

Our Ref: 16-073903/A8716096
Contact: Jonathan Chivers
Direct Dial: 03 5950 1163
Email: Jonathan.Chivers@mornpen.vic.gov.au



15 April 2019

John Reynoldson
31 Warrawee Road
BALNARRING VIC 3926

Dear John

RE: Licence – Flinders Foreshore “Public Purposes” Reserve

I refer to previous discussions and correspondence regarding the above matter and enclose a fully executed copy of the Licence Agreement for your records.

Thank you for your assistance in getting this matter finalised.

If you have any queries please do not hesitate to contact me.

Yours sincerely

A solid black rectangular box used to redact the signature of Jonathan Chivers.

Jonathan Chivers
Senior Property Officer

Enc

MORNINGTON PENINSULA SHIRE COUNCIL

LICENCE

CROWN LAND (RESERVES) ACT 1978

Section 17B

THIS LICENCE is granted by the Licensor to the Licensee and commences on the date set out in the Schedule.

In consideration of the payment of the licence fee and the conditions contained in this Licence, the Licensor or a person authorised by the Licensor, at the request of the Licensee HEREBY AUTHORISES the Licensee to use the licensed premises described in the Schedule for the specified purposes set out in the Schedule.

This Licence is subject to the provisions of the *Crown Land (Reserves) Act 1978* and Regulations thereunder, the licence conditions attached and any Statutory and other Special Conditions set out in the Schedule.

Signed for and on behalf of the
Mornington Peninsula Shire Council
by ~~Yasmin Woods~~, Manager Property
and Strategy in the presence of:

.....
NATHAN KEARLEY - INTERIM MANAGER
PROPERTY & STRATEGY

Witness

The Licensee hereby agrees to comply with the terms and conditions of this licence

Signed for and on behalf of the
**Victorian Hang Gliding and Paragliding
Association Inc** (Reg.No.A0018791T) by
its Secretary in accordance with the
Associations Incorporations Reforms Act
2012 in the presence of:

Signature of witness

ROB VANDER KLOOSTER

Name of witness

Signature of Secretary

PO BOX 157 NORTHCOOTE VIC 3070

Address of Secretary
Program Manager
Land & Built

Approved by ANDREW WYVER
as delegate of the Minister for Energy, Environment & Climate Change

on

29/3/19

Minister for Energy,
Environment and
Climate Change

NOTE:

1	<i>This licence is not valid until it has been approved by the Minister or the Minister's delegate.</i>
2	<i>This Licence is an important document and should be stored in a secure and safe place.</i>
2	<i>In the event of loss, a replacement fee will be charged.</i>

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SCHEDULE

ITEM

1. **Licence Number:** A8287499
2. **Licensors:** Mornington Peninsula Shire Council
3. **Licensee:** Victorian Hang Gliding and Paragliding Association Incorporated (Registration No. A0018791T)
4. **Licensee's Address:** PO Box 157 Northcote, Victoria 3070
5. **Commencement Date:** 20 September 2018
6. **Term:** 10 (ten) years
7. **Licence fee:** \$531.44 plus GST subject to annual increases on the anniversary of the Commencement Date in line with the increase in the annual CPI published prior to the anniversary of the Commencement Date
8. **Payable:** Annually in advance
9. **Reservation description:** Flinders Foreshore Reserve – temporarily reserved for Public Purposes by order dated 23 December 1886
10. **Licensed Areas:** Part Flinders Foreshore Reserve as shown on the attached plans
11. **Area:** Launching/take-off area – approx. 120m²
Landing Areas – approx. 2.3Ha
12. **Powers under which licence granted:** Section 17B Crown Land (Reserves) Act 1978
13. **Specified Purposes:** Entry and use of the licensed area for the launching and landing of hang gliders and paragliders
14. **Amount of Public Liability Insurance:** \$20,000,000
15. **Licensors Address:** 90 Besgrove Street, Rosebud, Victoria 3939
16. **Special Conditions:**
 - Erection of appropriate signage at the launching/take-off area by the Victorian Hang Gliding and Paragliding Association (VHPA) advising that use of the site for flights is restricted to suitably qualified current members of the Hang Gliding Federation of Australia (HGFA) and advising the public of the nature of operations.
 - Operations to be conducted as mandated by the HGFA Operations Manual, directions policies and guidelines and in accordance with the Civil Aviation Safety Authority Regulations, Standards Advisory Publications and laws.

- Access to the gate to the launching/take-off area to be secured with a combination lock with publication of the code restricted to members of the HGFA via a secure members-only web site and subject to regular change. Council is to be notified of the code, including the regular changes. This gate must be kept closed and secured at all times when the launching/take-off area is not being used or is unsupervised. The Licensee is responsible for maintaining the gate and at the termination of the Licence the Licensee must remove the gate and reinstate the fence.
- Use of the Licensed premises to be restricted to Advanced rated pilots only (or Intermediate pilots at the discretion of safety officers on site if conditions are appropriate).
- The Licensed premises are not to be used for competitions or events without the prior written consent of the Council.
- Flying should only take place when the conditions are favorable and safe to do so and safe landing areas are available taking into account tide height and/or high number of pedestrians within landing area(s).
- Flying or use of the Licensed premises may not take place if the area surrounding the monuments is in use for scheduled ceremonial or cultural activities or if the area is being used for a wedding or event previously booked with the Council.
- Any capital works on the infrastructure involved and subsequent required maintenance is subject to the prior written consent of the Council. All costs associated with such works are the responsibility of the VHPA and its delegated local clubs.
- No works are to be carried out or vegetation to be removed within the Licensed premises and/or surrounding area without the prior written consent from Council. The Licensee must make good any damage to Council assets including the park surface and fencing.
- The Council reserves the right to stop all activity including the Specified Purposes in or from the Licensed premises at any stage in order to carry out its functions as the Committee of Management.
- There must be no training or paid lessons (either individually or as a group) at the Licensed premises.
- The Licensee acknowledges that the Licensed Areas are adjacent to War Memorials and that the Licensee will advise users to respect the site accordingly and not fly any objects from the associated flag poles.
- The Licensee acknowledges that the Council may close the Licensed premises or any part of the Licensed premises without payment or expectation of compensation to the Licensee.

Licensed Areas

Flinders Launching/Take-off Area Plan

Flinders
Town Centre

COOK ST

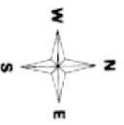
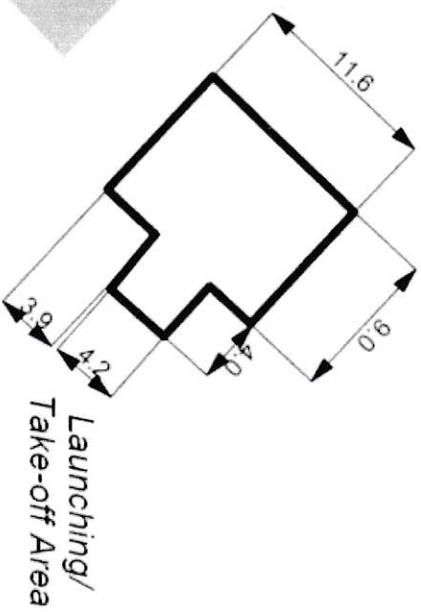
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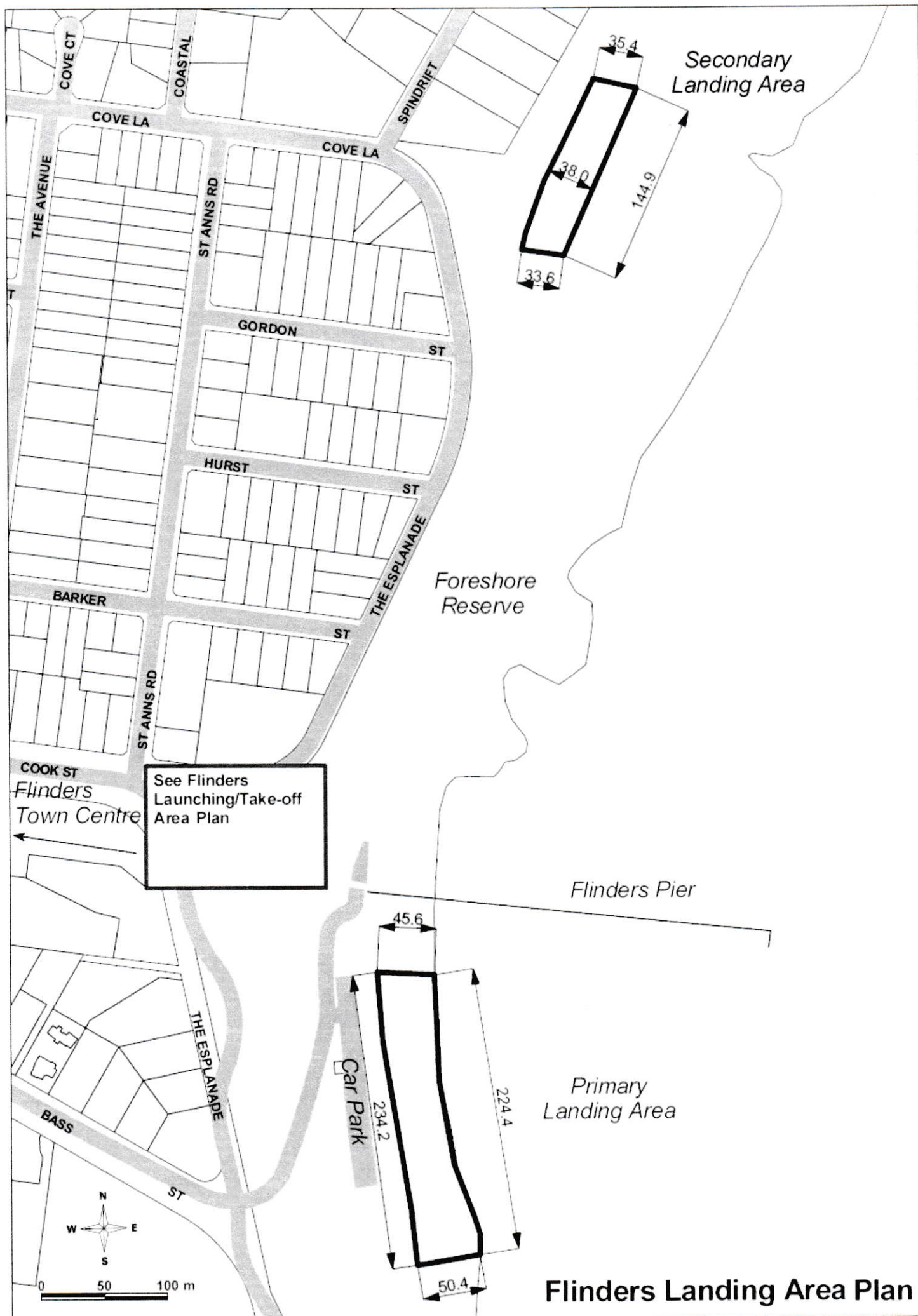
Car Park

Foreshore Reserve

Flinders Pier



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LICENCE CONDITIONS

1 **Grant**

The rights conferred by this Licence are non-exclusive, do not create or confer upon the Licensee any tenancy or any estate or interest in or over the licensed premises or any part of it, and do not comprise or include any rights other than those granted or to which the Licensee is otherwise entitled by law.

2 **Licensee's Obligations (Positive)**

The Licensee **Hereby Covenants** with the Licensor that during the term the Licensee will:-

2.1 **Licence fee**

Duly and punctually pay or cause to be paid the licence fee to the Licensor at the payment address shown in Item 15 of the Schedule or as advised by the Licensor from time to time on the days and in the manner provided in Item 8 of the Schedule without demand, deduction, set-off or abatement.

2.2 **Rates and Taxes**

2.2.1 Duly and punctually pay as and when they respectively fall due all rates and taxes on the licensed premises.

2.2.2 If requested to do so by the Licensor, produce receipts to the Licensor evidencing payment of the rates and taxes.

2.2.3 Duly and punctually pay to the Licensor at the same time and in the same manner as the licence fee is payable to the Licensor (or as otherwise notified to the Licensee by the Licensor) under clause 2.1 above the amount of any GST payable on or in relation to this licence and/or the rent payable thereunder or that becomes payable by the Licensor during the period covered by the fee.

2.3 **Indemnity**

Indemnify the Crown in respect of any claim or liability for property damage and/or injury or death of any person which arises directly or indirectly out of negligence, tort, contract, or breach of a statutory duty by the Licensee or any associated party consequential to the use or occupation of the licensed premises, including, but without restricting the generality of the foregoing, the pollution or contamination of land or water, and any costs, charges and expenses incurred in connection therewith.

2.4 **Public Liability Insurance**

A public liability insurance policy over the premises (providing no less limit of indemnity for any one occurrence during the policy period than the amount shown at Item 14 of the Schedule), which is endorsed (as follows), to note:

'the Committee of Management, the Crown in the right of the State of Victoria, the Secretary to the Department of Environment, Land, Water and Planning its servants, agents and employees in respect to providing indemnity for personal injury and/or property damage caused by an occurrence, and/or for breach of Professional duty arising out of the negligent acts, errors or omissions of the Licensee and/or its servants agents and employees. The endorsement and extension to the policy does not extend to negligent acts, errors or omissions of the Crown (and others above mentioned), and is limited to the amount shown in Item 14 of the Schedule for any one occurrence.'

2.5 **Maintenance**

2.5.1 Throughout the term keep the licensed premises in good order and condition and the improvements (if any) on it in good order and condition having regard to their condition at the commencement date or, if constructed or added to the licensed premises after the commencement date, at the date of such construction or addition as the case may be and in particular but without restricting the generality of the foregoing will:-

2.5.1.1 Keep the licensed premises free of pest animals and weeds;

2.5.1.2 Remedy every default of which notice is given by the Licensor to the Licensee within a reasonable time specified in the notice but in any event the time specified in the notice will not be less than 14 days.

2.6 **Fire Protection Works**

Undertake all fire protection works on the licensed premises required by law to the satisfaction of the Licensor and the responsible fire Authority

2.7 **Condition at Termination**

On expiry or prior determination of this Licence return the licensed premises to the Licensor in good order and condition and otherwise in accordance with the Licensee's obligations.

2.8 Notice of Defects and other matters

- 2.8.1 Give the Licensor prompt notice in writing of any accident to or defect in the licensed premises and of any circumstances likely to cause any damage risk or hazard to the licensed premises or any person on it;
- 2.8.2 Give to the Licensor within 7 days of its receipt by the Licensee a true copy of every notice, proposal or order given, issued or made in respect of the licensed premises and full details of the circumstances of it;
- 2.8.3 Without delay take all necessary steps to comply with any notice, proposal or order referred to in paragraph 2.8.2 with which the Licensee is required to comply; and
- 2.8.4 At the request of the Licensor make or join with the Licensor in making such objections or representations against or in respect of any notice, proposal or order referred to in paragraph 2.8.2 as the Licensor deems expedient.

2.9 Compliance with Law

Comply at the Licensee's cost with the provisions of all statutes, regulations, local laws and by-laws relating to the licensed premises and all lawful orders or direction made under them;

2.10 Arrears and Interest

- 2.10.1 Pay to the Licensor:-
 - 2.10.1.1 on any moneys payable by the Licensee to the Licensor and outstanding for thirty (30) days or on any judgment for the Licensor in an action arising under the Licence, interest at the penalty rate of interest for the time being made payable under the **Penalty Interest Rates Act 1983** computed from the date the moneys or judgment became payable until all moneys (including interest on them) are paid in full;
 - 2.10.1.2 on demand all the Licensor's legal costs and disbursements payable in respect of or in connection with any assignment of this Licence or under-licensing of the licensed premises, any surrender of this Licence, the giving of any consent by the Licensor or any failure by the Licensee to perform and observe this Licence, or any deed or other document executed in connection with this Licence.

2.11 Further Conditions

Comply with the Special Conditions (if any) contained in Item 16 of the Schedule.

3 Licensee's Obligations (Negative)

The Licensee **Hereby Covenants** with the Licensor that during the term the Licensee will not -

3.1 Use of Licensed premises

Use the licensed premises for any purpose other than the specified purpose referred to in Item 13 of the Schedule without first obtaining the Licensor's written consent which can be given or withheld at the absolute discretion of the Licensor or be given subject to conditions.

3.2 Create nuisance

Do not cause or permit to be done anything which constitutes an actionable nuisance, annoyance or disturbance to other persons lawfully entitled to use the licensed premises or to use any land in the vicinity or to occupiers of properties adjoining the licensed premises.

3.3 Allow rubbish

Permit any rubbish to accumulate in or about the licensed premises.

3.4 Hazardous Chemicals

Keep any hazardous materials on the premises without the Licensor's written consent save a reasonable quantity of any hazardous material which is normally used in any specified purpose actually carried on in or upon the premises and which is kept in compliance with the requirements of any authority charged with regulating the keeping of it.

3.5 Assignment

Without first obtaining the written consent of the Licensor assign, under-license, mortgage, or charge this Licence or part with or share possession of the licensed premises or any part of it.

3.6 Licensor's Entry

- 3.6.1 Prevent, attempt to prevent or in any other way hinder, obstruct or permit the hindrance or obstruction of the Licensor or the Licensor's employee or agent at any time from entering and remaining on the licensed premises either with or without motor vehicles or other equipment for any purpose and in particular, but without restricting the generality of the foregoing, for any of the following purposes:-
 - 3.6.1.1 retaking or attempting to retake possession of the licensed premises;
 - 3.6.1.2 inspection; or
 - 3.6.1.3 any other lawful purpose.

3.7 Void insurance

Do or allow anything to be done which might result in any insurances relating to the licensed premises becoming void or voidable or which might increase the premium on any insurance.

3.8 Erection of Improvements

Erect or permit the erection of any improvement on the licensed premises without the Licensor's prior written approval, which can be given or withheld at the absolute discretion of the Licensor or be given subject to conditions.

4 General Conditions

4.1 Termination upon Default

If the Licensor is satisfied, after giving the Licensee a reasonable opportunity to be heard, that the licensee has failed to comply with any terms or conditions of the licence, the Licensor may, by notice published in the Government Gazette, declare that the licence is cancelled, and upon cancellation the licensee will not be entitled to any compensation whatsoever.

4.2 Termination without Default

4.2.1 In addition to and not in substitution for the power to cancel this Licence under clause 4.1, the Licensor may with the approval of the Minister by giving to the Licensee at least 30 days written notice to that effect cancel this Licence upon a date to be specified in that notice notwithstanding that there has been no breach by the Licensee of any term or condition of this Licence.

4.2.2 If the licence is terminated under this clause the Licensee is entitled to receive and will be paid by the Licensor a refund of an amount of the licence fee paid.

4.2.3 The amount of refund will be determined by the Licensor on a pro rata basis, taking into account any period of the licence remaining at the date of cancellation.

4.2.4 Except as provided in sub clause 4.2.2 above no compensation is payable in respect of the cancellation of the licence.

4.3 Ownership of Improvements

The Licensee acknowledges that all buildings and structures on the licensed premises at the date of commencement of this Licence and all new structural works (except for any Licensee's trade fixtures or fittings) and any additions or modifications to the existing or new buildings and structures carried out during the term of this Licence are and remain the property of the Licensor.

4.4 Licensee's Chattels

4.4.1 Except as provided in sub-clause 4.4.3 the Licensee's chattels shall remain the property of the Licensee.

4.4.2 On the cancellation or expiration of the Licence the Licensee must, within a period of time specified by the Licensor, remove all Licensee's chattels from the licensed premises and forthwith make good all damage caused to the licensed premises by the affixing, retention or removal of Licensee's chattels to the satisfaction of the Licensor.

4.4.3 If the Licensee's chattels are not removed at the end of the period of time specified under sub-clause 4.4.2, the Licensee's chattels shall become the property of the Licensor.

4.5 Licensor may remove and dispose of Licensee's chattels

If the Licence expires, or is cancelled, the Licensor may at the end of the period of time specified under Clause 4.4.2 remove the Licensee's chattels and store them at the Licensee's expense without being liable to the Licensee for trespass, detinue, conversion or negligence. After storing them for at least one month, the Licensor may sell or dispose of them by auction, private sale, gift, distribution or otherwise and apply the net proceeds towards the payment of any moneys owed by the Licensee to the Licensor.

4.6 Licensor's Agents

Every act or thing to be done, decision to be made or document to be signed pursuant to this Licence by the Licensor and not required by law to be done, made or signed by the Licensor personally may be done made or signed by any person or class of person to whom such power has been delegated by the Licensor.

4.7 Notices

Any notice consent or demand or other communication to be served on or given to the Licensee by the Licensor under this Licence shall be deemed to have been duly served or given if it is in writing signed by the Licensor and delivered or sent by pre paid post to the Licensee's address set out in Item 4 of the Schedule or to the latest address stated by the Licensee in any written communication with the Licensor.

4.8 Debt recovery

All moneys payable by the Licensee to the Licensor under this Licence are recoverable from the Licensee as liquidated debts payable on demand.

4.9 Additional Approvals

If the Licensor is a Committee of Management or Trustees the approvals required in Conditions 3.1 and 3.8 shall be read to mean the Licensor and the Secretary or delegate.

5 Definitions

Unless inconsistent with the context or subject matter each word or phrase defined in this clause has the same meaning when used elsewhere in the licence.

"**commencement date**" means the date described in Item 5 of the Schedule and is the first day of the term;

"**Crown**" means the Crown in right of the State of Victoria and includes the Licensor and each employee and agent of the Crown or the Secretary;

"**Department**" means the Department of Environment, Land, Water and Planning or its successor in law;

"**GST**" means a goods and services tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*.

"**hazardous chemical**" includes gas, inflammable liquid, explosive substance, pesticide, herbicide, fertilizer and other chemicals;

"**improvement**" includes building, dam, levee, channel, sign, permanent fence, or other structure and any addition to an existing improvement;

"**licensed premises**" means the land and structures described in Item 10 of the Schedule;

"**Licence fee**" means the licence fee described in Item 7 of the Schedule as varied during the term;

"**Licensee**" means the person named in Item 3 of the Schedule and includes the permitted assigns and successors in law to a Licensee;

"**Licensor**" means the Trustees or Committee of Management appointed by the Minister to manage the reserved land described in Item 9 of the Schedule or if there are no Trustees or Committee of Management means the Secretary to the Department of Environment, Land, Water and Planning or a person or class of person authorised by the Secretary to grant licences under Section 17B of the *Crown Land (Reserves) Act 1978*;

"**Minister**" means the Minister of the Crown for the time being administering the *Crown Land (Reserves) Act 1978*;

"**person**" includes a body corporate as well as an individual;

"**pest animals**" has the same meaning as in the *Catchment and Land Protection Act 1994*;

"**rates and taxes**" means all existing and future rates (including water by consumption and any special rates or levies) taxes, charges, tariffs, assessments, impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the licensed premises or the Licensor or the Licensee or payable by the owner or occupier of the licensed premises;

"**schedule**" means the schedule to this Licence;

"**Secretary**" means The Secretary to the Department of Environment, Land, Water and Planning the body corporate established under the *Conservation, Forests and Lands Act 1987*;

"**sign**" includes names, advertisements and notices;

"**soil**" includes gravel, stone, salt, guano, shell, sand, loam and brick earth;

"**term**" means the period of time set out in Item 6 of the Schedule, as and from the commencement date;

"**weeds**" include noxious weeds within the meaning of the *Catchment and Land Protection Act 1994*, and prescribed flora within the meaning of the *Flora and Fauna Guarantee Act 1988*;

"**writing**" includes typewriting, printing, photography, lithography and other modes of representing or reproducing words in a visible form and "written" has a corresponding meaning.

6 Interpretations

6.1 A reference importing the singular includes the plural and vice versa.

6.2 The index and headings are included for ease of reference and do not alter the interpretation of this Licence.

6.3 If any day appointed or specified by this Licence falls on a Saturday, Sunday or a day appointed under the *Public Holidays Act 1993* as a holiday for the whole day the day so appointed or specified is deemed to be the first day succeeding the day appointed or specified which is not a Saturday, Sunday or day appointed as a holiday.

6.4 References to an Act of Parliament or a section or schedule of it shall be read as if the words "or any statutory modification or re-enactment thereof or substitution therefor" were added to the reference.

6.5 If the Licensee comprises more than one person, the covenants and agreements contained in this Licence shall be construed as having been entered into by, and are binding, both jointly and severally on all and each of the persons who constitute the Licensee.

6.6 References to clauses, sub-clauses and Items are references to clauses, sub-clauses and Items of this Licence respectively.