

WITHOUT PREJUDICE AND SUBJECT TO COUNCIL APPROVAL

**THIS MEMORANDUM OF UNDERSTANDING (MOU)**

is made on the **12th** day of **June** 2020

**BETWEEN**

Ku-ring-gai Council (ABN 86 408 856 411) of 818 Pacific Highway, Gordon NSW 2072

and

Northern Sydney & Beaches Hockey Association Inc (ABN 20 504 267 521) of 9 Edwards Bay Road, Mosman NSW 2088

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**1. BACKGROUND**

Ku-ring-gai Council (Council) and Northern Sydney & Beaches Hockey Association (NSBHA) would like to work together to fund, design and construct a new multi-purpose artificial playing surface and refurbishment of the existing clubhouse building (The Facility) at Barra Brui Oval, 2A Burraneer Road, St Ives (Lot 7318 in DP 1158573). Council is the Crown Land Manager of the reserve.

Council intends to build The Facility to meet the needs of Council, the community and relevant user groups, including NSBHA.

**2. COUNCIL APPROVAL & BUSINESS CASE**

On 24 July 2018, Council Resolved:

- A. That Council provides "In Principle" support for a synthetic field to be introduced at Barra Brui Sportsground, St Ives. This provision will allow Council to carry out the necessary investigation and consultation and provide hockey the opportunity to source contribution from the Greater Sydney Sports Facility Fund in the second year of the grant (2019).
- B. That Council completes an internal review to assess the potential environmental impacts for the proposed synthetic surface at Barra Brui Sportsground in 2018/19.
- C. That Council undertakes a comprehensive consultation process with stakeholders and the community in 2018/19 and a report be submitted to Council at the completion of that process.

Council acknowledges that it provides its "in principle" support to NSBHA's proposal titled "Project Plan" dated 7 December, 2018.

**3. PURPOSE**

The purpose of this Memorandum of Understanding (MOU) is to reflect the parties' respective required outcomes, commitments and obligations regarding the funding, development and subsequent management and operation of The Facility.

#### **4. COUNCIL'S COMMITMENT**

Council agrees to:

- Consult NSBHA and other interested parties regarding the technical, spatial and functional requirements for The Facility.
- Confirm the project brief and business case for the project, including scope, costings and timeframes for The Facility.
- Project-manage the delivery of The Facility, subject to the elected Council's approval to progress the works.
- Complete the documentation required for the Community Sports Infrastructure Program for the amount of \$500,000, which was awarded to NSBHA as grant funding on 29 February 2019.
- Council will prepare a Project Deed, which will assign key roles between the parties regarding the delivery of The Facility, and to reflect parameters regarding the release of funds under the Funding Agreement.

#### **5. NSBHA's COMMITMENT**

NSBHA agrees to:

- Prepare a needs brief outlining its technical, spatial and functional requirements for Council's review.
- Work with Council to ensure the proposed needs brief can be delivered within committed funds and agreed timelines.
- Respond to Council's reasonable requests in a timely manner throughout the project.

#### **6. FUNDING**

It is proposed that a detailed project plan be undertaken to determine the accurate scope, costs and timeframe for the project, comprising The Facility, access, parking and surrounding public spaces.

The parties' funding commitments towards the project are outlined below.

A. NSBHA will contribute \$3,000,000 ex GST comprised from

- \$2,250,000 ex GST secured by NSBHA through the Greater Sydney Sports Facility Fund to assist with funding the artificial playing surface and clubhouse building refurbishment.
- \$500,000 ex GST awarded to NSBHA to assist with funding the building refurbishment through the Sport Australia Community Sport Infrastructure Grant Fund.
- To be an eligible applicant for the Greater Sydney Sports Facility Fund, NSBHA submitted a financial guarantee of over \$500,000 ex GST from a local hockey family to help it bridge from its projected cash reserves to the minimum 25% co-contribution commitment of \$750,000 (as per NSBHA's proposal titled "Project Plan" dated 7 December, 2018). NSBHA has since been able to de-risk its contracted financial commitments by agreement with the Greater Sydney Sports Facility Fund, in displacing the original financial guarantee with the \$500,000 ex GST subsequently awarded NSBHA through the Sport Australia Community Sport Infrastructure Grant Fund.



- \$250,000 ex GST cash contribution from NSBHA, noting that \$200,000 ex GST of these funds will be received by Council prior to the Request for Tender for constructing The Facility, with the remaining \$50,000 ex GST received by Council not later than 6 months after NSBHA's first payment of \$200,000 ex GST. However additional funds can be raised by NSBHA if required and subject to agreement between the parties.
- B. Council will contribute up to a maximum of \$1,116,814 ex GST towards the project (including the costs of preliminary environmental assessments up to the date of signing of this memorandum), replacing its original \$250,000 ex GST contribution as per the Funding Agreement. This contribution must be allocated towards project management services, including environmental assessment, consultation and planning approvals regarding The Facility, and any capital requirements arising for Council regarding the development of playing surface, ancillary parking and access, as the project is further defined.

Other funding requirements are as follows:

- Once costs and project timelines are determined, it is proposed that Council and NSBHA review its future funding commitments.
- The parties acknowledge and agree that the priority for The Facility is for the construction of the new multi-purposes artificial playing surface, with the balance of funds to be directed to the refurbishment of the clubhouse building.
- The parties agree to incorporate a payment schedule within the Project Deed,
- Council and NSBHA will bear their own costs in relation to this MOU and any other contracts, licences or any other agreements contemplated by it.
- The project is GST free given Council's control of payments and its GST Free status.

## 7. OWNERSHIP AND OPERATION OF THE FACILITY

Council as Crown Manager will own The Facility, and intends to enter into a licence agreement with NSBA over The Facility, including the appropriate use and access to The Facility on the following key terms:

- Licence area – incorporates the synthetic playing surface and adjoining clubhouse building.
- Licence term – 7+7+7 years. Options subject agreement between the parties (to align with life cycle of playing surface and to ensure that life cycle costs are able to be fully maintained by NSBHA).
- Permitted use – multi-purpose community sporting facility. Canteen/kiosk permitted within clubhouse building, subject to Council approval, food health regulations, BCA and planning approval.
- NSBHA to operate and manage all bookings for The Facility, and will set reasonable usage fees for all non-NSBHA users in consultation with Council.
- Licence fee – minimum licence fee required under the Crown Land Management Act. NSBHA to keep appropriate records of all bookings. The parties should seek to enter into a profit sharing model in addition to the minimum rent following the initial 7 year term.
- NSBHA will be required to establish and maintain a sinking fund as per the following conditions:
  - The annual contributions amount is to be determined between the parties in consultation with an independent expert regarding the ongoing maintenance and



- renewal of the artificial playing surface and clubhouse building. This amount may increase over the licence term as the operation of the facility increases;
- The sinking fund is to be used for the ongoing maintenance and renewal of the artificial playing surface and clubhouse building; and
- Audited accounts must be provided to Council annually, which, among other things, clearly identify the sinking fund.
- The playing surface is to be publicly accessible outside of booked usage times.
- NSBHA must maintain the building in good condition at all times, including at its cost the prompt rectification of all internal and external building repairs and maintenance.
- NSBHA is responsible for all outgoings, utilities and services associated with the use of The Facility (including without limitation electricity, gas, water, air conditioning, telecommunications and charges for discharge of trade waste and garbage collection charges).
- The proposed licence is subject to compliance with an authorised plan of management, as well as Council and Crown approval.

## **8. COMMUNITY ENGAGEMENT**

- A. A Community Engagement Plan will be formalised as part of the project and undertaken by Council in conjunction with NSBHA.
- B. The NSBHA must not, and must ensure that its personnel do not, disclose, distribute or otherwise communicate any information, media release, material or publicity about The Facility or this agreement, their relationship and dealing with Council or otherwise refer to the Council (including use its logo) without Council's prior approval.

## **9. PROCUREMENT OF WORKS AND SERVICES**

- A. Procurement of all works and services will be undertaken by Council in accordance with Council's procurement policy and processes.
- B. The NSBHA is entitled to have a non-voting representative on Council's Tender Evaluation Committee and Tender Review Committee. The deliberations of these committees are to remain confidential until such time as disclosed publicly by Council. Note: The deliberations of these committees, in accordance with normal practice and legislative requirements, will only disclosed to the public in a limited manner.

## **10. INSURANCE**

NSBHA must maintain:

- (a) an insurance policy for public risk in connection with The Facility covering each claim for at least \$20 million with no limit on the number of claims that can be made. The Council must be an additional insured;
- (b) an insurance policy for workers' compensation if appropriate.

## **11. TERMINATION**

- A. Either party may terminate this MOU by giving one month's written notice.
- B. Both parties can withdraw from the project if the pre tender estimates are too high to deliver The Facility in their respective opinion, acting reasonably.

- C. The parties reserve the right to withdraw from the project if the public tender results in a price of delivering The Facility which is too high in their respective opinion, acting reasonably. Council's ability to proceed with the project is at all times subject to Council approval.

## **12. CONFIDENTIALITY**

The parties, their employees, members, or agents agree that all information and negotiations regarding any tender process in relation to the matters contemplated by this MOU are to be kept confidential unless otherwise agreed by the parties.

## **13. THIS MOU IS NOT LEGALLY BINDING**

- A. This agreement is non-binding on the parties.
- B. It is entered into to only conveniently summarise the discussions between Council and NSBHA regarding the delivery of The Facility.
- C. If the parties agree to work together to deliver The Facility, the parties will negotiate in good faith enter into legally binding agreements based on the subject matter set out in this agreement including:
  - a. Project Deed
  - b. Licence Agreement
- D. The arrangements proposed under this agreement, including the entry into the Project Deed and Licence Agreement, are conditional on each party obtaining all necessary internal and external approvals to proceed with The Facility.
- E. This agreement is the entire agreement between the parties on everything connected with the subject matter of this agreement. The agreement may only be varied in writing.

#### 14. EXECUTION OF MOU

**Signed by** Ku-ring-gai Council (ABN 86  
408 856 411) by its authorised delegate:

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Signature


\_\_\_\_\_  
Print Name

**WITNESS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**Signed by** Northern Sydney &  
Beaches Hockey Association Inc.  
(ABN 20 504 267 521) by its authorised  
delegate:

  
\_\_\_\_\_  
Signature

**David Johnston**  
\_\_\_\_\_  
Print Name

**WITNESS**

  
\_\_\_\_\_  
Signature

**Diana Brown**  
\_\_\_\_\_  
Print Name