

E&C REPORT – 7 JUNE 2021 – CLAUSE F – ATTACHMENT B

**COMMUNITY FACILITIES
CONNECTED COMMUNITIES
LIFESTYLE AND COMMUNITY SERVICES**

AMENDMENT OF LEASE

TENURE DETAILS	
File Reference	112/445/444/1313
Proposed Tenant	Crushers Leagues Club Limited ACN 061 454 680
Name and Address of Land to be Leased	352 Stafford Road, Stafford Gibson Park (D0204)
Interest of Land to be Leased	Freehold
Real Property Description of Land to be Leased	Lot 5 on SP150610 Parish of Kedron, County of Stanley
Area to be Leased (Premises)	Lease C on SP306522
BACKGROUND	
Background	<p>On 11 June 2019, Council approved a new 20-year lease to Crushers Leagues Club Limited (ACN 061 454 680) (the organisation) for part of Gibson Park, Lease C on SP306522 located within Lot 5 on SP150610, more commonly known as 352 Stafford Road, Stafford.</p> <p>The organisation has been in contact with Council officers since November 2019, seeking an amendment to the definition of 'Turnover' in the approved lease. The organisation has presented to Council that the condition in the lease referring to 'Turnover' is not consistent with the definition provided by the Queensland Government's Office of Liquor and Gaming Regulation. While the condition in the approved lease does not contravene the <i>Gaming Machine Act 1991</i> (Qld) (the Act), the method of calculation of the community contribution does not account for the relevant gaming taxes and health service levy in accordance with section 317 of the Act, which are payable by the organisation.</p> <p>Council has also been contacted by officers from the Queensland Government's Department of Tourism, Innovation and Sport (the Department) who have been liaising with the organisation regarding grant funding to redevelop the sports surface. The Department has advised both Council and the organisation that for the organisation to be successful in any funding submission to the Department it would be asked to outline the demand for a new bowls club, taking into account the use of existing bowls clubs in the catchment and the potential requirement to produce a needs analysis for the conduct of bowls club activities in Stafford.</p> <p>The purpose of the lease amendment is to:</p> <ul style="list-style-type: none"> clarify the definition of Turnover in relation to the calculation of community support contributions in years six to 20 in the lease update the approved Use of the Premises to assist the organisation in securing funding through sport and recreation grant programs.

	<p>The organisation is committed to making a difference in the local community and its vision is to create a complete sporting and community complex, inviting other sports, schools, charities, businesses and cultural groups to use the facility. The organisation estimates the operation of the licensed venue will create approximately 20 new employment opportunities in the local area.</p> <p>The organisation has re-confirmed it will support local sporting organisations, Stafford District Cricket Club, Padua College Limited, Brothers Junior Rugby League Football Club Incorporated and the remaining members of the former Stafford Bowls Club, to access and use the premises for club functions, training and meetings. In addition, the organisation has committed \$50,000 per annum to maintain the neighbouring rugby league fields to support the activities of Gibson Park Committee Inc. The organisation will also provide a minimum of \$150,000 per annum in sponsorship to local families and clubs to assist with the costs of participating in sport. This includes covering the cost of travel to State, national and international events, uniforms, playing equipment and general sponsorship.</p> <p>The organisation's delivery of capital works of \$4.7 million will significantly improve an ageing community facility and assist in reactivating local community interest and participation in sport and recreation. In addition, the ongoing community support contributions represent a significant benefit to the community of a minimum of \$200,000 per annum.</p>
Ward Councillor	Councillor Fiona Hammond, Councillor for Marchant Ward, is in support of the amendment.
RECOMMENDATION	
<p>That Council:</p> <p>(i) approves the amendment of the 20-year lease with Crushers Leagues Club Limited in accordance with the lease terms and otherwise on terms and conditions satisfactory to the Manager, Asset Management, Brisbane Infrastructure, and the Chief Legal Counsel, City Legal, City Administration and Governance.</p>	
Commencement Date	11 June 2019
Termination Date	10 June 2039
Use of the Premises	<p>DELETE:</p> <p>The playing and practicing of lawn bowls, conduct of a licensed club, and other community-based activities as first approved in writing by Council.</p> <p>INSERT:</p> <p>The conduct of a multi-sports facility and licensed club. Other community-based activities as first approved in writing by Council.</p>

<p>Additional Conditions</p>	<p>DELETE:</p> <p>1. Turnover means the aggregate of all receipts, revenue and income derived directly or indirectly from or in relation to the Tenant's operations at the Premises or otherwise attributable to the Tenant's operations including remuneration received or receivable from the following:</p> <ul style="list-style-type: none"> (a) the sale of all merchandise, including pre-packaged snacks, beverages and food (b) payments of all kinds received from both members and non-members (c) gross revenue from gambling activities, including gaming machines prior to the payment of prizes (d) sums and credits received in settlement of claims under policies of insurance or other contracts of indemnity for loss of business sales or profit, and (e) all other payments, credits and amounts whatsoever received or receivable for or in connection with the Tenant's operations at the Premises, <p>but does not include GST or other taxes imposed on the purchase price or cost of hire of goods or services at the point of sale or hire.</p> <p>INSERT:</p> <p>1. Turnover means the aggregate of all receipts, revenue and income derived directly or indirectly from or in relation to the Tenant's operations at the Premises or otherwise attributable to the Tenant's operations including remuneration received or receivable from the following:</p> <ul style="list-style-type: none"> (a) the sale of all merchandise, including pre-packaged snacks, beverages and food (b) payments of all kinds received from both members and non-members (c) the net Metered Win from any gaming machines and gross revenue from other gambling activities in operation at the Premises (d) sums and credits received in settlement of claims under policies of insurance or other contracts of indemnity for loss of business sales or profit, and (e) all other payments, credits and amounts whatsoever received or receivable for or in connection with the Tenant's operations at the Premises, <p>but does not include GST or other taxes imposed on the purchase price or cost of hire of goods or services at the point of sale or hire.</p> <p>2. "Metered Win" has the same meaning as defined in the <i>Gaming Machine Act 1991</i> (Qld).</p> <p>3. "Net Metered Win" means the amount obtained by subtracting the gaming taxes and health service levy payable in accordance with Section 317 of the <i>Gaming Machine Act 1991</i> (Qld) from the Metered Win.</p>
<p>Appendices</p>	<p>Appendix A: Council approved lease terms (11 June 2019)</p>

**COMMUNITY FACILITIES
CONNECTED COMMUNITIES
LIFESTYLE AND COMMUNITY SERVICES**

**LEASE TERMS
20-YEAR LEASE**

TENURE DETAILS

File Reference	112/445/444/1139-02
Proposed Tenant	Crushers Leagues Club Limited ACN 061 454 680
Name and Address of Land to be Leased	352 Stafford Road, Stafford Gibson Park (D0204)
Interest of Land to be Leased	Freehold
Real Property Description of Land to be Leased	Lot 5 on SP 150610 Parish of Kedron, County of Stanley
Area to be Leased (Premises)	Lease C on SP 306522

BACKGROUND

Background	<p>Gibson Park is located at 352 Stafford Road, Stafford, is registered as Lot 5 on SP 150610, and covers six hectares. Gibson Park comprises a park shelter, half-court basketball court, an internal access road and associated parking, as well as sport and recreation land comprising four senior rugby league fields, a licensed clubhouse and a former lawn bowls club. The four senior rugby league fields and licensed clubhouse are currently leased to Gibson Park Committee Inc, with the former lawn bowls club currently licensed to Crushers Leagues Club Limited (the organisation). The organisation has submitted an acceptable lease application for a new 20-year lease for Lease C on SP 306522 located within Lot 5 on SP 150610.</p> <p>The previous tenant of the lawn bowls facility, Stafford Bowls Club Inc, vacated the premises on 30 November 2016 due to declining membership, poor governance and increasing operating expenses. Council conducted an Expression of Interest process in November 2016 to identify a suitable eligible organisation to continue the management of the facility. The proposal from the organisation was identified as the most suitable and meritorious application.</p> <p>On 2 March 2018, Council's delegate approved a new one-year licence to the organisation to enable it to take possession of the premises and develop a plan for long-term investment into the facility. The organisation is a registered not-for-profit community organisation with the objectives of providing a social and sporting club for members, and providing financial support to promote, foster and encourage the development of junior rugby league and other junior sports in the community.</p> <p>The organisation is committed to making a difference in the local community and its vision is to create a complete sporting and community complex, inviting other sports, schools, charities, businesses and cultural groups to use the facility. The organisation estimates the operation of the licensed venue will create approximately 20 new employment opportunities in the local area.</p>
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	<p>The organisation is proposing to spend approximately \$4,700,000 to refurbish the facility, including a new undercover multi-purpose sports surface, upgrading the existing lawn bowls green, new carpets, new furniture, internal and external painting and upgrading the function rooms. The interior will also be reconfigured to create a family friendly bistro with alfresco dining overlooking the adjacent rugby league fields and lawn bowls green. The existing gaming room will also be upgraded to meet current standards and provide a more discreet area to restrict access to gaming for children and families. Given the significant investment, the organisation has requested a minimum 20-year lease to provide security of tenure to recover the initial investment.</p> <p>The organisation is also seeking Council approval to transfer the current approved gaming machine licence for 76 machines from their previous premises at 41 Agincourt Street, Grange. The organisation is relocating from this location due to the costs incurred from the failed Crushers National Rugby League franchise and the subsequent sale of its freehold playing fields for residential development. The relocation of the licensed club operations to part of Gibson Park will allow the organisation to reconnect with sub-users of the adjacent Gibson Park Committee Inc leased fields.</p> <p>The organisation has confirmed it will support local sporting organisations, Stafford District Cricket Club, Padua College Limited, Brothers Junior Rugby League Football Club Incorporated and the remaining members of the former Stafford Bowls Club, to access and use the premises for club functions, training and meetings. In addition, the organisation has committed \$50,000 per annum to maintain the neighbouring rugby league fields to support the activities of Gibson Park Committee Inc. The organisation will also provide \$150,000 per annum in sponsorship to local families and clubs to assist with the costs of participating in sport. This includes covering the cost of travel to State, national and international events, uniforms, playing equipment and general sponsorship.</p> <p>The organisation's delivery of capital works of \$4,700,000 will significantly improve an ageing community facility and assist in reactivating local community interest and participation in sport and recreation. In addition, the ongoing community support contributions represents a significant benefit to the community of \$200,000 per annum.</p> <p>The granting of a 20-year lease will be subject to the organisation obtaining a development approval for the reconfiguration of part of Lot 5 on SP 150610 within 12 months of the lease approval.</p>
Lease Application	An acceptable Lease Application was submitted on 25 February 2019 for the 20-year term.
Ward Councillor	Councillor Fiona Hammond, Councillor for Marchant Ward, is in support of this lease.
SITE CHECKS	
Properties on the Web – Property Details	<input checked="" type="checkbox"/> Property details reviewed (refer tab 8)
Bikeway and Road Checks	<input checked="" type="checkbox"/> No Impact - Standard clause applies <input type="checkbox"/> Yes Impacted - See additional conditions

RECOMMENDATION

That Council:

- (i) approves entry into a new lease for 20 years (Term) with Crushers Leagues Club Limited (ACN 061 454 680) in accordance with the lease terms subject to:
 - (a) Crushers Leagues Club Limited obtaining a development approval for reconfiguring part of a lot within 12 months of this approval
 - (b) otherwise on terms and conditions satisfactory to the Manager, Asset Management, Brisbane Infrastructure, and the Chief Legal Counsel, City Legal, City Administration and Governance
- (ii) approves Crushers Leagues Club Limited making an application for reconfiguring part of a lot pursuant to the *Planning Act 2016*
- (iii) consents to Crushers Leagues Club Limited making an application under the *Gaming Machine Act 1991* to operate a maximum of 76 gaming machines on the premises
- (iv) consents to Crushers Leagues Club Limited entering into a mortgage of lease.

Commencement Date	The date of Council's approval of this lease.
Termination Date	20 years from the Commencement Date.
Annual Rent for the First Year of the Lease	\$3,117 (inclusive of GST) per annum, payable in advance which is the annual rental for two lawn bowls greens and a large building, as set out in the Schedule of Fees and Charges of Council's approved 2018-19 Budget.
Rent Review	<p>Council may choose to review the annual rent on all anniversaries of the Commencement Date except for the Renegotiation Dates (Review Dates), according to this formula:</p> $AR = \frac{CPI1}{CPI2} \times PAR$ <p>where:</p> <p>AR = the annual rent payable for the year beginning on that Review Date</p> <p>CPI1 = the All Groups Consumer Price Index (Brisbane) for the quarter year ending immediately before the Review Date</p> <p>CPI2 = the All Groups Consumer Price Index (Brisbane) for the quarter year ending immediately before:</p> <ul style="list-style-type: none"> (a) the last Review Date or Renegotiation Date on which the annual rent was reviewed, renegotiated, or recalculated, whichever occurred last, or (b) if the annual rent has not been reviewed, renegotiated or recalculated previously, the Commencement Date <p>PAR = the annual rent payable for the year ending on the day before that Review Date.</p> <p>Council and the Tenant agree to renegotiate the annual rent payable from each Renegotiation Date.</p> <p>If Council and the Tenant do not agree on the renegotiated annual rent within six months of the particular Renegotiation Date, the annual rent for the year commencing on that Renegotiation Date will be calculated using this formula:</p> $AR = 150\% \times PAR$ <p>where:</p> <p>AR = the annual rent payable for the year beginning on that Renegotiation Date</p> <p>PAR = the annual rent payable for the year ending on the day before that Renegotiation Date.</p>

Renegotiation Date	Fifth, tenth and fifteenth anniversaries of the Commencement Date.
Additional Rent	Not applicable.
Use of Premises	The playing and practicing of lawn bowls, conduct of a licensed club, and other community-based activities as first approved in writing by Council.
Permitted Operating Hours	<p><u>Use of Clubhouse</u> 10am-12am, seven days a week</p> <p><u>Use of Playing Fields</u> 10am-12am, seven days a week</p>
Public Liability Insurance	\$20,000,000 (Certificate of Currency provided for period ending 10 April 2020)
Address for Notices to the Tenant	PO Box 1261 Stafford QLD 4053
Maintenance Plan in Schedule 2	<p>Before the expiration of the fifth year of the Term, the Tenant must:</p> <p>(a) undertake capital improvements to the Premises to the value of \$4,700,000 as set out in the lease application documents submitted to Council and dated 4 November 2017</p> <p>(b) carry out maintenance of the Premises to the value of at least \$400,000 at a rate of not less than \$80,000 per annum, or at such a rate as otherwise agreed with Council, and such maintenance is to include both buildings and grounds</p> <p>(c) give Council a new five-year additional maintenance plan satisfactory to Council on or before the fifth, tenth and fifteenth anniversaries of the Commencement Date.</p>
Alcohol	<p><input type="checkbox"/> Strictly No Alcohol Permitted</p> <p><input type="checkbox"/> BYO Only</p> <p><input type="checkbox"/> BYO and Private Function</p> <p><input type="checkbox"/> Community Liquor Permit <input type="checkbox"/> Restricted Liquor Permit</p> <p><input checked="" type="checkbox"/> Full Liquor Licence</p>
Gambling	<p><input type="checkbox"/> No Gambling Permitted</p> <p><input type="checkbox"/> Fundraising and Raffles Only</p> <p><input checked="" type="checkbox"/> Gaming Machines Permitted. Limit of 76.</p>
Contaminated Site	<p><input type="checkbox"/> Not Applicable</p> <p><input checked="" type="checkbox"/> Contaminated Standard Clause Applies</p>
Additional Conditions	<ol style="list-style-type: none"> 1. The Tenant must undertake annual maintenance inspections of the Premises and provide Council with a list of maintenance works identified and completed. 2. The Tenant must provide Council with a copy of the Tenant's most recent audited financial statements relating to the Premises, and other financial information reasonably requested by Council, on each and every anniversary of the Commencement Date.

3. Whenever the consent of Council is required under this lease:
 - (a) the Tenant must make a written request to Council
 - (b) the consent may be given or withheld in Council's absolute discretion
 - (c) the consent must be in writing, and
 - (d) the consent may be given, subject to conditions.
4. The Tenant acknowledges that it is responsible for all costs of maintenance and removal of trees and shrubs on the Premises. To avoid confusion, the parties acknowledge that the Tenant must obtain Council's consent before commencement of any removal works.
5. The Tenant acknowledges that the existing bowling greens must be retained and used for sporting purposes, unless otherwise approved by Council.
6. The Tenant:
 - (a) will make the bowling greens, change rooms and amenities on the Premises, which are necessary for the proper conduct of the sport of lawn bowls, available for the playing of lawn bowls at times which do not conflict with the normal activities of the Tenant, and
 - (b) may impose reasonable conditions, including the charging of a reasonable fee, for the use under this clause.
7. The Tenant acknowledges that there is extensive community interest in this site and agrees to engage with key members of the local community and previous users of the facility when undertaking any planning for the future use and development of the Premises.
8. Access
 - (a) The Council permits the Tenant, its licensees, and invitees to have access to, and egress from, the Premises as shown on Plan Number 300186089-01 in this lease (or as otherwise determined by Council from time to time), in common with the Council and others having a like right.
 - (b) The Tenant uses this right of access at its own risk.
9. The Tenant commits to supporting the neighbouring existing sporting clubs and the remaining members of the Stafford Bowls Club to continue use and access to the Premises during the Term of the lease.
10. **Community Support Contributions** means an amount in money (or in-kind) spent by the Tenant for the support of community and sporting groups based within the Brisbane local government area.
11. The Tenant must during the Term of this lease at the Tenant's cost:
 - (a) provide the Community Support Contributions
 - (b) Community Support Contributions are to include financial and in-kind support to the Gibson Park Committee Inc, including, but not limited to, Stafford District Cricket Club, Padua College Limited and Brothers Junior Rugby League Football Club Incorporated (or such other clubs that utilise the sporting facilities on the Premises) during the Term of this lease to the satisfaction of Council by way of:
 - (i) maintenance of the playing fields, greens, grounds and ovals in a fit and proper condition for the playing of and practising for the game of rugby league football, lawn bowls
 - (ii) other games, sports, athletics and recreation permitted or approved under this lease, to the satisfaction of Council.
12. The minimum amount payable each year by the Tenant towards Community Support Contributions is:

- (a) for years one to five of the lease, the amount of \$200,000 (plus GST)
- (b) for years six to 20 of the lease, an amount which is the greater of:
 - (i) \$200,000 (plus GST), or
 - (ii) three per cent of the Tenant's annual turnover (applicable to the Premises), to be reviewed every five years.

13. The Community Support Contributions are to be fully documented and submitted to Council, without demand, annually on 1 November each year of the Term.

14. **Turnover** means the aggregate of all receipts, revenue and income derived directly or indirectly from or in relation to the Tenant's operations at the Premises or otherwise attributable to the Tenant's operations including remuneration received or receivable from the following:

- (a) the sale of all merchandise, including pre-packaged snacks, beverages and food
- (b) payments of all kinds received from both members and non-members
- (c) gross revenue from gambling activities, including gaming machines prior to payment of prizes
- (d) sums and credits received in settlement of claims under policies of insurance or other contracts of indemnity for loss of business sales or profit, and
- (e) all other payments, credits and amounts whatsoever received or receivable for or in connection with the Tenant's operations at the Premises,

but does not include GST or other taxes imposed on the purchase price or cost of hire of goods or services at the point of sale or hire.

15. The Tenant must give Council a new five-year additional maintenance plan satisfactory to Council on or before the fifth, tenth and fifteenth anniversaries of the Commencement Date.

16. The Tenant acknowledges that Council may obtain a condition audit report of the Premises during the Term of this lease. The Tenant must, if requested to do so by Council, provide Council with a new maintenance plan satisfactory to Council, that addresses maintenance issues listed in that report, to replace the existing plan.

17. Clause 7.2 of Council's standard community lease terms is to be deleted.

18. Clause 21.1 of Council's standard community lease is amended to read:

The Tenant indemnifies Council against every action, claim, demand, notice, loss, damage, cost and expense for which Council may become liable arising from:

- (a) loss or damage to property, or death or injury related to the Tenant's Use of the Premises and not caused by the negligence of Council
- (b) any act, neglect, default or omission by the Tenant or the Tenant's invitees on the Premises, or
- (c) the performance or non-performance of any obligation under this lease.

19. Council:

- (a) acknowledges that, as at the Commencement Date, the Tenant holds a club liquor licence under the *Liquor Act 1992* and holds a gaming machine licence under the *Gaming Machine Act 1991*, which permits it to operate 76 gaming machines on the Premises
- (b) consents to the Tenant holding both these licences.

20. Further additions to the amount of gaming machines may require a review of the percentage payable under 12(b)(ii).

21. If the Tenant at any time wishes to apply to further vary the terms of these licences, the Tenant must first apply to Council for Council's consent to the variation.

22. Tenant's Acknowledgments: Corporation Limited by Guarantee

If the Tenant ceases to be a corporation limited by guarantee, becomes a corporation limited by shares, or if its articles or memorandum of association cease, to provide that:

- (a) the income and property of the Tenant must be used and applied solely to promote, foster, support and encourage by financial means and otherwise the development of junior rugby league and other junior sports in our community
- (b) no part of the income or property of the Tenant may be distributed, paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to or amongst the members of the Tenant, except as payment in good faith of:
 - (i) interest to any member on money advanced by them to the Tenant or owing by the Tenant to them
 - (ii) remuneration of any officers, employees or members of the Tenant or any other person in return for any services rendered to the Tenant
 - (iii) out of pocket expenses, money lent, reasonable and proper charges for goods hired by the Tenant or reasonable and proper rent for premises demised or let to the Tenant
- (c) if the Tenant is wound up and there remains any property, after satisfaction of all its debts and liabilities, that property must not be paid to or distributed among the members of the Tenant, but must be given or transferred to some other institution with similar objects to those of the Tenant and which prohibits the distribution of its income and property among its members,

then this is a major breach of the lease.

23. Reconfiguration of lot

Reconfiguration Approval means the approval of Council (in its capacity as town planning authority) for the Reconfiguration of the Land arising as a consequence of this lease.

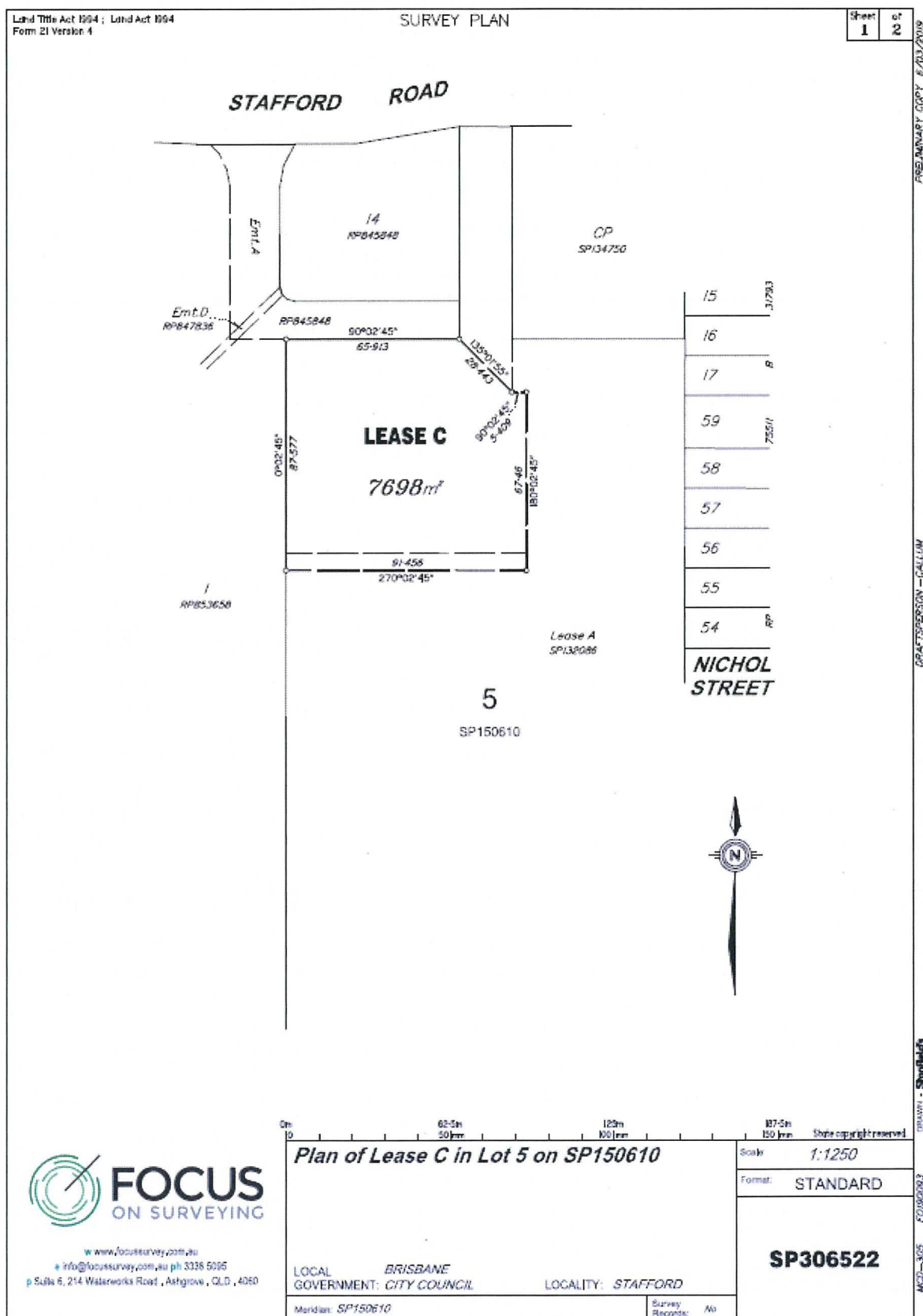
Reconfiguration means a reconfiguration as defined in the *Planning Act 2016*.

Reconfiguration Date means 12 months from the Commencement Date, or such extension thereof as the parties may agree.

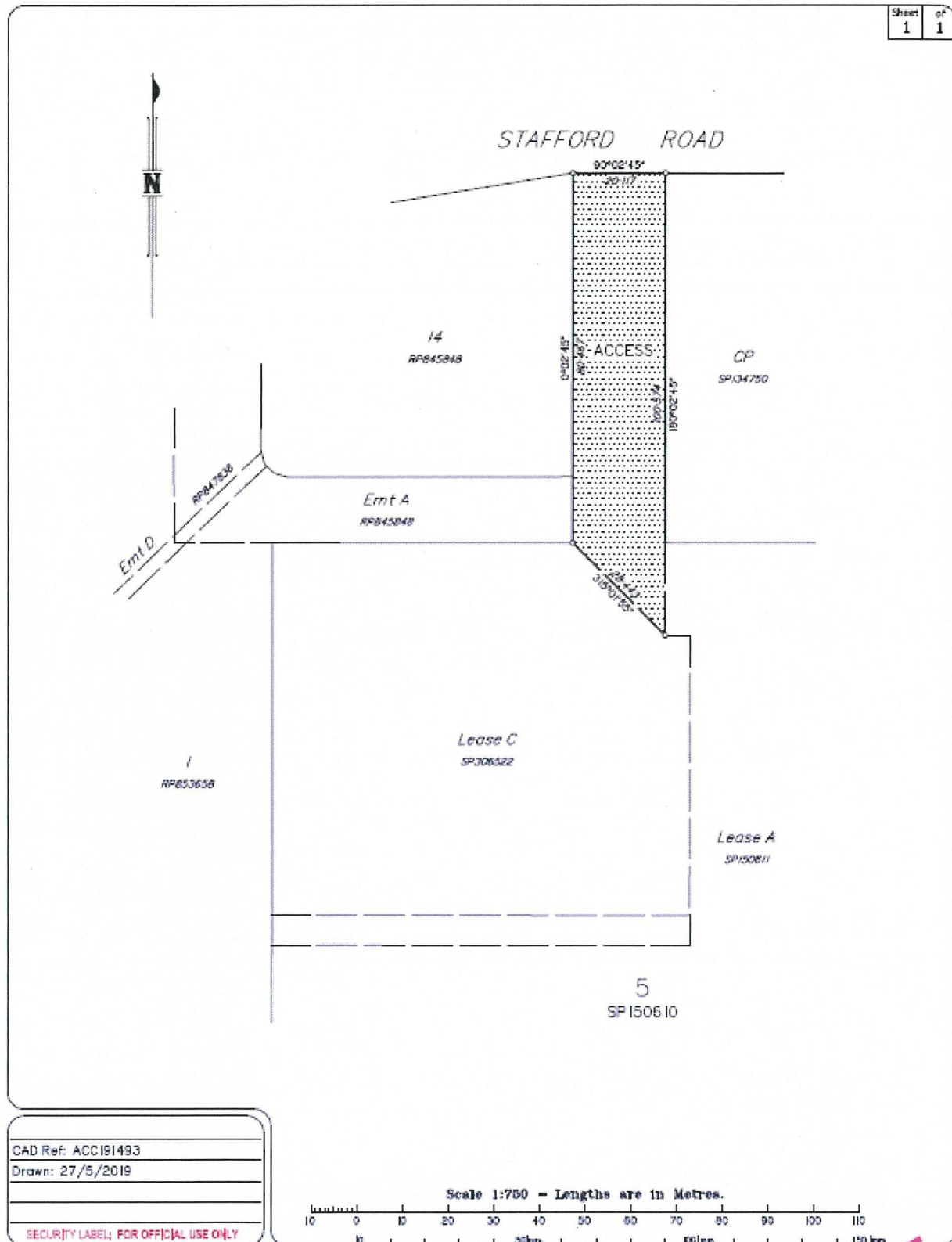
- (a) This lease is subject to and conditional upon the condition that the Tenant will obtain the Reconfiguration Approval pursuant to the *Planning Act 2016* on or before the Reconfiguration Date.
- (b) The Tenant must use its reasonable endeavours to obtain the Reconfiguration Approval, on or before the Reconfiguration Date.
- (c) The Tenant must give notice to Council that the Reconfiguration Approval has been obtained.
- (d) If the Reconfiguration Approval is obtained on or before the Reconfiguration Date, the condition in additional condition 24(a) is satisfied and this lease is unconditional in that regard.
- (e) If the Reconfiguration Approval is not obtained on or before the Reconfiguration Date, then either party may by written notice to the other, terminate this lease.
- (f) If this lease is terminated under additional condition 24(e) then this lease is at an end and neither party will have any further claim against the other arising under or pursuant to this lease, except in respect of any breach occurring before the date of termination.

	<p>24. Council does not breach any provisions of this lease in the proper exercise of any power, obligation or duty had by it as a local government authority or as a town planning authority. Without limiting the foregoing, the Tenant specifically acknowledges and agrees that the grant of this lease does not in any way bind Council in its capacity as a local government authority or as a town planning authority to grant the Reconfiguration Approval.</p> <p>25. Further, the Tenant will pay all costs in connection with the obtaining of any necessary approval of Council as local authority to any town planning application required for the use of the Premises under this lease.</p>
Appendices	<p>Appendix A: Lease plans</p> <p>Appendix B: Access plan</p>

LEASE PLANS (not to scale)
Lease C on SP306522



ACCESS PLAN (not to scale)

**ACCESS PLAN**

for Lease A on SP132086 & Lease C on SP306522
Locality of STAFFORD

 City Projects Office 11, Green Square 100, 100, 100, 100 Torquay Valley, Q4 4000	
ACC 91493-01	-

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