledges that AFL NSW/ACT will appoint the Construction Contractor, as principal contractor for the purposes of the WH&S Legislation in relation to the Works.

### 11. Release by AFL NSW/ACT

---

#### 11.1 AFL NSW/ACT uses Construction Area at own risk

AFL NSW/ACT uses and occupies the Construction Area at AFL NSW/ACT's own risk.

#### 11.2 AFL NSW/ACT's release of Council

Council is not liable to AFL NSW/ACT for and AFL NSW/ACT releases Council from any Loss or Claim, including in connection with death or injury:

- (a) paid, suffered or incurred by AFL NSW/ACT and AFL NSW/ACT's Visitors; or
- (b) for which AFL NSW/ACT may be or become liable,

to the extent that it is wholly or partly due to or arising out of AFL NSW/ACT's occupation and use of the Construction Area or as a result of the Works.

This release does not apply to the extent that the Loss or Claim is caused or contributed to by the Council.

### 12. Indemnity by AFL NSW/ACT

---

#### 12.1 Indemnity

AFL NSW/ACT must indemnify Council against:

- (a) any loss damage or destruction to Council's property (including the Construction Area) caused by the Works;
- (b) any claim or liability against the Council in connection with any illness, injury or death, loss, damage or destruction to property arising from or in connection with:
  - (i) accessing the Construction Area;
  - (ii) the Works; or
  - (iii) any failure by AFL NSW/ACT (or its Construction Contractor) to comply with this Agreement.

This indemnity is full and absolute except to the extent that the Loss or Claim is caused or contributed to by the Council.



## Construction Licence

### 12.2 Continuation and independence of Indemnities

Each indemnity in this Construction Licence is a continuing obligation, separate and independent from the other obligations of the parties, and survives the expiration or termination of this Construction Licence. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Construction Licence.

### 13. Not used

### 14. Default

---

#### 14.1 Default and termination

AFL NSW/ACT will be in default under this Construction Licence if:

- (a) AFL NSW/ACT has repudiated this Construction Licence;
- (b) Licence Fee (if demanded by Council) or any other money payable by AFL NSW/ACT under this Construction Licence is more than 30 days overdue for payment; or
- (c) AFL NSW/ACT fails to comply with any material obligation of AFL NSW/ACT under this Construction Licence within 30 days after Council gives AFL NSW/ACT notice requiring compliance; or
- (d) AFL NSW/ACT is unable, or admits its inability, to pay its debts as they fall due or being a corporation fails to comply with a statutory demand under the *Corporations Act 2001*; or
- (e) AFL NSW/ACT being a corporation (including an incorporated association), becomes deregistered or a step is taken to cancel its registration; or
- (f) where AFL NSW/ACT is a corporation, an Insolvency Event occurs to AFL NSW/ACT except where the Insolvency Event is a reason that a right cannot be enforced against AFL NSW/ACT under Part 5 of the *Corporations Act 2001* for the period that the enforcement is stayed,

and then Council may enter and take possession of the Construction Area or by written notice to AFL NSW/ACT terminate this Construction Licence.

#### 14.2 Insolvency or bankruptcy

AFL NSW/ACT must ensure that:

- (a) being a company, it does not resolve or enter into any arrangement for the benefit of creditors, resolve to or be wound up or internally reconstructed, take any step to obtain protection from creditors become an externally administered

## Construction Licence

body corporate, become insolvent or any thing analogous or having a substantially similar effect.

### 14.3 Damages

- (a) The essential terms of this Construction Licence include AFL NSW/ACT's obligations under:
  - (i) clause 3 *Payment of Construction Licence Fee*;
  - (ii) clause 6 *Goods and Services Tax*;
  - (iii) clause 5 *Use, Maintenance and Repair*; and
  - (iv) clause 7 *Assignments, sub-licences and mortgages*.
- (b) If there is a breach of an essential term, Council can recover damages for all losses over the entire period of this Construction Licence up to the Terminating Date but must do every reasonable thing to mitigate those losses.
- (c) Council can recover damages even if:
  - (i) Council accepts AFL NSW/ACT's repudiation of this Construction Licence; or
  - (ii) Council ends this Construction Licence by entering and taking possession of any part of the Construction Area or terminates this Construction Licence by notice.

### 14.4 Waiver

- (a) A provision or a right created under this Construction Licence may not be waived or varied except in writing signed by the party to be bound. No failure to exercise and no delay in exercising any right, power or remedy under this Construction Licence or any custom or practice existing between the parties in relation to this Construction Licence operates as a waiver. No single or partial exercise of any right, power or remedy precludes any other or further exercise of that or any other right, power or remedy. No waiver by a party of one breach of a provision under this Construction Licence by the other party is a waiver of another breach of that provision or any other.
- (b) The demand of or subsequent acceptance of any money under this Construction Licence by a party is not to be deemed a waiver of any preceding breach of this Construction Licence by the other party, except only in relation to the failure to make that particular payment when due.
- (c) Money tendered by AFL NSW/ACT and accepted by Council may be applied in the manner Council decides.

## Construction Licence

### 14.5 Not used

### 14.6 Licensor may rectify

Council may remedy at any time, upon providing AFL NSW/ACT with reasonable notice in advance, any breach of this Construction Licence by AFL NSW/ACT as agent of AFL NSW/ACT and at the risk of the AFL NSW/ACT. AFL NSW/ACT must pay all reasonable costs incurred by Council in remedying a default.

### 14.7 Costs on default

AFL NSW/ACT must pay Council's legal fees and disbursements on an indemnity basis in connection with any breach of a provisions of this Deed or default by AFL NSW/ACT.

### 14.8 Interest on overdue payments

AFL NSW/ACT must pay interest on any money due to Council but not paid on the due date from the date payment was due at the Prescribed Rate.

### 14.9 Not used

## 15. Notices and Service

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Construction Licence:

- (a) must be in writing;
- (b) must be addressed as to the other party as set out in this Construction Licence (or as otherwise notified by that party to the other party from time to time);
- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of email):
    - (A) if it is transmitted by 5.00pm (Sydney time) on a Business Day – on that Business Day; or

## Construction Licence

- (B) if it is transmitted after 5.00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day, and (in the case of delivery by hand) on delivery.

Error! Unknown document property name.

Page 20

Item 57

Attachment 4

Construction Licence

**Attachments**

Plan of Construction Area

Item 57

Error! Unknown document property name.

Page 21

Attachment 4

Construction Licence

Signing page

Executed as a deed

**EXECUTED** by **Inner West Council** ABN  
19 488 017 987 by its authorised delegate  
(but not so as to incur any personal liability)  
in the presence of:

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Delegate

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Position of Delegate

\_\_\_\_\_  
Address of Witness

**EXECUTED** by **AFL (NSW/ACT)**  
**Commission Limited** ABN 53 086 839 385  
by its authorised representative in the  
presence of:

.....  
Signature  
Witness

.....  
Signature  
Authorised Representative

.....  
(print name)

.....  
(print name)

.....  
(print address)

.....  
(print position)

Error! Unknown document property name.

Page 22

## Construction Licence

**EXECUTED** by **Australian Football League** ACN 004 155 211 by its authorised representative in the presence of:

.....  
Signature  
Witness

.....  
(print name)

.....  
(print address)

.....  
Signature  
Authorised Representative

.....  
(print name)

.....  
(print position)

**DEED OF AGREEMENT**

BETWEEN

**INNER WEST COUNCIL**

and

**NEWTOWN RUGBY LEAGUE FOOTBALL CLUB LIMITED**

Error! Unknown document property name.



**DATE OF AGREEMENT:**

**2023**

## **PARTIES**

1. **Inner West Council** ABN 19 488 017 987 of Petersham Service Centre, 2-14 Fisher Street, Petersham NSW 2049 ("**Council**").
2. **Newtown Rugby League Football Club Limited** ABN 66 000 258 408 of 43-45 Carrington Road, Marrickville NSW 2204 ("**Jets**").

## **BACKGROUND**

- A. Council is the owner and manager of Henson Park, which is a regional sports facility at Centennial Street, Marrickville (**Henson Park**).
- B. The Jets have traditionally used Henson Park as their home ground for match days and training to compete in the NSW Rugby League Cup. The Jets work cooperatively with other users of Henson Park (such as AFL NSW/ACT) and liaise regularly with Council to facilitate the shared use of Henson Park.
- C. Henson Park is managed in accordance with Council's Sporting Grounds Allocation Policy (**SGAP**). Council aims to recognise and encourage organisations who contribute to the development and upgrade of a Council facility as provided in the SGAP.
- D. The Jets entered into a Deed of Agreement with Council whereby Council granted the Jets a non-exclusive seasonal licence during the winter season for a period of 8 years commencing 1 April 2017 (**2016 Deed**).
- E. The Jets have supported a grant by the NSW Office of Sport to AFL NSW/ACT of a maximum of \$5,000,000.00 excl. GST for a series of upgrades to the facilities at Henson Park, including construction of a new multipurpose building and refurbishment of the King George V Grandstand (**Works**). This grant was formalised by way of an Infrastructure Grants Funding Agreement dated 17 May 2023.
- F. The Jets have also supported and gained a commitment from the Commonwealth Government in respect of a grant in the amount of \$2.5M which will be administered by the Council in respect of the Henson Park Redevelopment Project.
- G. The Works were completed on [insert date]. In consideration of the Jets' support for the Works as set out in Recital F, the Jets have requested Council enter into this Deed.
- H. Council has at [insert details of Council resolution with respect to new Licence with Newtown Jets] resolved to enter into this Deed for the use of Henson Park by the Jets, for training and match play, for a period of 21 years.

Error! Unknown document property name.

- I. The parties agree to be bound by the provisions of this Deed which commences on [insert date] (Commencing Date).

## OPERATIVE PROVISIONS

### 1. Jets Obligations

- 1.1 The Jets acknowledge that they must make a yearly application to Council for a non-exclusive licence to use Henson Park in the annual playing season and pay the applicable ground hire fees consistent with the Council's adopted Pricing Policy and Fees and Charges.
- 1.2 The Jets acknowledge this Deed only relates to the Jet's use of Henson Park for match play and training during the annual playing season.
- 1.3 In each yearly application to Council the Jets must provide an outline of demonstrated programs to be held seasonally at Henson Park to support increased participation of junior sports, girls; women; people from lower socio economic backgrounds; people with disabilities; seniors and/ or people from culturally and linguistically diverse backgrounds.

### 2. Council's Obligations

- 2.1 Subject to clause 2.2, Council must grant the Jets a non-exclusive annual licence for match play and training during the annual playing season at Henson Park for a period of 21 years from the Commencing Date.
- 2.2 The grant of a non-exclusive annual licence to the Jets under clause 2.1 is subject to the SGAP principles and criteria including the ongoing participation levels and financial viability of the Jets. Council may, after conducting a review of the Jets' ongoing participation levels and ongoing financial viability or other principles and criteria in the SGAP, not grant a non-exclusive annual licence for the playing season that particular year.

### 3. Match Day Communications

- 3.1 The Jets must, at the commencement of each annual playing season, notify by letter drop all local residents within a 400m radius of Henson Park of the annual playing schedule.
- 3.2 Notwithstanding in any promotional material associated with match day events at Henson Park, the event holder must advocate and promote the use of public transport by match day patrons.

### 4. GST

Each party shall do whatever is necessary to assist the other in complying with their GST obligations including, without limiting the foregoing, issuing tax invoices that conform to the GST Laws.

Error! Unknown document property name.

#### 4. Disputes

- 4.1 Any dispute that may arise under this Deed will be dealt by either party giving to the other a notice in writing of such dispute with full particulars of the issues in dispute; and
- 4.2 If the dispute is not resolved by negotiation within 28 days of the service of the notice either party may refer the matter to mediation or such other forum the parties agree to.

#### 5. Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Deed:

- 5.1.1 must be in writing;
- 5.1.2 must be addressed as to the other party as set out in this Deed (or as otherwise notified by that party to the other party from time to time);
- 5.1.3 must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- 5.1.4 is taken to be received by the addressee:
- a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - c) (in the case of email):
    - (i) if it is transmitted by 5.00pm (Sydney time) on a Business Day – on that Business Day; or
    - (ii) if it is transmitted after 5.00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day, and (in the case of delivery by hand) on delivery.

#### 6. Non-Exclusive

- 6.1 The Jets acknowledge they will not have exclusive rights over the playing fields in Henson Park and Council may enter into hire agreements with other non sporting organisations subject to Council consulting with the Jets and other Licencees.

#### 7. Termination

- 7.1 If the Jets are in breach of this Deed then Council may require the Jets to remedy the breach within a reasonable timeframe.
- 7.2 Council may terminate this Deed where the Jets:

Error! Unknown document property name.

- a) becomes insolvent, enters administration, is wound up or suffers some like action;
- b) suspends or otherwise fails to perform its obligations;
- c) fails to comply with a notice from Council requiring the Jets to rectify a breach of this Deed; or
- d) is otherwise in breach of its obligations under this Deed.

## 8. Operating Period

8.1 This Deed will operate for a period of 21 years from the Commencing Date.

8.2 The parties agree to amend the 2016 Deed so that it terminates on the day prior to the Commencing Date.

## 9. Miscellaneous

### 9.1 Definitions

In this document unless expressed or implied to the contrary:

**Business Day** means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney.

**GST** has the same meaning as in the GST Law.

**GST Law** means the *A A/ew Tax System (Goods and Project Tax) Act 1999* (Cth).

### 9.2 Interpretation

- a) This Deed may be amended only by a written instrument duly executed by the parties.
- b) The law of the State of New South Wales governs this Deed and any related legal proceedings.

Error! Unknown document property name.

**EXECUTED as a deed**

Signed for and on behalf of:

**EXECUTED** by **Inner West Council** ABN 19 488 017 987 by its authorised delegate (but not so as to incur any personal liability) in the presence of:

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Delegate

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Position of Delegate

\_\_\_\_\_  
Address of Witness

Executed by **Newtown Rugby League**

**Football Club Limited** ABN 66 000 258 408

in accordance with section 127 of the *Corporations Act 2001 (Cth)*

Signature of Director

Signature of Director/Secretary

Name:

Name:

Item No: C0623(1) Item 58

Subject: HENSON PARK DEVELOPMENT AGREEMENT - SUPPLEMENTARY INFORMATION

Prepared By: Matthew Pearce - General Counsel

Authorised By: Peter Gainsford - General Manager

## RECOMMENDATION

That Council adopt the recommendation in the *Confidential Attachment 1*.

## DISCUSSION

Council will move into closed session to deal with the Henson Park Development Agreement, for information which is classified as confidential under Section 10A(2)(d)(i) of the *Local Government Act 1993*. The matter is deemed confidential, as the matter is commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.

Pursuant to section 10A(2), 10(2) and 10A(3) of the *Local Government Act 1993*, the media and public will be excluded from the meeting on the basis that the business to be considered is classified as confidential under Section 10A(2)(d)(i) of the *Local Government Act 1993*.

## ATTACHMENTS

1. Henson Park Confidential Report - Supplementary Information - *Confidential*

***This attachment is confidential in accordance to commercial information of a confidential nature (Section 10A(2)(d)(i) of the Local Government Act 1993) that would, if disclosed prejudice the commercial position of the person who supplied it.***

2. AFL letter of Support - *Confidential*

***This attachment is confidential in accordance to commercial information of a confidential nature (Section 10A(2)(d)(i) of the Local Government Act 1993) that would, if disclosed prejudice the commercial position of the person who supplied it.***

3. Development Agreement - *Confidential*

***This attachment is confidential in accordance to commercial information of a confidential nature (Section 10A(2)(d)(i) of the Local Government Act 1993) that would, if disclosed prejudice the commercial position of the person who supplied it.***