

ITEM NUMBER: 18.5

CONFIDENTIAL REPORT

GLENELG FOOTBALL CLUB – NEW LEASE AND LICENCE

Pursuant to Section 83(5) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- b. Information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and would, on balance, be contrary to the public interest.

- d. commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and would, on balance, be contrary to the public interest.

Recommendation – Exclusion of the Public – Section 90(3)(b & d) Order

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 357/22 Glenelg Football Club - New Lease and Licence of in confidence.
2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 357/22 Glenelg Football Club - New Lease and Licence on the following grounds:
 - b. pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would prejudice the commercial position of the Council.
 - d. pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.

Item No: 18.5

Subject: **GLENELG FOOTBALL CLUB – NEW LEASE AND LICENCE**

Date: 23 August 2022

Written By: Manager, Development Services

General Manager: Strategy and Corporate, Ms P Jackson

SUMMARY

The Glenelg Football Club Incorporated (“Club”) has occupied its current premises at Glenelg Oval under a lease and license arrangement since 1 July 2001. At its Meeting held on 11 July 2017, Council resolved to enter into a new lease and licence agreement with the Club for a period of five (5) years commencing 1 October 2017 and ending on 30 September 2022, with an option to renew for a further five (5) years thereafter. Following preliminary discussions with the Club, it is proposed that Council now enter into a new lease and license agreement with the Club for a period of five (5) years commencing 1 October 2022, with an option to renew for a further five (5) years thereafter, with an annual payable rent of [REDACTED] (excl GST) from 31 October 2023. It is also recommended that negotiations commence to finalise the terms of a sub-lease between the Club and the commercial entity currently enjoying exclusive use of a section of the first floor in the Clubroom building. Full details of the proposal are outlined within this report.

RECOMMENDATION

That Council:

1. **enters into a new Lease Agreement with the Glenelg Football Club Incorporated over a portion of land contained within Certificate of Title Volume 5869 Folio 949 for a period of five (5) years commencing 1 October 2022, with an Option to Renew for a subsequent five years;**
2. **charges the Lessee an annual rent in the first year of [REDACTED] (excl GST) per annum from 31 October 2023 to be reviewed annually in accordance with movements in CPI (Adelaide All-Groups);**
3. **enters into a new license agreement with the Glenelg Football Club Incorporated for non-exclusive use rights over a portion of land contained within Certificate of Title Volume 5869 Folio 949 for a period of five (5) years commencing 1 October 2022, with an annual rent of \$1 payable on demand;**
4. **endorse the Mayor and Chief Executive Officer to be authorised to execute and seal any documents required to give effect to this lease; and**

5. authorise Administration to negotiate the terms of a sub-lease for Council's authorisation between the Glenelg Football Club and ACH for exclusive use of the first floor to take effect from 31 October 2023.

RETAIN IN CONFIDENCE - Section 91(7) Order

6. That having considered Agenda Item 18.5 in confidence under section 90(2) and (3)(d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments and minutes be retained in confidence for a period of 24 months from the date of this decision and that the Chief Executive Officer is authorised to release the documents at the expiry of that period and that this order be reviewed every 12 months.

STRATEGIC PLAN

Wellbeing Objectives 2020-2030 – Integrate community, recreational, and commercial services in multi-purpose spaces through the increase in utilisation rates for Council owned buildings.

COUNCIL POLICY

Sporting and Community Leasing Policy
Commercial Leasing & Licensing Policy

STATUTORY PROVISIONS

Local Government Act 1999
Retail and Commercial Lease Act 1995

BACKGROUND

At its Meeting held on 11 July 2017, Council resolved to enter into a lease and licence agreement with the Glenelg Football Club for a period of five (5) years ending on 30 September 2022, with an option to renew for a further five (5) years thereafter (Resolution No. C110717/834). Since that time, Council endorsed the *Sporting & Community Club Leasing Policy* at its meeting held on 24 April 2018 (Resolution No. C240418/1124), with the intent being that it be used to inform future sporting club leases. At its Meeting held on 14 December 2021, Council resolved to maintain the annual lease for the Glenelg Football Club at \$40,000 (including GST) up to 31 October 2023 (Resolution No. C141221/2502) to assist with the Club's debt reduction strategy (the Club would otherwise be paying \$72,000 in rent per annum under the terms of the current lease).

REPORT

Since Council last entered into a lease and license agreement with the Club in July of 2017, Council adopted the *Sporting and Community Leasing Policy* (the Policy) on 24 April 2018. In this regard, the new lease for the Glenelg Football Club will be based on the new Policy, including its inherent

rent calculation model. The Policy was endorsed to ensure a balance between commerciality, community benefits and the long term viability of sporting clubs, and to provide consistency and transparency in the treatment of leases. Furthermore, the Policy provides the opportunity to formally recognise the exclusive commercial use of a section of the first floor in the Clubroom building, enabling negotiations to commence for a separate sub-lease for the space, with rent calculated at a commercial rate, portion of which would be returned to Council.

Administration has been working with the Glenelg Football Club to review and negotiate various conditions and terms of the lease, maintenance schedules and applicable rental and ground maintenance. It is proposed that Council enter into a lease agreement with the Club to allow exclusive use rights of the Club buildings, including Edward Rix Grandstand, with the licence permitting non-exclusive use rights of the oval, oval surrounds and car park.

The lease and licence areas are detailed in Attachment 1.

Refer Attachment 1

Basis of Rental

Under the 2018 *Sporting and Community Leasing Policy*, clubs are required to pay a market rent for Council owned premises they occupy based on a fixed percentage of the capital cost of the building less any equity (capital contribution) that the club has invested in the building.

This “market rent” is then discounted by a standard 70% Community Club Leasing rebate to determine the “net rental”. This net rental figure is then subject to further incentive discounts (up to a maximum of 70%) as outlined in the Policy, which reflect a club’s commitment/adoption of activities and programs with specific community outcomes. With respect to the Glenelg Football Club, the incentives relative to community outcomes have been calculated as follows:

- Clubrooms available/hired for public access (maximum 0% discount);
- Implementation of Inclusive sports programs (maximum 20% discount);
- Quality and implementation of good club governance practices (max 20% discount);
- Implementation of youth programs (maximum 10% discount); and
- Grounds/clubrooms used for multi-code programs (maximum 10% discount).

As such, the Glenelg Football Club is entitled to the standard 70% community club discount plus an additional 60% incentive discount (out of a total further discount of 70%).

Having regard to the Glenelg Football Club’s equity in the building (which it funded in 2002 through a loan by Council), the annual rent of the Edward Rix Grandstand and Glenelg Football Clubrooms (including ACH facility) amount is \$6,030.00.

A grounds maintenance charge is being introduced in this lease to ensure the Glenelg Football Club pay a proportion of the additional grounds maintenance costs to maintain the grounds from community park level to sports ground level. These additional costs include extra top dressing, fertiliser, weed controls and soil conditioners, and additional watering and higher costs for bore and irrigation repairs to ensure turf is safe for sport and can survive the high usage of sports fields.

Administration has calculated a reasonable ground maintenance charge for tenants of Glenelg Oval to be \$0.30 per square metre of leased area. This equates to an annual maintenance fee of \$6,434.10 for the 21,477m² of grassed area (car park area excluded). This amount is halved to reflect joint use of the playing field with the Glenelg District Cricket Club. The adjusted annual land charge for the Glenelg Football Club is therefore \$3,221.55. As such, the total rent payable when merging the market rent with the ground maintenance fee is \$9,251.55. The rent calculator is provided as Attachment 2.

Refer Attachment 2

However, in a separate agreement, the Club is renting approximately 207m² of the first floor of the Clubroom building to a third party commercial operator (being ACH) for exclusive use to operate a health studio. Attachment 3 to this report outlines the area on the first floor intended for exclusive commercial use as a health studio operated by ACH. The Glenelg Football Club will receive in 2022/23 an annual fee of [REDACTED] from ACH for use of section of the first floor.

Refer Attachment 3

In accordance with the Council's *Sporting and Community Clubs Leasing Policy*, where facilities are not made available to the community, Council reserves the right to apply occupancy terms and conditions that reflect exclusive use of the premises. Furthermore, the Policy requires that where a club restricts community access for the purpose of exclusive use, annual rental fees based on a market appraisal of the land will be imposed. Given that profits from the health studio on the first floor of the Clubroom building are retained by ACH, the *Sporting and Community Clubs Leasing Policy* seeks that where the profits gained from a commercial activity are not reinvested into the Club facilities or sport, then a rent charged in accordance with the separate *Commercial Leasing & Licensing Policy* may apply. The *Commercial Leasing & Licensing Policy* seeks that rent must reflect a rent that could reasonably be obtained in the open market, determined by an independent valuation. An independent commercial valuation was therefore commissioned and is provided as Attachment 4 to this report. The valuation provides for an annual rent of between [REDACTED] and [REDACTED] for the upstairs health studio, or between [REDACTED] and [REDACTED] per square metre of floor area. In this regard, the actual rent paid to the Glenelg Football Club is higher than the valuation, which equates to [REDACTED] per square metre of floor area. It is recommended that the market rent payable under the sub-lease is based on the actual rent received rather than on the valuation.

Refer Attachment 4

Rents Calculation

The Glenelg Football Club has never been charged a separate market rent by the Council for the upstairs area of the Clubroom building, even when part of the space operated as The Bay Function Centre. However, with the adoption of the *Sporting and Community Clubs Leasing Policy*, and with precedent being established through other recent lease negotiations, Council is entitled to consider a rent akin to that expected in the open market, in recognition that the sections of the

upstairs Clubroom are not available to the community, with all profits retained by a third party commercial operator.

Whilst the *Commercial Leasing & Licensing Policy* requires that the rent must reflect a rent that could reasonably be obtained in the open market determined by an independent valuation, and therefore in accordance with the valuation provided as Attachment 4, the Policy does enable Council to consider other factors in determining the final rent. From the Club's perspective, these factors include:

1. The risk of losing agreed income from the tenant (ACH) if a rent imposed would be different to the [REDACTED] per annum currently received.
2. The Glenelg Football Club wholly funded the construction of the Clubroom building (albeit through a loan provided to it by Council)
3. The Club has significant amount of equity in the leasable area and it should be entitled to negotiate its own terms as a means to generate secure income

Conversely, the Council's perspective requires greater latitude, as it needs to consider factors on behalf of the broader community, which include:

1. The Club borrowed funds from Council to construct the Clubroom building, with an ongoing debt to the Council
2. The likelihood that the approach taken with respect to setting the terms of this sub-lease will establish a precedent for future sub-lease discussions with other clubs

It would seem reasonable and responsible for the Council to therefore adhere to its policies in having regard to a valuation, but to use the discretion available to it to establish terms that reflect existing agreements if the return to the community is greater. Therefore, Council could apply a rent equation that would take its cues from the actual rent paid to the Glenelg Football Club by ACH rather than the independent valuation, whilst acknowledging the Club's equity in the Glenelg Football Club buildings in that calculation.

Rental and Ground Maintenance Fee Summary

Buildings Rent:

After allowing for equity contribution of \$5,300,657, the rental calculation with a Community Lease discount of 70% and incentive discounts of 60% (out of a total of 70%) has resulted in a rebated commencing rent of \$6,030 (excl GST) per annum for the occupancy of the buildings.

Ground Maintenance Fee:

The portion of leased area utilised by the club includes a grassed playing surface and warm up areas is determined at 21,477m² in size. Applying the grounds maintenance fee at \$0.30/m² of leased grass area the grounds maintenance fee has been set at \$6,443 (excl GST). This amount is halved to \$3,221.55 (excl GST) to acknowledge the shared use of Glenelg Oval with the Glenelg District Cricket Club, and charged to the Club in addition to rent over the term of the lease.

Commercial Rent:

Applying a commercial rent of [REDACTED] per square metre to the 207m² section of the first floor of the Clubroom building occupied exclusively by ACH as a health studio, a market rent of [REDACTED] is derived. With the Glenelg Football Club's equity across the buildings it occupies being 72.5%, Council's portion of the rent should therefore be 27.5% of the market rent valuation, or [REDACTED]. The proportionate calculation based on equity yields a similar return to Council to the 30% model most recently applied to similar sub-lease arrangements for other council assets.

Total Rent

Combining the property rental, commercial rent, and grounds maintenance fees gives a total commencing annual rent charge to the club of [REDACTED] (excl GST), which will then be subject to annual CPI increases commencing from 31 October 2023. [REDACTED]

In this regard, and should

Council accept the rent model presented, the new rent would not be paid until 31 October 2023, notwithstanding that the new lease would be executed on 1 October 2022.

In addition to rental charges for the buildings occupied by the Glenelg Football Club, Council's policy requires a sharing of the maintenance costs for both the buildings and grounds. Responsibilities for building maintenance are established through a site specific maintenance schedule (in this case similar for each of the three club leases) which sets out the respective responsibilities for operational costs, repairs, maintenance (whether routine servicing or breakdown maintenance) and end-of-life replacement. Administration and the Club have negotiated over these responsibilities and the draft maintenance schedule reflects Administration's view of what we consider are fair and equitable.

Proposed basic terms and conditions of the lease.

Lessor	City of Holdfast Bay
Lessee	Glenelg Football Club Inc. and Glenelg Footballers Club Inc.
Address	Brighton Road Glenelg East
Leased Areas	Glenelg Football Club, including Edward Rix Grandstand.
Commencement Date	1 October 2022
Term of Lease	5 years
Expiry Date	1 October 2027
Option to Renew	5 Years
Rental Per Annum	[REDACTED] (excluding GST)
Rental Commencement Date	31 October 2023
Rental Payable	Monthly in advance
Rental Review	1 October 2025.
Rental Review Type	CPI, all Groups Adelaide quarter ending 30 September of each year.
Permitted Use	Sporting, recreation, hospitality and community activities for the operation of the Glenelg Football Club Inc. and Glenelg Footballers' Club.

General Maintenance	Lessee responsible for the general maintenance of all leased areas in accordance with the lease maintenance schedule.
Structural Maintenance	Responsibility of Lessor, unless caused by negligence of Lessee.
Water	Water used in building areas payable by Lessee
Electricity	Payable by Lessee
Gas	Payable by Lessee
Other Utilities	Payable by Lessee
Council Rates	Payable by Lessee
Other Levies and Charges	Payable by Lessee
Building Insurance	Paid by Lessor and reimbursed by Lessee
Contents Insurance	Lessee to insure all contents its uses and provide a certificate of currency when requested by the Lessor.
Public Liability Insurance	Lessee to have a minimum \$20 million per claim and unlimited in the annual aggregate public liability insurance and provide a certificate of currency when requested by the Lessor.
Security	All costs payable by Lessee.
Building Services	Maintenance and running costs of all building services payable by Lessee.
Assignment or Sub Letting	The Lessee will not assign, sub lease or sublet any part of the premises without the prior written consent of the Lessor.
Indemnity	The lessee will indemnify the Lessor for injury, death, damage and all demands, claims, losses, suits or actions that may arise as a result of this lease.
Warranty	The Lessor does not warrant that the premises are fit for the use that the Lessee proposes to use them for.
Lease Preparation	Lessor's lawyers to prepare the licence document on terms and conditions which incorporated this document. The Lessee to be responsible for its own costs
Contemporaneous agreements	Lessee acknowledges the lease will be entered into at the same time as a licence for the Glenelg Oval. A breach of the lease by the Lessee will constitute a breach of the licence.
Redevelopment and demolition	Subject to the lease agreement, the Lessee acknowledges that during the term of the lease, the Lessor may refurbish, repair, redevelop or extend the building and/or land ("property"), and if necessary, the Lessor may obtain vacant possession of the property for the purpose of any such works.
Special Conditions	
	The lessee must make available for the use of the council 40 tickets to each game for all SANFL league matches conducted at the property.
	The Lessee will be responsible for keeping all areas clean and tidy during times of use.
	The Lessee will be responsible for planning, administering, and review all traffic management for game days at its own cost in all things.

Proposed basic terms and conditions of the license.

Licensor	City of Holdfast Bay
Licensee	Glenelg Football Club
Address	Brighton Road Glenelg East
Licensed Areas	Oval area and surrounds, including grandstand.
Commencement Date	1 October 2022
Term of Licence	5 years
Expiry Date	1 October 2027
Times of Use	1 April to 31 September of each year.
Option to Renew	5 Years
Rental Per Annum	\$1 payable on demand
Rental Commencement Date	1 October 2022
Rental Payable	Monthly in advance
Rental Review	1 October 2025.
Permitted Use	Sporting, recreation and community activities for the operation of the Glenelg Football Club Inc.
General Maintenance	<p>The Licensee is responsible for cleaning the licensed area prior to and at the end of each use. The Licensee must also repair any damage caused by the Licensee and/or its contractors and invitees and otherwise comply with the attached maintenance schedule.</p> <p>Licensor to maintain the oval in a condition generally suitable for SANFL games only. The Licensee is responsible for all maintenance costs to improve the grounds above this standard.</p> <p>Otherwise, in accordance with the lease maintenance schedule</p>
Structural Maintenance	Responsibility of Licensor, unless caused/contributed by the act, omission, negligence or default of the Licensee.
Water	Payable by Licensor
Electricity	Payable by Licensee
Other Utilities	Payable by Licensee
Council Rates	Payable by Licensee
Other Levies and Charges	Payable by Licensee
Building Insurance	Paid by Licensor and reimbursed by Licensee
Contents Insurance	Licensee to insure all contents its uses.
Public Liability Insurance	Licensee to have a minimum \$20 million per claim and unlimited in the annual aggregate public liability insurance
Security	All costs payable by Licensee.
Assignment or Sub Letting	The Licensee will not assign, sub license or sublet any part of the premises without the prior written consent of the Licensor.
Indemnity	The Licensee will indemnify the Licensor against any demands, claims, losses, suits or actions that may arise as a result of this licence.

Warranty	The Licensor does not warrant that the premises are fit for the use that the Lessee proposes to use them for.
Licence Preparation	Licensor's lawyers to prepare the licence documents on terms and conditions which incorporate this document. The Licensee to be responsible for its own costs
Contemporaneous agreements	Licensee acknowledges the licence will be entered into at the same time as a lease for a portion of the Glenelg Oval Precinct. A breach of the licence by the Licensee will constitute a breach of the lease.
	The Licensee acknowledges that the Licensor may in its absolute discretion, after consultation with the Licensee, grant a licence to third parties for the use of the premises outside of the Times of Use.
	The Licensee will be responsible for collecting and removing all waste and rubbish from the oval and surrounds following game day matches and ensuring that the oval and surrounds are clean and tidy for use by the general public by the commencement of the next calendar day.
	The Licensor will be responsible for the maintenance of the oval surround areas, including grassed area, mounds, steps, ramps and grandstand seating areas.
	The Licensee may let advertising space in or upon the fences on the perimeter of the oval and may control the placing and erection of such signs and hoardings subject to obtaining Licensor approval, Development Approval if required under the Planning, Development & Infrastructure Act 2016.
	<p>On days of SANFL competition matches, trial matches and other football matches organised by the Licensee, the Licensee has the following rights subject to all relevant laws:</p> <ul style="list-style-type: none"> - The right to sell foodstuffs from the booths and canteens within the property. - The right, (subject to compliance with the Liquor Licensing Act, 1997), to supply and sell alcoholic and other beverages from the booths and canteens, - The right, (in conjunction with the SANFL), to full control of all gates and entrances to the property. - The right to sell seating within the property. - The right to charge fees, or to permit fees to be charged for admission to the property and grandstands. - The right to sell or permit to be sold any football publications or souvenirs. - The right to use parking areas.
	The Licensor will be responsible for cleaning and generally maintaining the caretakers building and toilets.

Sub-Lease Negotiations

Given that the rent payable to Council will remain capped at \$40,000 until 31 October 2023, there is no urgency to finalise the sub-lease between the Glenelg Football Club and ACH. In this regard,

it is recommended that Council authorises Administration to progress with the preparation of the terms for the sub-lease in consultation with the Glenelg Football Club as a means to have the sub-lease with ACH finalised ahead of the commencement of the new rent arrangements in the Head Lease.

BUDGET

As no rental is currently paid direct to the City of Holdfast Bay this lease will have an effect on councils operating budget from 2022/23.

LIFE CYCLE COSTS

Under the terms of the new lease the City of Holdfast Bay will be responsible for the structural maintenance of this facility. The renewal of the major structural components of the building is provided within Council's asset management plans.

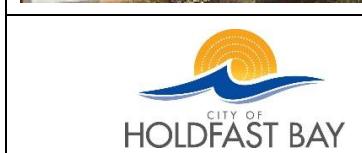
CONFIDENTIAL

Attachment 1





Az Property Address Labels
▲ Holdfast Bay
~ Property
■ Property Miss Matches
■ CHB Aerial (2017)



This map has been created for the purpose of showing basic locality information and is a representation of the data currently held by The City of Holdfast Bay. This information is provided for private use only.
While every effort has been made to ensure the accuracy of the product, Council accepts no responsibility for any errors or omissions.
Property
Boundary line network data is supplied by State Government.

Glenelg Football Club
Lease & License Areas

4/05/2017

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Attachment 2



Lease - Rental Calculator - Rent payable by Glenelg Football Club for Leased Premises on basis of Sporting & Community Leasing Policy

Premises Value	\$ 7,310,498	NOTE: Capital Asset Value of clubrooms, grandstand, kiosk and training centre
Area used	100%	NOTE: Building Area used by lessee <100%
	\$ 7,310,498	

Equity	\$ 5,300,657	NOTE: \$ Lessee Contributed to the build/premises, if no contribution, then \$0.
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Current Rental NOTE: Add current rent exc GST to determine incremental increases.

	Property Value	Property value minus Equity	Market Rent	Net Rent (CoHB Discount)	Non-Exclusive Use (<50%)	OR	Lease incentive discounts (community)						PLUS	Land Size (m ²)	Land Charge
							hire for Public Access (for exclusive use only)(<10%)	Inclusion (<20%)	Governance (<20%)	Youth Programs (<10%)	Multi-Code (<10%)	Total discount			
							0%	20%	20%	10%	10%	60%			
BUILDING	\$ 7,310,498	\$ 2,009,841	\$ 50,246	\$ 15,074									\$ 6,030		
LAND	\$ -	\$ -	\$ -										\$ -		

The tenant is responsible for providing ongoing evidence of their compliance with the incentive discounts

 \$ 6,030

Rent per annum: 9,251.55

NOTE:

Rent as calculated above relates solely to the "Premises" the subject of the Lease Agreement dated 14 November 2017.

"Premises" means and includes the clubrooms, grandstand, kiosk and St John Ambulance/training centre as built and existing prior to the Masterplan works.

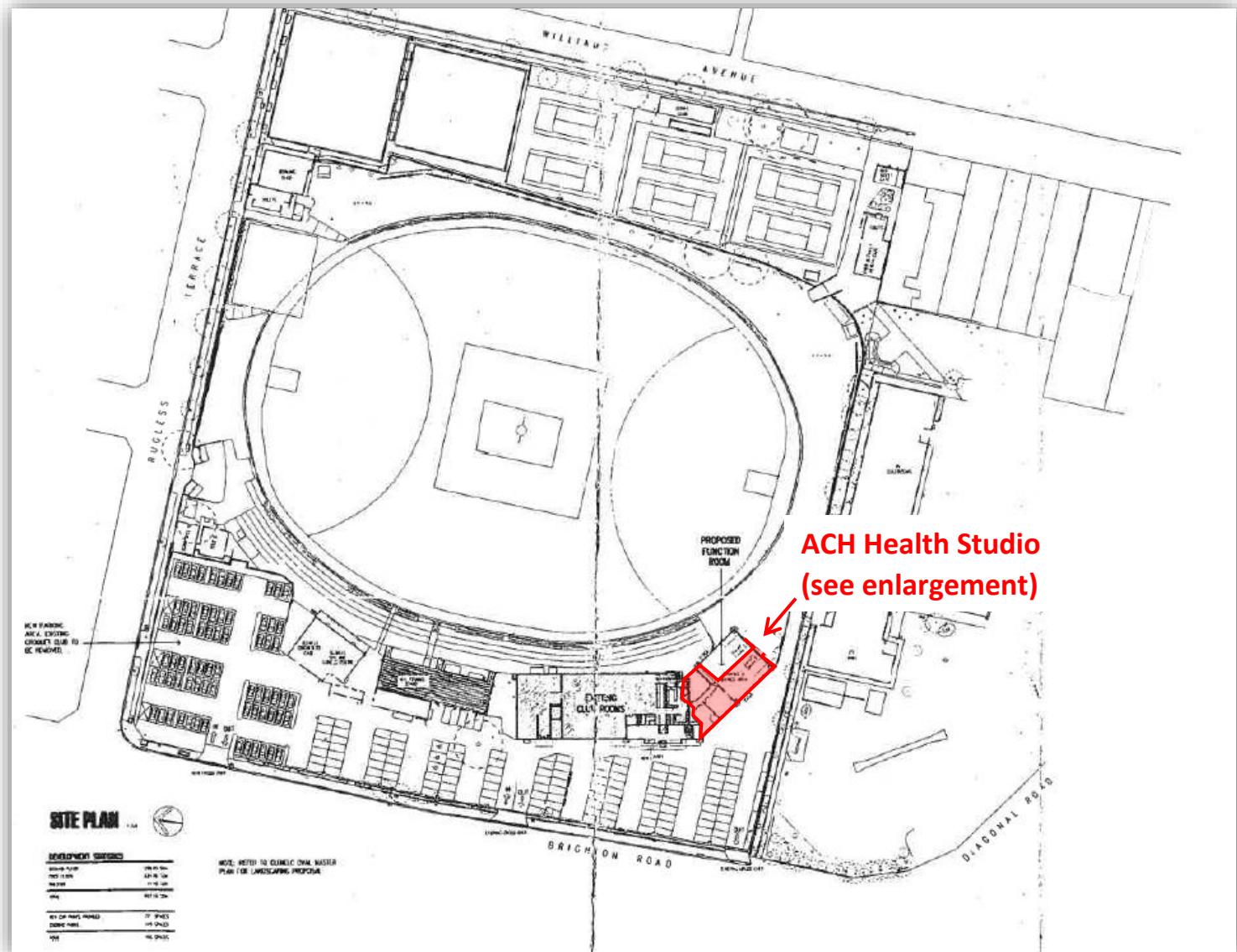
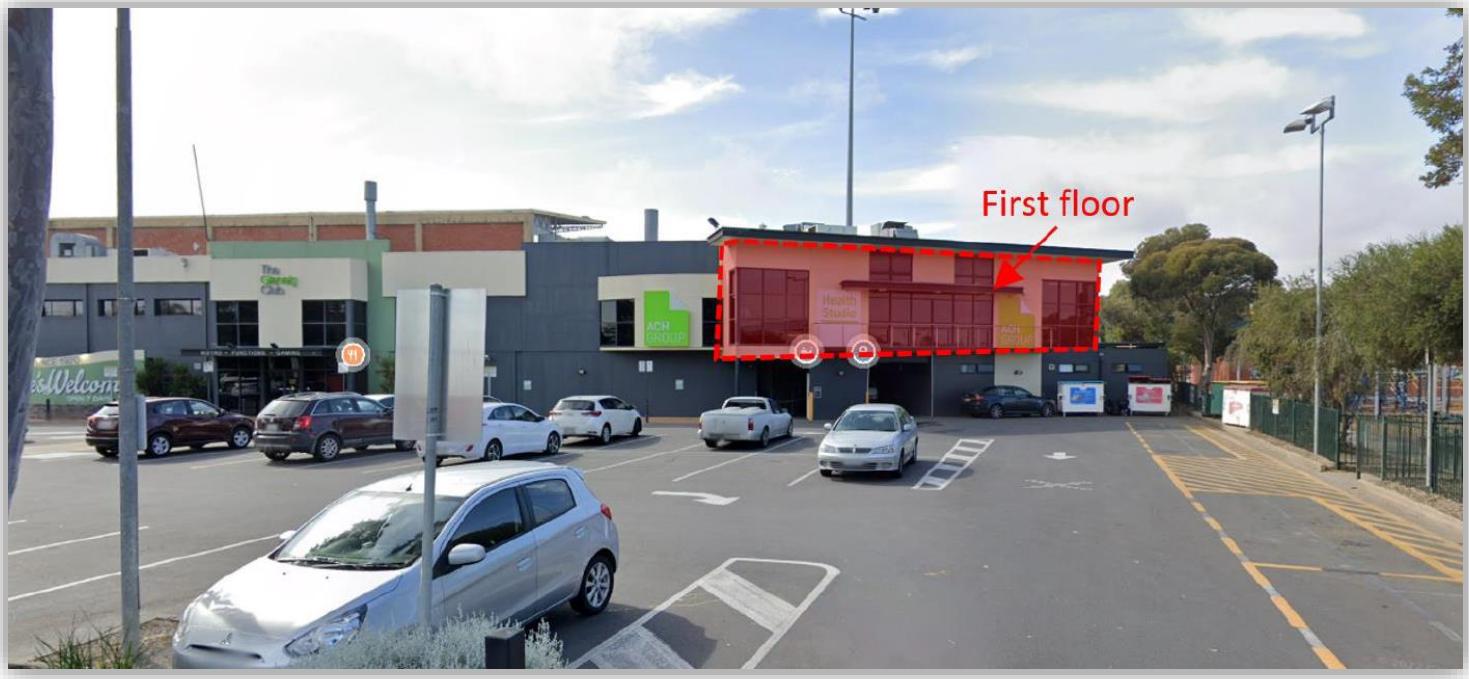
GFC has the use of the oval, carpark and surrounds by way of a separate seasonal licence agreement with Council for an annual licence fee of \$1,000 plus GST.

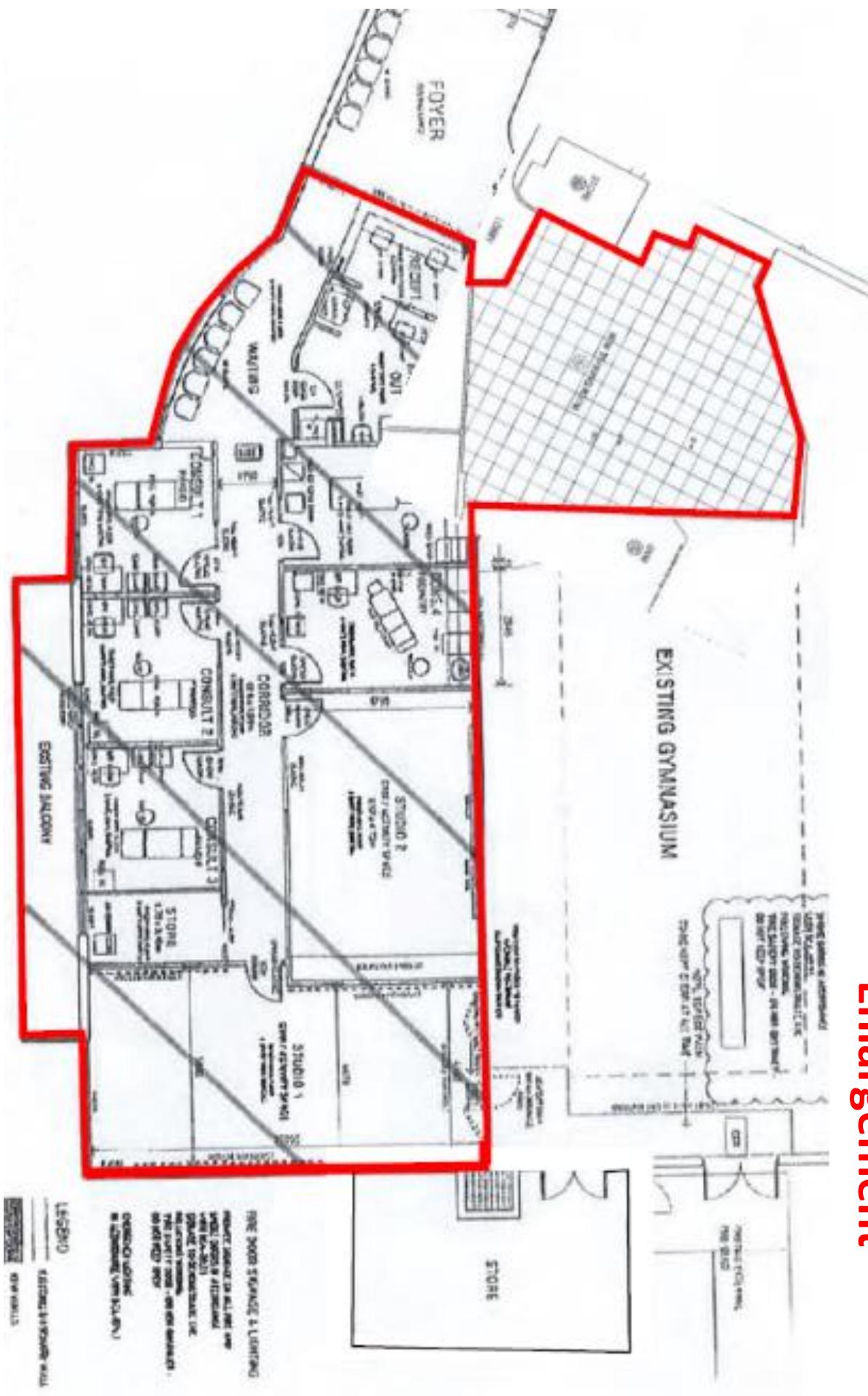
GFC also have the use of the change rooms by way of a further separate seasonal licence for a commencing annual fee of \$787.50 plus GST.

To be applied only when Council maintains a area of land (ie playing surface) to a level that is above "Reserve" status. Examples: Cricket Pitch, Football Ovals, Rugby Pit etc.

Attachment 3







Enlargement

Attachment 4

