



HEPBURN SHIRE COUNCIL  
ORDINARY MEETING OF COUNCIL  
MINUTES

TUESDAY 16 DECEMBER 2014

THE WAREHOUSE - CLUNES

36 FRASER STREET

CLUNES

6:00PM

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# MINUTES

TUESDAY 16 DECEMBER 2014

The Warehouse - Clunes  
36 Fraser Street, Clunes  
Commencing 6:00PM

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AARON VAN EGMOND  
CHIEF EXECUTIVE OFFICER  
16 DECEMBER 2014

## 1. ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

We would like to acknowledge we are meeting on Jaara people country, of which members and elders of the Dja Dja Wurrung community and their forebears have been custodians for many centuries.

On this land, the Jaara people have performed age old ceremonies of celebration, initiation and renewal.

We acknowledge their living culture and their unique role in the life of this region.

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The Mayor noted the following:

We note the tragic events in Sydney yesterday. We express our condolences to the families of the hostages lost and note that our flags today are flying at half mast.

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## 2. OPENING OF MEETING

**PRESENT:** Mayor Councillor Kate Redwood AM, Deputy Mayor Councillor Neil Newitt, Birch Ward Councillor Pierre Niclas, Coliban Ward Councillor Sebastian Klein, Creswick Ward Councillor Don Henderson, Creswick Ward Councillor Greg May, Holcombe Ward Councillor Bill McClenaghan.

**IN ATTENDANCE:** Chief Executive Officer Aaron van Egmond, General Manager Corporate Services Grant Schuster, General Manager Community Services Kathleen Brannigan, General Manager Infrastructure Bruce Lucas and Governance and Corporate Support Officer Mary Dancuk.

**STATEMENT OF COMMITMENT**

“WE THE COUNCILLORS OF HEPBURN SHIRE  
DECLARE THAT WE WILL UNDERTAKE ON EVERY OCCASION  
TO CARRY OUT OUR DUTIES IN THE BEST INTERESTS  
OF THE COMMUNITY  
AND THAT OUR CONDUCT SHALL MAINTAIN THE STANDARDS  
OF THE CODE OF GOOD GOVERNANCE  
SO THAT WE MAY FAITHFULLY REPRESENT  
AND UPHOLD THE TRUST PLACED IN THIS COUNCIL BY THE  
PEOPLE OF HEPBURN SHIRE”

**3. APOLOGIES**

Nil

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**4. DECLARATIONS OF CONFLICTS OF INTEREST**

Nil

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5. CONFIRMATION OF MINUTES

5.1. CONFIRMATION OF MINUTES

RECOMMENDATION

- 5.1 That the Minutes of the Ordinary Meeting of Council held on 18 November 2014 (as previously circulated to Councillors) be confirmed as required under Section 93 (2) of the Local Government Act 1989.

MOTION

5.1.1. *That the Minutes of the Ordinary Meeting of Council held on 18 November 2014 (as previously circulated to Councillors) be confirmed as required under Section 93 (2) of the Local Government Act 1989.*

**Moved:** Councillor Don Henderson

**Seconded:** Councillor Neil Newitt

**Carried.**

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5.2. CHANGE TO ORDER OF BUSINESS

MOTION

5.2.1. *That Council resolves to change the order of business for tonight's Council Meeting by moving Agenda Item 9 – Public Participation Time before Agenda Item 6 – Notices of Motion.*

**Moved:** Councillor Neil Newitt

**Seconded:** Councillor Pierre Niclas

**Carried.**

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Due to Motion 5.2.1 to Change the Order of Business, Agenda Item 9 – Public Participation Time was moved before Agenda Item 6 – Notices of Motion.

Following the completion of Agenda Item 9 – Public Participation Time, Council considered Agenda Item 6 – Notices of Motion.

## 6. NOTICES OF MOTION

### 6.1. BULLARTO COMMUNITY FACILITIES

Date: 9 December 2014

#### MOTION:

*That Council:*

- 6.1.1. *Reiterates its commitment to building new community facilities at Bullarto as resolved at the August 2014 Council Meeting.*
- 6.1.2. *Considers new information received since the August 2014 Council Meeting to evaluate the availability and suitability of an adjacent alternative site for locating community facilities.*
- 6.1.3. *Places on hold all works on building these community facilities on the old tennis court site until the new information is fully considered and the availability and suitability of an alternative site has been fully evaluated.*
- 6.1.4. *Requests an additional report from officers on the varying opinions and aspirations within the Bullarto community following the Community Day on Sunday 7<sup>th</sup> December 2014 and the considered availability and suitability of the identified alternative site on the corner of South Bullarto Road and Fiddlers Lane.*

**Moved:** Councillor Bill McClenaghan

**Seconded:** Councillor Don Henderson

**Lost.**

#### BACKGROUND

- Council has allocated \$22,000 to creating new community facilities at Bullarto.
- Council has resolved to locate these facilities on its property adjacent to the Bullarto Hall land, being the former Bullarto Tennis Court site.

- The Bullarto Community Hall Committee of Management Incorporated (BCHC) has leased this Council land for many years, having been unable to own it and pay rates on it themselves when the land was originally donated by the Frith family. BCHC seeks to retain the use and control of this land in order to conduct numerous events, functions and fundraising activities at the Bullarto Hall. The land will be required for overflow car parking and a hard standing area on the old tennis court base for erection of a large marquee where required. Continuing use of this land as in the past is considered to be fundamental to the viability of the Bullarto Community Hall, that occupies a smaller parcel of adjacent land, some incorrectly called an "unnamed road" but which is really Hall land.
- Council has been informed that the BCHC only need this Council land on one weekend of the year to run their annual Bullarto Tractor Pull. This is not correct. The BCHC has now supplied Council with a list of Hall bookings that refute this claim absolutely.
- By contrast the Bullarto Community Planning Group (BCPG) wishes to construct community facilities on the old tennis court site that will interfere with the BCHC's ability to conduct their various bookings, events and functions. Although the proposed picnic shelter may occupy only 1% of the said land, its location will be right where the large marquees are erected. Another conflict situation will be the 100 metre interface between Council land and the Hall land that will blur issues like insurance, vehicle access and property control.
- Hence, if the construction of community facilities proceeds on the old tennis court site, then the fundraising and event holding ability of BCHC will be severely constrained. However, in August 2014 there appeared to be no alternative site available. This has created the impasse.
- In early December 2014, a detailed mapping search and site visit has identified three other sites within the township of Bullarto that might be alternatively considered. One is too small however and the second is north of the railway and the Trentham arterial road. A third site is located on the corner of South Bullarto Road and Fiddlers Lane and comprises of old road reserve, currently under Council control. This site is just across the road from Council's old tennis court land and is certainly centrally located within the Bullarto township as it has developed over the years.
- Despite being road reserve and Crown Land, part of this area has been enclosed within a wire fence by a former landowner and appears to be private property. However, adverse possession of Crown Land is not possible. A title search through the Department of Environment and Primary Industries (DEPI) on Wednesday 3 December 2014 revealed that this parcel of land is indeed road



reserve, not private land and also neither leased nor licensed to an adjoining landowner.

- BCPG has aspired to have a community reserve in the township of Bullarto in an open, sunny site where community facilities like a picnic shelter, safe BBQ, car parking and interpretive signage can be located. The corner road reserve across the road from the Hall and the old tennis court land would appear to be ideal, offering accessibility, space and amenity for the creation of a Bullarto Community Park.
- Whilst the actual availability and suitability of this land is yet to be officially evaluated, this Motion seeks to place all further construction and development on the old tennis court site on hold. It does not seek to rescind the Motion from the August 2014 Council Meeting.
- The Community Day on Sunday 7 December revealed that the Bullarto community is deeply divided on the matter of whether Bullarto needs or wants another community precinct other than the Community Hall and if so, where additional community facilities might be best located. The divide in this small rural community is to be avoided at all costs. Unfortunately, the decision to locate community facilities on Council land beside the Community Hall that is under different management has created winners and losers. The BCHC see themselves as the losers in that they are losing land they need to fundraise and maintain the Community Hall.
- The establishment of a Bullarto Community Park on an old road reserve block, on the corner of South Bullarto Road and Fiddlers Lane would surely create a WIN / WIN position for everyone in that:
  - The community facilities are built on suitable land within the Bullarto township and
  - The BCHC get to keep using the old tennis court site for their functions and fundraising events.
  - The degree of community angst over this matter will disperse as everyone gets what they want.
- Any plans for future additions to community facilities in the suggested site are now very possible as there are no conflicting use requirements with any other group and sufficient land for the construction of amenities like toilets; not possible adjacent to existing Hall toilets.
- The accompanying map shows the location of the alternative site for community facilities that appears comparable in size to the old tennis court site with much better access on two sides.

▶ ORDINARY MEETING OF COUNCIL  
16 DECEMBER 2014

Councillor Name: Bill McClenaghan



Councillor Signature:

Chief Executive Officer Signature:



Aaron van Egmond



— — — — = Available land

7. ITEMS OF URGENT BUSINESS

Nil

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## 8. PRESENTATION OF COUNCILLOR REPORTS

### MAYOR'S REPORT

#### Councillor Kate Redwood AM, Birch Ward

The central event for the last month has been the state election. Leading up to the election my Council activities were directed towards lobbying and attending state candidate functions with a view to any further benefits that could be achieved for this Shire with its two marginal state electorates.

Congratulations to our two new representatives, Mary-Anne Thomas and Louise Staley. We look forward to working with you on the delivery of funds and programs for Hepburn Shire during your term.

In the second half of the month there have been annual events such as the Daylesford Highland Gathering and the Kingston and Daylesford Shows, and the annual end of year celebrations of many groups across the Shire. It has been a privilege to represent the Shire at many events.

I have also represented Council at the meetings of Council committees including Audit and Risk, International Women's Day and the Public Art Panel. I have also attended the public consultations regarding the design of the Hepburn Hub and have been impressed by the public interest and responses. I believe this project has demonstrated great iterative responsiveness to the community.

The presentation to Council on the bio heating and cooling system should not go without comment. The measures that might be included in this project to ensure an ambient heating/cooling system could, if the project is adopted, demonstrate cutting edge environmental practice at beneficial rates over the long term.

As part of the role of Mayor, I have put time and effort into representing the Council in the local and regional media.

Finally, as this is the last Council meeting before Christmas, I thank all Councillors and Council staff and volunteers for their contribution during the year and wish you all happy celebrations and the joy of sharing this time with family and friends.

## COUNCILLOR REPORTS

### **Councillor Don Henderson, Creswick Ward**

This past month has seen a diversity of activity across the Shire and a state election as well. I congratulate all candidates who put their hand up.

Opportunity was there and I believe Hepburn Shire was very much a winner from the lobbying process and the difference is that most of our projects were not promises but actually signed off thus taking the doubt away.

Streetscape projects for both Clunes and Creswick were announced along with Victoria Park and a number of smaller projects. The fact that Creswick and Clunes can now get on with business is really exciting.

I was invited by Parks Victoria to have a site visit to the St Georges Lake project and work is progressing well. Parks Victoria has installed a small beach area and this will be important because this is the swimming pool for many Creswick people who do not travel to Clunes or Ballarat for a swim.

Kingston Agricultural Show is growing and they have expressed real appreciation for our support. Personally, I organised a display of pigeons and young people were fascinated with a display of animals involved in the various wars.

Miss Muddy was a huge success and when entries closed at 5,300 women it seemed great. Another 700 turned up as I understand it and were allowed to enter on the day. Local businesses and accommodation places were booked out for stays and meals. Even the local fish and chip shop was afraid it would run out of supplies. I interviewed over 100 entrants including many locals from our Shire who fielded teams. I was surprised that women from Cairns and Perth travelled to what they described as the best time ever. Many said that now that they had discovered Creswick, they would be back with their families for other activities. A count has not been officially given yet but would have to have been in excess of 10,000. Local clubs benefitted in the tens of thousands on the day by doing parking and other ancillary activities. Traffic was a minor problem that does need some work.

Last Sunday I attended the Christmas lunch at Creswick Elderly Citizens along with Mayor Cr Kate Redwood

The place was packed and everyone had a great time.

Since this is the last meeting, I wish all of my colleagues and staff a safe and happy end of year break

**Councillor Sebastian Klein, Coliban Ward**

Well it's been a very busy month with the onslaught of Christmas and I have been glad of the real community work between the season's seemingly endless events and functions.

Namely, it was great to be a part of the Strategic Planning Session for the Daylesford Community Action Network (CAN), a group started by our own community services and youth services staff. The group focuses on collaboration between agencies concerned with youth issues.

I also met with Pat Harrison from Hepburn Community Radio. I look forward to them finding a home from which to broadcast.

It was great as well to attend the Trentham Early Years Working Group and great to see the work they have done with our General Manager Community Services and I look forward to hearing more from this process. I also attended the Trentham Community Bank AGM which is great to see nearing profitability.

I met again with representatives from both the Bullarto Public Hall and the Bullarto Community Planning Group and I think this is now the issue that I have attended the most meetings on out of any issue and I look forward to achieving resolution on this issue, despite the fact that neither party may be totally happy with the outcome.

I went along to do my bit for men's health at the Trentham Pub Clinic, a collaboration between Hepburn Health Service and the community health service based in Gisborne. It was ironic that, at an event focussing on prostate cancer and heart disease that the schooners of beers were in some supply and that golden deep fried morsels were on demand.

Finally, I also attended the Mollonghip Poetry Slam and even managed to drag some friends along from the city. It's an absolute gem of an event and everyone should get along at least once in their lives if they are able to.

I also went to a meeting with Natalie Hutchins the new Minister for Local Government and a bunch of other events which can be found in my written report.

Other events for December 2014:

- Met with Pat Harrison Hepburn Community Radio
- Gambling forum with political representatives
- Mollonghip Poetry Slam
- Trentham Community Bank AGM
- Daylesford CAN strategic planning session
- Trentham Early Years Working Group
- The Trentham Hotel Pub Clinic
- Trentham Food Hub Meeting

- Victorian Local Governance Association (VLGA) Board Meeting x 2
- VLGA Annual General Meeting
- Meeting with the Mayor and Community members about the New Mechanics in Trentham
- VLGA Christmas celebration and John Jago Governance Awards
- Hepburn Shire end of year function with staff and Councillors
- Met with the Mayor, Holcombe Ward Councillor and Graeme Orr
- Met with the Bullarto Community Planning Group
- Met with the new Minister for Local Government, The Hon Natalie Hutchins.

### **Councillor Greg May, Creswick Ward**

During the past month I have attended a number of Council related events, the first of these being a funding announcement by the Member for Western Victoria, David O'Brien for money to commence streetscape works in both Creswick and Clunes. Creswick works which will be completed with these funds will include the old Creswick Bowling Club site, pedestrian crossing and footpath alterations. I also attended another funding announcement in Creswick, this time by the then Minister Peter Walsh, around statewide funding for further flood mitigation works.

Creswick Novotel Resort recently hosted the Miss Muddy event. I called in early on the Sunday morning of the event to find an amazing crowd and what appeared to be a well run event. I was and still am a little puzzled why people want to wallow in mud but what struck me about the girls who had completed the event was that they were all having an enormous amount of fun. The event brought a huge crowd to Creswick and would have been a great boost for local businesses.

I have also been fortunate enough to attend some Christmas functions for Councillors, Council staff and visitor information centre volunteers. The latter function has held at Eastern Peak Winery and was attended by around 70 volunteers from the Clunes and Creswick Visitor Information Centres. It was great to see so many smiling faces enjoying their day and great that the Shire shows its appreciation to these people for the many unpaid hours they spend promoting the many attractions of the region to visitors.

It's also good to see the roadside slashing taking place currently, helping to lessen the fuel load with a dry hot summer predicted.

Also, recently long time Council officer Kevin Clohesy and myself took up the Movember challenge, albeit in reverse. Rather than growing a moustache in November to raise funds for Prostate and Testicular Cancer research, Kevin and I agreed to shave off our long held moustaches if a target of \$1,000 was reached. I'm



pleased to say that primarily Council staff contributed \$1,100 to this very worthwhile cause and now we are both part way through the unfortunate regrowth process.

### **Councillor Bill McClenaghan, Holcombe Ward**

A day after the last Council Meeting, I attended another meeting of the Glenlyon Recreation Reserve Special Committee and noted the progress to date on the new Reserve shed. The foundations were laid, the concrete footings poured ready for shed erection.

Later, on Friday 21<sup>st</sup> November, I attended the funeral of former Councillor Ken Stockfeld, late of Denver and delivered a eulogy to acknowledge his longstanding contributions to the Glenlyon, Denver and Drummond areas as a Councillor of the former Shire of Daylesford and Glenlyon. The Daylesford Town Hall flag flew at half mast that day and the cortege paused briefly as it passed the Town Hall for final respects to be paid.

On Friday 5<sup>th</sup> December, I was back at the Drummond Hall for the last Special Committee meeting of the year – minus former member Ken Stockfeld, who once quipped that one may have to die to get off this Committee.

On Saturday 13<sup>th</sup> December, I attended the annual Glenlyon Community Christmas BBQ at the Glenlyon Reserve. Santa arrives every year on the local fire truck and takes all the children for a drive around the race track. The Glenlyon community is now preparing for the annual New Year's Day Sports, an iconic local event. Those at the BBQ were treated to a fine site; the new shed has now been erected to lock up stage and had a concrete slab poured as well. It will now be fitted out, wired up and made ready for an opening in the New Year. This shed is a fantastic and greatly needed enhancement to the Glenlyon Reserve.

### **Councillor Pierre Niclas, Birch Ward**

No Councillor report submitted by Cr Niclas.

However, I do want to acknowledge a few high points over the last few months:

1. The pedestrian crossing is a real home run for our Infrastructure team.
2. The election of our new Mayor, Cr Kate Redwood and our new Deputy Mayor, Cr. Neil Newitt. I wish them both well and every success over the coming year and reiterate my full support.
3. The bizarre but successful Ms Muddy. I hope we can see this event become a regular annual event for Creswick and bring success to the entire Hepburn Shire.

I wish all my fellow Councillors a safe and happy Christmas and a safe and prosperous New Year.

I also wish to acknowledge the hard work and dedication of our CEO and his team over 2014 and can assure them that we have plenty more of that hard work planned for them all in 2015.

### **Councillor Neil Newitt, Cameron Ward**

On 4 December I attended the Municipal Association of Victoria (MAV) Mayoral Program in Melbourne. With around 30 mayors and deputy mayors from across the state attending, it was a chance to hear what challenges others are experiencing in their regions.

Councillors from each shire represented spoke of the common challenges we face, but also spoke of the points of difference of each of our regions.

Each councillor wanted to highlight their own shire's unique attraction.

We heard from those councils experiencing the largest growth, the highest number of babies born in their region, to those facing population decline. We heard from the remotest parts of the state, to the councils with the most tennis courts per capita in the country.

Through all this, we shared similar challenges including employment and technology (such as broadband).

It also brought into focus one of our specific challenges.

We are a growing region attracting a diverse demographic to our existing population base. Our residents want us to improve services, whilst being respectful of our natural, agricultural and heritage environment.

I attended along with around 500 others the Grasslands project held at the Lee Medlyn Home of Bottles.

The event was staged by locals Rebecca Russell and Ken Evans and told, through performance, the story of the Bottle Museum – through its history as the former south Clunes Primary School and knitting mills.

It is rewarding to see this space now becoming somewhat a performance precinct and home for the Clunes Neighbourhood House as well as the Bottle Museum and Visitor Information Centre.

I have been pleased to attend a number of Christmas and end of year get-togethers these past few weeks. I would like to take this opportunity to wish our communities,

our volunteers, our staff and each other all the best for the festive season and the New Year.

**RECOMMENDATION**

8.1 That Council receives and notes the Mayor's and Councillors' reports.

**RECOMMENDATION**

8.1. *That Council receives and notes the Mayor's and Councillors' reports.*

**Moved:** Councillor Bill McClenaghan

**Seconded:** Councillor Sebastian Klein

**Carried.**

## 9. PUBLIC PARTICIPATION TIME

This part of the Ordinary Meeting of Council allows for the tabling of petitions by Councillors and Officers and 30 minutes for the purpose of:

Responding to questions that have been submitted by members of the community.  
Allowing members of the community to address Council.

Community members are invited to submit written questions to the Chief Executive Officer by 12 noon on the day of the Council meeting. If you wish to address Council you must provide a brief synopsis of your address in writing to the Chief Executive Officer by 12 noon on the day of the Council meeting.

Questions received may be taken on notice and responded to later. Likewise, some questions of an operational nature may be responded to through usual administrative procedure. Separate forums and Council processes are provided for deputations or for making submissions to Council.

### 9.1. PETITION – HEPBURN PRIMARY SCHOOL CROSSING

#### SUMMARY

Council has received a Petition with 111 signatures from concerned residents and community members which states:

#### 'Hepburn School Crossing Petition

'We, the undersigned recognise there is a public safety risk at the Hepburn Primary School Crossing.

All children deserve to feel safe walking to and from school and we are asking for a School Crossing Supervisor to ensure our children are protected whilst crossing Main Road in front of Hepburn Primary School'.

#### RECOMMENDATION

That Council:

- 9.1.1 Receives the Hepburn Primary School Crossing Petition requesting a School Crossing Supervisor at this crossing and that the petition lay on the table for one month.
- 9.1.2 Refers the petition to the Community Safety Co-ordinator for preparation of a report for consideration at the January 2015 Council Meeting.

9.1.3 Advises the head petitioner of the above process.

## MOTION

*That Council:*

- 9.1.1. *Receives the Hepburn Primary School Crossing Petition requesting a School Crossing Supervisor at this crossing and that the petition lay on the table for one month.*
- 9.1.2. *Refers the petition to the Community Safety Co-ordinator for preparation of a report for consideration at the January 2015 Council Meeting.*
- 9.1.3. *Advises the head petitioner of the above process.*

**Moved:** Councillor Pierre Niclas

**Seconded:** Councillor Neil Newitt

**Carried.**

## 9.2. QUESTIONS

**Question 1:** From Bullarto Community Planning Group Committee  
Ms Marg Botheras, Deputy Chair

Madam Mayor, last year Council facilitated two community consultation meetings at Bullarto Hall in June and August 2013. Following this consultation a Bullarto Musk Community Plan was developed by Council. In September 2013 Council officers wrote to Gary McIntosh letting him know he had been nominated from those meetings to lead a group to investigate suitable locations and details for new community facilities in Bullarto, a top priority project identified from the Community Plan. Council requested he undertake the task at hand and the project commenced. The planning group has now worked on this project for over a year (and other top priority projects) engaging with local residents and stakeholder groups in a completely open, transparent and professional manner in close liaison and collaboration with Council and other relevant authorities.

Madam Mayor, the Bullarto Community Planning Group is an altruistic not-for-profit community group that was established with similar objectives to the Lyonville Community Planning Group. The group welcomes all local residents and

organisations to participate in apolitical discussions to further strengthen the surrounding communities. The underlying tenet of the group is 'inclusiveness'. New members are welcome to join at any time.

All races, age groups, religions, political beliefs, the wealthy and those less fortunate are encouraged to contribute and participate fully in the planning group as evidenced by two letter drops this year inviting every resident of Bullarto and nearby areas to community get-togethers, the first of their kind to be held at Bullarto.

In August 2014, a full year after the last of the Council facilitated community consultation meetings and the development of the Community Plan, Council passed three resolutions approving the location and details for new community facilities at Bullarto proposed by the planning group. However, since that time a four month delay and complete standstill has transpired culminating in Council's Information Day held at Bullarto on 7<sup>th</sup>December.

**Why was a complete four month delay and standstill considered necessary regarding our community project at Bullarto following Council's resolutions approving same in August 2014?**

**Answered by Mayor Councillor Kate Redwood**

The project to develop new community facilities at Bullarto followed an allocation of funds in Council's 2014/15 budget. After this time, a project plan was developed for implementing the project. The timetable in this plan was based on availability of Council officer time. A summary of this project plan was circulated to relevant members of the Bullarto community in September 2014. Initially the Community information day was planned for November 2014 but due to availability of the hall, the day was eventually scheduled for 7 December 2014.

**Question 2:** From Bullarto Community Planning Group Committee  
Ms Marg Botheras, Deputy Chair

Why was Cr McClenaghan allowed by Council officers to address the information meeting at Bullarto on December 7<sup>th</sup> as the only speaker and the planning group specifically requested not to do so?

**Answered by Mayor Councillor Kate Redwood**

Councillor McClenaghan asked to address the audience at the Community Information Day as he had additional, new information to share that had not been provided. The information day was not an open forum for addressees but an opportunity to share information with the community.

**Question 3:** From Bullarto Community Planning Group Committee  
Ms Marg Botheras, Deputy Chair

Is Council aware that Cr McClenaghan has not attended either of Council's community consultation sessions at Bullarto, nor Council's briefing by the planning group on the project, nor any of the open planning group meetings nor any of the community get-togethers at Bullarto and that he is not the relevant ward Councillor nor a resident of Bullarto, unlike Councillor Klein?

**Answered by Mayor Councillor Kate Redwood**

Yes, we are aware that Cr McClenaghan is not the Ward Councillor. We also note that he has attended the meeting at Bullarto on 7 December and we are also aware that he was not attending briefing meetings where he had a declared conflict of interest in relation to the Rail Trail.

**Question 4:** From Bullarto Community Planning Group Committee  
Mr Gary McIntosh, Chair

Council officers agreed at the information day that any feedback gathered would not be considered to be a legitimate survey. The single and only question on the feedback form simply asked about what new facilities people wanted, not about their location.

Do Council officers acknowledge therefore that the feedback forms from the day must be scrutinised and dismissed as being quite obviously biased, manipulated and irrelevant to the question asked on the feedback form, whereas the information gathered and presented over the past 12 months by the planning group in an objective, legitimate and transparent manner is relevant?

Answered by Mayor Councillor Kate Redwood

Council did not set out to collect data through a quantitative survey rather to gather views and ideas about what new facilities community members would most like to see. Information supplied by the Bullarto Community Planning Group will be considered along with information presented by other members of the community.

Question 5:                      From Bullarto Community Planning Group Committee  
Mr Gary McIntosh, Chair

The Bullarto Primary School is holding its Xmas concert at Bullarto Hall this Thursday with Santa arriving on the local CFA fire truck from the Musk Brigade. **Would Council consider it appropriate that if a picnic shelter and community information displays were erected and displayed at Cr McClenaghan's suggested site that the school children and parents would need to cross the busy South Bullarto Road and dangerous intersection to read the information and use the picnic shelter and tables?**

Answered by Mayor Councillor Kate Redwood

Council has not considered or assessed the site and therefore the question is taken as hypothetical and one that, if we were to respond to it, would have to be at a later date once the site had been assessed.



**Question 6:** From Bullarto Community Planning Group Committee  
Mr Gary McIntosh, Chair

Importantly, will Council ensure that in future when Community Planning Groups are established and supported by Council to develop Community Plans and to progress identified priority projects from those community plans that Council and Council officers will fully support those groups all the way through to the implementation phase?

**Answered by Mayor Councillor Kate Redwood**

Council's Community Planning Strategy and Policy describe how Council works with communities to identify and progress priority projects.

Specifically, these documents state that we will:

- Assist communities in gaining approval for, developing and implementing the priority projects identified in community plans
- Support communities through provision of advice from relevant Council officers
- Support communities to connect to organisations external to Hepburn Shire Council where needed.

The project for new community facilities in Bullarto identified in the Musk and Bullarto community plan has proceeded to being supported through a Council budget commitment. Council will continue to work with the community to deliver this project. Council will work to implement new facilities that best meet the needs of Bullarto residents taking into account all views from the community.

**Question 7:** From Bullarto Public Hall Committee  
Ms Marlene Orr

Would Council officers please provide a summary of the views expressed at the "new Facilities in Bullarto community information day" on Sunday 7<sup>th</sup> December 2014?

**Answered by Mayor Councillor Kate Redwood**

Yes, this will be provided once the feedback for the information day has been collated, hopefully before Christmas.

**Question 8: From Bullarto Public Hall Committee  
Mr Graeme Orr**

From literature and plans we have received, it appears the location of the picnic shelter is to be on the south end of the old tennis court area on a firm bitumen base without the need for a concrete slab.

Also, the location of the interpretive signage is to be at the north end of the old tennis court base.

It then may be that a BBQ could go between these structures leaving no area for the Hall Committee to put up a large marquee on a flat hard standing surface.

**As the Hall Committee is made up of local volunteers trying to raise money to keep the hall viable, would Council be prepared to allow these plans to go ahead and cripple our fund raising abilities?**

**Answered by Mayor Councillor Kate Redwood**

The motion from the August Ordinary Meeting of Council approves the land adjacent to the Bullarto Hall for development of a recreation reserve including an interpretive display, notice board and picnic shelter but does not detail the exact location of any of these items. As part of implementing the project Council is actively listening to community views about the facilities and does not wish to impede the functioning of the Bullarto Hall. There is no BBQ in the proposed works.

**9.3. REQUESTS TO ADDRESS COUNCIL**

**Mr Gary McIntosh, on behalf of the Bullarto Community Planning Group Committee**, addressed Council regarding the outcome of Council's Community Information Day held at Bullarto on Sunday 7 December 2014.

Mr McIntosh tabled a letter of objection from Mr Leigh Smith to Cr McClenaghan's proposed alternative site.

**Ms Anne Bremner, on behalf of the Bullarto Public Hall Committee**, addressed Council regarding the impact of the proposed new community facilities adjacent to the Bullarto Hall.

Following consideration of Agenda Item 9 – Public Participation Time, Council considered Agenda Item 6 – Notices of Motion.

10. STATUTORY PLANNING REPORTS

There were no Planning Applications for consideration at the December 2014 Council Meeting.

## 11. OFFICERS' REPORTS

### 11.1. RESPONSE TO PETITION - SMEATON COMMUNITY ACTION CHIEF EXECUTIVE OFFICER

*In providing this advice to Council as the Manager Planning, I Justin Fiddes have no interests to disclose in this report.*

#### PURPOSE

The purpose of this report is to respond to the Smeaton Community Action petition tabled at the Ordinary Meeting of Council on 16 November 2014, requesting a sound-proofed fence/barrier to be erected and/or other initiatives to help contain the noise pollution emitting from the Unigrain factory. The petition also seeks sound monitoring to occur each time a new sound occurs.

#### BACKGROUND

The Unigrain facility is located on the west side of Main Road, south of the Smeaton township.

A Development Plan Overlay - Schedule 2 (DPO2) was approved by the Minister for Planning and incorporated into the Hepburn Planning Scheme in January 2006, to allow the facility to operate as a seed and grain mill storage facility (Rural Industry).

#### ISSUE/DISCUSSION

The approved planning permit for the site contains conditions relating to general amenity. Any activities on the site should not detrimentally affect the general amenity of the area.

Council and the Victorian Environment Protection Authority (EPA) have received and investigated previous complaints about excessive noise emanating from the site. Previous planning investigations have resulted in no breaches of planning conditions in relation to noise detrimentally affecting the amenity of the area. These investigations have been jointly carried out with the EPA. If circumstances have changed, then further investigation work may be required.

Council has no power to require the owner to erect sound-proofed fencing/barriers.

#### COUNCIL PLAN/LEGISLATIVE COMPLIANCE

The *Environment Protection Act 1970* deals with Industrial noise complaints. For noise coming from industries, the EPA is the responsible authority for enforcing compliance.

The *Planning and Environment Act 1987* deals with enforcing planning conditions. Council is responsible for investigating any possible breaches of planning permit conditions including amenity conditions issued in relation to the 'Rural Industry' planning permit issued at the Unigrain site.

#### **FINANCIAL IMPLICATIONS**

Expenses relating to hire of sound monitoring equipment may be incurred.

#### **RISK IMPLICATIONS**

Not applicable.

#### **ENVIRONMENTAL/SOCIAL/ECONOMIC IMPLICATIONS**

Unigrain contributes to the local value-adding economy of Hepburn Shire. The operation employs full time and seasonal workers and is a significant producer for the domestic and export seed and grain markets.

#### **COMMUNITY AND STAKEHOLDER ENGAGEMENT**

Development Plan Overlay - Schedule 2 (DDO2) was advertised for 14 days.

#### **CONCLUSION**

The EPA has the power to investigate and enforce noise limits against industries. Previous investigations by the EPA and Council have found no breaches in relation to noise at the site. In response to this petition, Council can request the EPA to determine if circumstances have changed and whether further investigations are required.

#### **OFFICER'S RECOMMENDATION**

That Council:

- 11.1.1 Contacts the Victorian Environment Protection Authority (EPA) to investigate whether circumstances have changed in relation to industrial noise emanating from the Unigrain site since previous investigations.
- 11.1.2 If circumstances are determined to have changed, works with the EPA to jointly investigate whether any activities on the site are detrimentally affecting the amenity of the area including excessive noise emanating from the site.
- 11.1.3 Writes to the head petitioner to advise of 11.1.1 and 11.1.2 and to advise the head petitioner in writing of the outcome of the Council and EPA investigation.

- 11.1.4 Writes to the head petitioner to advise that Council has no power to require the Unigrain facility to erect sound-proofed fencing.

#### MOTION

*That Council:*

- 11.1.1. *Contacts the Victorian Environment Protection Authority (EPA) to investigate whether circumstances have changed in relation to industrial noise emanating from the Unigrain site since previous investigations.*
- 11.1.2. *If circumstances are determined to have changed, works with the EPA to jointly investigate whether any activities on the site are detrimentally affecting the amenity of the area including excessive noise emanating from the site.*
- 11.1.3. *Writes to the head petitioner to advise of 11.1.1 and 11.1.2 and to advise the head petitioner in writing of the outcome of the Council and EPA investigation.*
- 11.1.4. *Writes to the head petitioner to advise that Council has no power to require the Unigrain facility to erect sound-proofed fencing.*

**Moved:** Councillor Don Henderson  
**Seconded:** Councillor Neil Newitt  
**Carried.**

## 11.2. COUNCIL MEETING DATES AND LOCATIONS 2015

### GENERAL MANAGER CORPORATE SERVICES

*In providing this advice to Council as the General Manager Corporate Services, I Grant Schuster have no interests to disclose in this report.*

### PURPOSE

The purpose of this report is for Council to adopt the dates and locations for the 2015 Ordinary Meetings of Council.

### BACKGROUND

At the Ordinary Meeting of Council held on 18 November 2014, Council resolved:

*'That Agenda Item 11.3 – Council Meeting Dates 2015 be deferred for one month for Council to consider the locations for 12 meetings in 2015.'*

### ISSUE/DISCUSSION

Following the November Council meeting, a review of Council Meeting locations was conducted. Council meeting locations for 2015 have been distributed across the five Hepburn Shire wards, as shown in the table below.

Ward	Number of Councillors	Number of Council Meetings
Birch	2	3
Cameron	1	2
Coliban	1	2
Creswick	2	3
Holcombe	1	2
<b>Total:</b>		<b>12</b>

It is suggested that Council continues to hold its Ordinary Meetings on the third Tuesday of each month starting at 6:00pm. Based on the table above, the proposed dates and locations for the 2015 Ordinary Meetings are shown below.

COUNCIL MEETING DATES AND LOCATIONS 2015		
Date	Time	Location
Tuesday 20 January	6:00pm	The Warehouse – Clunes
Tuesday 17 February	6:00pm	Glenlyon Hall
Tuesday 17 March	6:00pm	Trentham Mechanics Institute
Tuesday 21 April	6:00pm	Smeaton Community Centre
Tuesday 19 May	6:00pm	Creswick Senior Citizens' Centre
Tuesday 16 June	6:00pm	Daylesford Senior Citizens' Room
Tuesday 21 July	6:00pm	Daylesford Senior Citizens' Room
Tuesday 18 August	6:00pm	Creswick Senior Citizens' Centre
Tuesday 15 September	6:00pm	Lyonville Hall
Tuesday 20 October	6:00pm	Doug Lindsay Recreation Reserve, Creswick
Tuesday 17 November	6:00pm	Clydesdale Hall
Tuesday 15 December	6:00pm	Daylesford Senior Citizens' Room

#### **COUNCIL PLAN/LEGISLATIVE COMPLIANCE**

In accordance with Section 89(4) of the *Local Government Act 1989*, at least seven days' notice must be given before Ordinary Meetings of Council.

#### **FINANCIAL IMPLICATIONS**

There are minimal financial implications within Council's operating budget in rotating Council's Ordinary meetings around the Shire.

#### **RISK IMPLICATIONS**

Adopting an annual schedule of meeting dates and locations contributes to managing the risks associated with the good governance of Council meetings.

#### **ENVIRONMENTAL/SOCIAL/ECONOMIC IMPLICATIONS**

The varied locations of Ordinary Council Meetings provide increased community engagement and participation in the democratic process of local government.

#### **COMMUNITY AND STAKEHOLDER ENGAGEMENT**

The Council Meeting timetable will be advertised in local newspapers. Upcoming Council Meetings will also be listed in Council's Advocate page fortnightly. The timetable will also be placed on Council's website and Facebook page.



▶ ORDINARY MEETING OF COUNCIL  
16 DECEMBER 2014

## CONCLUSION

An annual schedule of Council Meeting dates and locations provides the community with advance notice of meetings and an opportunity to attend, observe and participate, where appropriate, in Council Meetings.

## OFFICER'S RECOMMENDATION

That Council:

- 11.2.1 Adopts the Council Meeting dates and locations for the 2015 Ordinary Meetings of Council as presented in the table below.

COUNCIL MEETING DATES AND LOCATIONS 2015		
Date	Time	Location
Tuesday 20 January	6:00pm	The Warehouse – Clunes
Tuesday 17 February	6:00pm	Glenlyon Hall
Tuesday 17 March	6:00pm	Trentham Mechanics Institute
Tuesday 21 April	6:00pm	Smeaton Community Centre
Tuesday 19 May	6:00pm	Creswick Senior Citizens' Centre
Tuesday 16 June	6:00pm	Daylesford Senior Citizens' Room
Tuesday 21 July	6:00pm	Daylesford Senior Citizens' Room
Tuesday 18 August	6:00pm	Creswick Senior Citizens Centre
Tuesday 15 September	6:00pm	Lyonville Hall
Tuesday 20 October	6:00pm	Doug Lindsay Recreation Reserve, Creswick
Tuesday 17 November	6:00pm	Clydesdale Hall
Tuesday 15 December	6:00pm	Daylesford Senior Citizens' Room

- 11.2.2 Places a public notice in local newspapers to advertise the dates and locations for Ordinary Meetings of Council for the 2015 calendar year in accordance with section 89(4) of the Local Government Act 1989.
- 11.2.3 Makes the Council Meeting dates and locations for 2015 available on Council's website and Facebook page.

**MOTION**

*That Council:*

11.2.1. *Adopts the Council Meeting dates and locations for the 2015 Ordinary Meetings of Council as presented in the table below.*

COUNCIL MEETING DATES AND LOCATIONS 2015		
Date	Time	Location
Tuesday 20 January	6:00pm	Smeaton Community Centre
Tuesday 17 February	6:00pm	Glenlyon Hall
Tuesday 17 March	6:00pm	Trentham Mechanics Institute
Tuesday 21 April	6:00pm	The Warehouse – Clunes
Tuesday 19 May	6:00pm	Creswick Senior Citizens' Centre
Tuesday 16 June	6:00pm	Daylesford Senior Citizens' Room
Tuesday 21 July	6:00pm	Daylesford Senior Citizens' Room
Tuesday 18 August	6:00pm	Creswick Senior Citizens Centre
Tuesday 15 September	6:00pm	Lyonville Hall
Tuesday 20 October	6:00pm	Doug Lindsay Recreation Reserve, Creswick
Tuesday 17 November	6:00pm	Clydesdale Hall
Tuesday 15 December	6:00pm	Daylesford Senior Citizens' Room

11.2.2. *Places a public notice in local newspapers to advertise the dates and locations for Ordinary Meetings of Council for the 2015 calendar year in accordance with section 89(4) of the Local Government Act 1989.*

11.2.3. *Makes the Council Meeting dates and locations for 2015 available on Council's website and Facebook page.*

**Moved:** Councillor Sebastian Klein

**Seconded:** Councillor Pierre Niclas

**Carried.**

**11.3. LEASE RENEWAL - MOUNT PROSPECT TENNIS ASSOCIATION INC – PARK LAKE RESERVE, CRESWICK**

**COUNCIL IS CONSIDERING THIS REPORT IN ITS ROLE AS TRUSTEE BY WAY OF A RESTRICTED CROWN GRANT FOR PARK LAKE RESERVE**

**GENERAL MANAGER INFRASTRUCTURE**

*In providing this advice to Council as the Property Officer, I Karen Ratcliffe have no interests to disclose in this report.*

**PURPOSE**

The purpose of this report is to seek Council approval to enter into a five year Crown Land lease (with two further options of five years) with the Mount Prospect Tennis Association Inc (the Club) for the tennis complex at Park Lake, Creswick.

**BACKGROUND**

The area of Park Lake Reserve relevant to this report, 35 Bridge Street, Creswick (CA 15, Section 69, Township of Creswick), was permanently reserved for Public Gardens by Order in Council on 5 February 1868. Hepburn Shire Council (HSC) is the responsible manager of the land at Park Lake Reserve by way of a restrictive Crown grant appointing HSC as trustee. Pursuant to the *Crown Land (Reserves) Act 1978* and an Order made by the Governor in Council on 15 December 1998, Council has the right to lease the premises.

The Club has occupied the tennis complex for more than 40 years. The clubrooms and courts were constructed on the Crown Land in 1967 and occupancy has been formalised by way of three year leases issued under Section 17(2) of the *Crown Land (Reserves) Act 1978*.

**ISSUE/DISCUSSION**

The proposed lease is for a five year term with two additional five year renewal options, based on the standard Department of Environment and Primary Industries (DEPI) lease under section 17D of the *Crown Land (Reserves) Act 1978* with special conditions.

The following table will be included in the proposed lease to formalise the Capital works and repairs and maintenance that the Club commits to undertake over the next 15 years of the proposed lease.

<b>1<sup>st</sup> Term: 2015 – 2020</b>
General repairs and maintenance up to \$13,000 per year
Paint internal brickwork
Install internal blinds throughout
Construct a store room for tables and chairs
Other items as required and agreed with Council's Asset Team
<b>Further Term 1: 2020 – 2025</b>
General repairs and maintenance up to \$15,000 per year
Construct a BBQ Room
Other items as required and agreed with Council's Asset Team
<b>Further Term 2: 2025 – 2030</b>
General repairs and maintenance up to \$17,000 per year
Install glass bi-fold doors overlooking the courts
Replace perimeter netting fencing
Other items as required and agreed with Council's Asset Team

#### Summary of the Proposed New Lease

- A standard Section 17D Crown Land lease will be used.
- The rent will remain the same at \$104pa + GST based on the DEPI established fee for community based organisations.
- The lease will be for a five year period (with 2 further options of five years).
- The Club is responsible for maintaining the 'public use' courts, and minor tree pruning.
- The Club will undertake capital improvements at the property over the life of the lease.
- The Club must take out public liability insurance (\$20 million) and personal property insurance. The Club must also reimburse Council for building insurance and any deductibles for claims relating to the premises.
- The Club must submit a risk management plan to Council annually.
- The Club must provide annual financial reports and supporting documentation on request.

- The proposed new lease will include specific details of Council's approval for the Club to draw water from Park Lake in order to water the grass courts and turf nursery.

#### **COUNCIL PLAN/LEGISLATIVE COMPLIANCE**

This lease will be granted under the powers of Section 17D of the *Crown Land (Reserves) Act 1978*. The new lease will be submitted for Ministerial approval via the Department of Environment and Primary Industries (DEPI).

*Council Plan 2013–2017:*

Key Strategic Activity 4.

4. Clarify roles and responsibilities of Council and sporting groups and level of support Council will provide, including building, maintenance and renewal, oval maintenance, courts and amenity to ensure that equitable and consistent support is provided.

#### **FINANCIAL IMPLICATIONS**

It is proposed that the Club will continue to pay an annual lease fee of \$104 + GST, based on the DEPI established fee for community based organisations. The Club will also have defined maintenance responsibilities as listed above. The costs of any repairs or improvements required which are above those amounts will be borne by Council depending on Council budget.

#### **RISK IMPLICATIONS**

The lease requires the Club to hold public liability insurance of \$20 million and evidence of this is to be provided. The lease will also stipulate a requirement of the Club to submit an annual risk management plan which covers such issues as personal injury, fires and other emergencies at the property.

#### **ENVIRONMENTAL/SOCIAL/ECONOMIC IMPLICATIONS**

Hepburn Shire Council recognises that participation in recreational groups and clubs provide important social connection and benefits for communities. No other implications are envisaged regarding the proposed lease.

#### **COMMUNITY AND STAKEHOLDER ENGAGEMENT**

The request to renew the lease originated from the Club which has approximately 500 participants and is an excellent example of community strengthening. Council officers have liaised with the Club regarding maintenance, safety and other operational matters which will be detailed in the proposed lease.

## CONCLUSION

A five year lease (plus a further two terms of five years) issued under Section 17D of the *Crown Land (Reserves) Act 1978* is presented for Council's approval.

## OFFICER'S RECOMMENDATION

That Council:

- 11.3.1 Approves the new five year (plus a further two terms of five years) Crown Land 17D lease for the Mt Prospect Tennis Association Inc at the Creswick Park Lake Tennis Complex.
- 11.3.2 Authorises the Chief Executive Officer and the Mayor to sign and seal the attached lease document.
- 11.3.3 Authorises officers to formally seek Ministerial Consent to the granting of this lease.

## MOTION

*That Council:*

- 11.3.1. *Approves the new five year (plus a further two terms of five years) Crown Land 17D lease for the Mt Prospect Tennis Association Inc at the Creswick Park Lake Tennis Complex.*
- 11.3.2. *Authorises the Chief Executive Officer and the Mayor to sign and seal the attached lease document.*
- 11.3.3. *Authorises officers to formally seek Ministerial Consent to the granting of this lease.*

**Moved:** Councillor Greg May  
**Seconded:** Councillor Pierre Niclas  
**Carried.**

ATTACHMENT 1 - CROWN LAND LEASE 17D – MT PROSPECT TENNIS  
ASSOCIATION INC

**HEPBURN SHIRE COUNCIL**

**("Landlord")**

**AND**

**MOUNT PROSPECT DISTRICT TENNIS ASSOCIATION INCORPORATED**

**("Tenant")**

**Section 17D Crown Land (Reserves) Act 1978  
Lease  
(Non Retail)**

**Premises: Mount Prospect Tennis Complex  
Park Lake Reserve, 35 Bridge Street, Creswick**



Barristers & Solicitors  
38 Lydiard Street South  
Ballarat, 3350  
Telephone: (03) 5333 8888

OUR REF: HKC  
21326764



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### Section 17D Crown Land (Reserves) Act 1978 Lease (Non Retail)

**PARTIES:**

- 1. **THE LANDLORD** whose name appears in Item 1 (**Landlord**)
- 2. **THE TENANT** whose name appears in Item 2 (**Tenant**)

**Executed on**

**2014**

**Executed by the Landlord:**

THE COMMON SEAL of the  
**HEPBURN SHIRE COUNCIL**

was affixed on this.....

.....day of.....20.....

on the authority of the Council and signed by:

.....Mayor

Cr Kate Redwood AM

.....Chief Executive Officer

Aaron van Egmond

**Executed by the Tenant:**

THE COMMON SEAL of **MOUNT)**  
**PROSPECT DISTRICT TENNIS)**  
**ASSOCIATION INC A.B.N. 16 807)**

**817 886 (A0002335C)** was affixed  
subject to its Constitution and Rules  
in the presence of:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

Position:

Position:

**MINISTERIAL ATTESTATION:**

Under Section 17D of the *Crown Land (Reserves) Act 1978*, I \_\_\_\_\_

\_\_\_\_\_

*(insert full name and title)*

in the Department of Environment and Primary Industry as delegate of the Minister for Environment and Climate Change hereby:

- Consent to the grant of this lease;
- Approve the covenants, exceptions, reservations and conditions contained therein;
- Am satisfied that the purpose for which the lease is being granted is not detrimental to the purpose for which the land is reserved.

-----

(Signature)

-----

(Date)

**THIS LEASE** commences on the date in Item 4 of Schedule 1

## **RECITALS:**

- A** The Land is reserved pursuant to Section 4 of the Act for the purpose set out in Item 13.
- B** The Landlord has power to enter into this Lease pursuant to Section 17D of the Act subject to the approval in writing of the Minister.
- C** The Landlord has agreed to lease the Land to the Tenant pursuant to Section 17D of the Act subject to the conditions, covenants, reservations, restrictions and exceptions and at the Rent set out in this Lease.

## **OPERATIVE PROVISIONS:**

### **PART 1. DEFINITIONS AND INTERPRETATION**

---

#### **1.1 Definitions**

In this document:

**Act** means the *Crown Land (Reserves) Act 1978*

**Authority** includes any government, local government, statutory, public or other Person, authority, instrumentality or body having jurisdiction over the Land, the Premises or any part of it or anything in relation to it;

**Bank Guarantee** means an unconditional and irrevocable undertaking in a form acceptable to the Landlord given by a bank authorised under the provisions of the *Banking Act 1959* (Cth.) or an Act of the Parliament of Victoria;

**Business Day** means any day (except a Saturday, Sunday or public holiday) on which banks are open for business in Melbourne, Victoria;

**Capital Works** means the works as described in Schedule 3;

**Claim** includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding and right of action;

**Clause** means a clause of this Lease; ("sub-clause" has a similar meaning); a reference to a Clause followed by a number refers to the relevant Clause in this Lease;

**Commencement Date** means the date set out in Item 4;

**Cost** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatever;

**Crown** means the Crown in right of the State of Victoria;

**Default Rate** means the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983*; if that rate ceases to be published then it means any rate substituted in its place;

**Further Obligations** means any obligations set out in Schedule 2;

**Further Term** means the further term or terms set out in Item 8;

**GST** means any consumption, goods and services or value added tax, by whatever name called, imposed, levied or collected by any Federal or State Government which operates at any time or times during the Term or any renewal or overholding of the Lease including, without limitation, GST as defined in the GST Act and any replacement tax;

**GST Act** means *A New System (Goods and Services Tax) Act 1999*;

**Guaranteed Sum** means the amount set out in Item 9;

**Hazardous Materials** includes any substance, material, thing, component or element which is hazardous, a contaminant or a pollutant to persons or property;

**Her Majesty** means Her Majesty Queen Elizabeth II and her heirs and successors;

**Insured Sum** means the amount set out in Item 12;

**Item** means the relevant item in Schedule 1;

**Land** means the land described in Item 3 to a depth of 15 metres below the surface and all rights, easements and appurtenances usually and normally enjoyed with that land;

**Landlord** means the Landlord named in this Lease and the person for the time being entitled to the Lease reversion when the Lease ends;

**Landlord's Agent** means the employees, contractors, agents and any other Person appointed from time to time by the Landlord as agent of the Landlord;

**Law** includes any requirement of any statute, rule, regulation, proclamation, ordinance or local law, present or future, and whether State, Federal or otherwise;

**Minister** means the Minister having responsibility for the administration of the Act or such other Minister of the Crown or Authority to whom responsibility for this Lease may at any time be given;

**Minister's Agents and Officers** includes any person, committee or delegate (including any statutory authority or statutory body corporate or committee for the time being responsible for the administration, care and management of the Land) from time to time responsible for carrying out functions, including the functions of the Minister, under this Lease;

**Name and Notice Address** means the name and address in Item 11 as it may be changed from time to time;

**Notice** means any notice or other written communication;

**Party** means a party to this Lease and includes any Guarantor;

**Permitted Use** means the permitted use of the Land set out in Item 7;

**Person** includes any corporation and vice versa;

**Premises** means the Land and the Tenant's Improvements;

**Proposed Work** means the construction, alteration, addition, renovation, refurbishment, demolition, removal of or to any improvement on the Land;

**Rates and Taxes** means all existing and future rates (including any special rates or levies) taxes (including land tax on a single holding basis), duties, charges, assessments, impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the Land or the Landlord or the Tenant or payable by the owner or occupier of the Land;

**Rent** means the annual Rent set out in Item 6;

**Requirement** includes any lawful Notice, order or direction received from or given by any Authority or pursuant to any Law, in writing or otherwise, and notwithstanding to whom such Requirement is addressed or directed but if not addressed to the Tenant then the Tenant must be given a copy;

**Review Date** means at the date or dates set out in Item 10.

**Schedule** means a Schedule of this Lease;

**Services** means all services installed or to be installed and connected to the Premises including, without limitation, gas, electricity, telephone and telecommunication, water, sewerage and drainage;

**Supply** means the supply of any good, service or thing by either Party under this Lease.

**Tenant** means the Tenant named in this Lease and includes in the case of a:

- (a) corporation the Tenant, its successors and permitted assigns;
- (b) natural Person the Tenant, his executors, administrators and permitted assigns;

**Tenant's Employees** means each of the Tenant's employees, agents, contractors, invitees or others (whether with or without invitation), sublessees, licensees and concessionaires or others (whether expressly or impliedly) who may at any time be in or upon the Land;

**Tenant's Improvements** means those items listed in Item 15 of Schedule 1 and all buildings, structures, fixtures, fittings, plant, equipment, partitions, signs or other material or articles and chattels of all kinds which are at any time erected or installed by the Tenant in or on the Land;



**Term** means the term of this Lease set out in Item 5 commencing from and including the Commencement Date; and

**this Lease** or "the Lease" means this lease and includes all schedules, appendices, attachments, plans and specifications, annexures and exhibits to it.

## 1.2 Interpretation

- (a) The singular includes the plural and vice versa;
- (b) A gender includes all genders;
- (c) An obligation imposed by this Lease on more than one Person binds them jointly and severally;
- (d) Every covenant by the Tenant includes a covenant by the Tenant to procure compliance with the covenant by each of the Tenant's Employees;
- (e) A reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it or amendment of it and a regulation, rule or statutory instrument issued under it;
- (f) This Lease must be interpreted so that it complies with all Laws applicable in Victoria. Any provision must be read down so as to give it as much effect as possible. If it is not possible to give a provision any effect at all, then it must be severed from the rest of the Lease. If any provision or part of it cannot be so read down, such provision or part shall be deemed to be void and severable and the remaining provisions of this Lease shall not in any way be affected or impaired;
- (g) Unless otherwise stated, no provision of this Lease limits the effect of any other provision of this Lease. "Including" and similar expressions are not and must not be treated as words of limitation;
- (h) A reference to the Land, Premises or any thing includes the whole and each part of it;
- (i) The Landlord and the Tenant agree that:
  - (i) the terms contained in this Lease including any terms contained in a Schedule constitute the whole of the agreement in respect of the Land and Premises between the Landlord and the Tenant and all previous negotiations and agreements are negated;
  - (ii) no further terms are to be implied or arise between the Landlord and the Tenant by way of collateral or other agreement made by or on behalf of the Landlord or by or on behalf of the Tenant on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negated;
  - (iii) no information, representation or warranty by the Landlord or the Landlord's agents was supplied or made with the intention or knowledge that it would be relied on by the Tenant in entering into this Lease; and

- (iv) no information, representation or warranty has been relied on by the Tenant in entering into this Lease.
- (j) Headings and the index to this Lease are for guidance only and do not affect the interpretation of this Lease;
- (k) If a reference is made to any Person, body or Authority and that person, body or Authority has ceased to exist, then the reference is deemed to be a reference to the Person, body or Authority that then serves substantially the same or equivalent objects as the Person, body or Authority that has ceased to exist;
- (l) Reference to the President of a Person, body or Authority must, in the absence of a President, be read as a reference to the senior officer or equivalent employee for the time being of the Person, body or Authority or such other Person fulfilling the duties of President;
- (m) A reference to "writing" or "written" and any words of similar import include printing, typing, lithography and any other means of reproducing characters in tangible and visible form, including any communication effected through any electronic medium if such communication is subsequently capable of reproduction in tangible or visible form;
- (n) A reference to "corporation" and any other words or expressions used or defined in the *Corporations Act 2001(Cth)*, unless the context otherwise requires, has the same meaning that is given to them in the *Corporations Act 2001(Cth)*;
- (o) This Lease is governed by Victorian law. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them. Except as expressly agreed in writing by both Parties or for an action required at a federal level, each Party waives any right it has to object to an action being brought in any court outside Victoria including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction;
- (p) If the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day, the day or last day for doing the thing or date on which the entitlement arises for the purposes of this Lease shall be the next Business Day;
- (q) Each provision of this Lease continues to have full force and effect until it is satisfied or completed;
- (r) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (s) A reference to an agreement or a document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time except to the extent prohibited by this Lease.

### 1.3 Minister's delegations

- (a) Wherever this Lease refers to an action, consent, approval or other thing to be done by, or matter to be considered by the Minister, the reference to the Minister shall be deemed to include a reference to the Minister's Agents and Officers.
- (b) The Minister may appoint any person as the Minister's delegate to exercise all powers conferred by this Lease on the Minister expressly, including without limitation, the power to give any consent or approval pursuant to this Lease.
- (c) The Minister may change the appointment at any time.

## PART 2. EXCLUSION OF STATUTORY PROVISIONS

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### 2.1 Moratorium

To the extent permitted by law, the application to this Lease or to any Party of any Law or any Requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of Rent or any part of it or otherwise affecting the operation of the terms of this Lease or its application to any Party is excluded and negated.

### 2.2 Exclusion of Statutory Provisions

The covenants, powers and provisions implied in leases by virtue of the *Transfer of Land Act 1958* are expressly negated.

## PART 3. LEASE OF LAND

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### 3.1 Lease of Land for Term

The Landlord leases the Land to the Tenant for the Term.

### 3.2 Landlord's Reservations

The Landlord reserves the right for the Landlord and the Landlord's Agents to:

- (a) carry out any works that may be required to comply with any applicable Law or Requirement; and
- (b) create any registered or unregistered easement or other right over the Land as long as it does not adversely affect the Tenant's rights under this Lease;
- (c) enter the Land and the Premises for the purposes set out in this Clause.

### 3.3 Other Reservations

This Lease is granted subject to the following reservations:

- (a) the reservation to the Crown of all gold and minerals within the meaning of the *Mineral Resources Development Act 1990* and petroleum within the

meaning of the *Petroleum Act 1958*, all of which are described as the "reserved minerals";

- (b) the reservation to the Crown of the rights of access for the purpose of searching for and obtaining the reserved minerals in any part of the Land;
- (c) the reservation to the Crown of the rights of access for any pipeline works and other purposes necessary for obtaining and conveying on and from the Land any of the reserved minerals obtained in any part of the Land; and
- (d) the right to resume the Land for mining purposes under Section 205 of the *Land Act 1958*.

### **3.4 Landlord's Exercise of Rights**

Except in an emergency, the Landlord must give the Tenant reasonable notice of the Landlord's intended exercise of the rights set out in this Clause. The Landlord must only exercise the rights at reasonable times and must minimise interference to the Tenant when doing so.

### **3.5 Ownership of Tenant's Improvements**

The Tenant owns all of the Tenant's Improvements unless the Act requires any buildings and structures erected on the Land by the Tenant to be and to remain the property of the Landlord. The Tenant acknowledges that all Capital Works remain the property of the Crown after this Lease is ended.

## **PART 4. RENT**

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### **4.1 Tenant to pay Rent**

The Tenant covenants to pay the Rent:

- (a) at the times and in the manner set out in Item 6 without demand by the Landlord;
- (b) without any abatement, deduction or right of set-off;
- (c) to the Landlord at the address set out in Item 14 or to any other address or in any other way the Landlord directs the Tenant by Notice.

### **4.2 Apportionment of Rent**

If the Commencement Date is not the first day of a rent period, the first and last installments of Rent will be apportioned on a pro-rata daily basis for the periods from:

- (a) the Commencement Date to the first day of the next rent period;
- (b) the first day of the last rent period of the Term until the date on which the Term expires.

## **PART 5. RATES AND TAXES AND GST**

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### **5.1 Tenant to pay Rates and Taxes**

The Tenant must pay the Rates and Taxes:

- (a) to the assessing Authority on time if assessed directly against the Tenant or the Land; but otherwise
- (b) to the Landlord by the date which is 10 Business Days before the due date for payment if the Landlord must pay the Rates and Taxes and has given the Tenant a copy of the notice at least 10 Business Days before then.

### **5.2 Tenant to Produce Receipts**

The Tenant must produce receipts to the Landlord evidencing payment of the Rates and Taxes by the due date for payment if the Tenant is required to pay them to the assessing Authority.

### **5.3 Pro-rata apportionment**

If necessary, the Rates and Taxes will be apportioned on a pro-rata daily basis at the beginning and at the end of the Term.

### **5.4 Goods and Services Tax**

- (a) If GST is or will be or is purported to be payable on any Supply the Party receiving the Supply must pay the Party making the Supply a sum equal to any GST payable by the supplier for that Supply.
- (b) To the extent that one Party is required to reimburse the other Party for costs incurred by the other Party, those costs do not include any amount in respect of GST for which the Party is entitled to claim an input tax credit.
- (c) A Party's obligation to pay an amount under this Clause is subject to a valid tax invoice being delivered to that Party. For the avoidance of any doubt, the Rent and all other payments under this Lease are exclusive of GST.

## **PART 6. COST OF SERVICES**

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The Tenant must pay Costs for all Services (including any special, additional or unusual Services separately supplied, metered, consumed or connected as appropriate in, to or on the Land or the Premises):

- (a) by direct payment on or before the due date if assessed directly against the Land or the Premises; but otherwise
- (b) by reimbursing the Landlord by the date which is 5 Business Days before the due date for payment if the Landlord has given a copy of the Notice to the Tenant at least 10 Business Days before then.

## **PART 7. COSTS**

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If requested, the Tenant must pay to the Landlord all the Landlord's reasonable legal and other Costs including the Costs of valuers, quantity surveyors and other consultants engaged by the Landlord of and incidental to:

- (a) the negotiation, preparation and execution of this Lease.
- (b) any consent required under this Lease;
- (c) any assignment or subletting for which the Landlord's consent is required by this Lease;
- (d) any variation, extension, surrender or termination of this Lease otherwise than by effluxion of time;
- (e) any default by the Tenant or the Tenant's Employees in observing or performing any covenants contained or implied in this Lease.

## **PART 8. INTEREST**

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### **8.1 Payment**

The Tenant must pay on demand interest at the Default Rate on any Rent or other moneys which the Tenant has not paid within 30 days of the due date for payment.

### **8.2 Calculation**

Interest is to be calculated daily from the due date and is to continue until the overdue money is paid. The interest will be capitalised on the last day of each month and may be recovered in the same way as Rent in arrears.

### **8.3 No Prejudice**

If the Landlord requires a Tenant to pay interest, it is without prejudice to any other rights, powers and remedies which the Landlord may have under this Lease or at law.

## **PART 9. USE OF PREMISES**

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### **9.1 Tenant's Permitted Use and negative covenants**

The Tenant must not:

- (a) use the Premises for any purpose other than the Permitted Use;
- (b) conduct any works (maintenance or otherwise) outside the leased area without written permission from the landlord;
- (c) do anything in or on the Premises which in the reasonable opinion of the Landlord causes or may cause nuisance, damage, disturbance or danger to the Landlord or the occupiers or owners of any other property;

- (d) use or allow the use of any radio, television or other sound producing equipment at a volume that can be heard outside the Premises;
- (e) affix any television or radio mast or antennae, satellite dish or any other communication device to any part of the Premises;
- (f) write, paint, display, hang or affix any sign, advertisement, placard, name, flagpole, flag or notice on any part of the Premises except with the prior written consent of the Landlord which is not to be unreasonably withheld but may be given conditionally;
- (g) overload the floor, walls, roof or any other part of the Premises, or, bring onto or remove from the Premises any plant or heavy equipment which by reason of its weight or vibration in its operation or in any way is likely in the reasonable opinion of the Landlord to cause damage to any part of the Premises or the Services;
- (h) except to the extent that they are necessary for the Permitted Use and then only in compliance with any Law or Requirement and in such quantities as are reasonably appropriate, store Hazardous Materials on or in the Premises;
- (i) install any equipment or system in the Premises that overloads or may overload the electrical or other Services to the Premises;
- (j) use the Premises as a residence unless it is a Permitted Use;
- (k) use the Premises for an illegal purpose;
- (l) burn any rubbish or waste on the Land or the Premises other than the burning of vegetation in accordance with all necessary permits.

## **9.2 Tenant's positive covenants**

The Tenant at its Cost must:

- (a) at all times carry out the Permitted Use in a business like and reputable manner;
- (b) keep the Premises clean and not permit any accumulation of useless property or rubbish in them;
- (c) keep the Premises free of pests, insects and vermin;
- (d) provide the Landlord (and keep updated when it changes) with the name, postal address, e-mail address, telephone and facsimile transmission numbers of a person or persons to contact during and after business hours if an emergency arises which affects the Premises;
- (e) comply with the Landlord's reasonable operational requirements for the Services and not interfere with the Services;

- (f) on vacating the Premises, remove all lettering, signs, flagpoles, flags, and other distinctive marks from the Premises and make good any damage caused by the removal;
- (g) obtain, maintain and comply with all consents or approvals from all Authorities which from time to time are necessary or appropriate for the Permitted Use. The Tenant must not by any act or omission cause or permit any consent or approval to lapse or be revoked;
- (h) maintain documented risk management identification and treatment programs for the Premises and the Services;
- (i) arrange for the regular and efficient removal from the Premises of its refuse and rubbish;
- (j) the Tenant must if a notifiable infectious illness occurs in the Premises promptly give Notice to the Landlord and all relevant Authorities and thoroughly fumigate and disinfect the Premises to the satisfaction of the Landlord and all relevant Authorities;
- (k) undertake all fire protection works on the Land required by Law to the satisfaction of the Landlord and all relevant Authorities;
- (l) permit the Landlord or the Landlord's servants or agents with or without vehicles and equipment, workmen or others at all times to enter the Land for fire protection and suppression purposes
- (m) comply with the further obligations, if any, set out in Schedule 3.

### **9.3 No warranty as to use**

- (a) The Landlord gives no warranty (either present or future) that the Land or the Premises are fit for the Permitted Use.
- (b) The Tenant has entered into this Lease with full knowledge of and subject to any prohibitions or restrictions contained in any Law or any Requirement on how the Land or the Premises may be used.

### **9.4 To Let Signs and Inspection**

The Landlord may after giving reasonable notice and at reasonable times:

- (a) place advertisements and signs on those parts of Land and Premises as are reasonable having regard to the interests of the Landlord and the Tenant where the Premises are available for lease if the Tenant does not exercise any option to renew this Lease for a Further Term;
- (b) by appointment with the Tenant, show tenants through the Land and the Premises.

The Landlord in exercising rights under this Clause must endeavour to minimise any inconvenience to the Tenant.



## 9.5 Cost of alteration

Pay to the Landlord on demand the Cost reasonably incurred by the Landlord of any alteration to any Services, sprinkler or fire prevention equipment and installations (including alarms) which may become necessary because of the non-compliance of the Tenant or of the Tenant's Employees with any Requirements, including those of any Tenant's insurer of the Premises or any Tenant's fittings within the period required or, if no period is required, within a reasonable period to meet those requirements.

## **PART 10. COMPLIANCE WITH LAWS AND REQUIREMENTS**

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### 10.1 Compliance with Laws

- (a) The Tenant at its Cost must comply with and observe all Laws and Requirements relating to the Land, the Premises, the Services and the Permitted Use. If the Tenant receives any Notice from an Authority, the Tenant must immediately provide a complete copy of it to the Landlord;
- (b) Before complying with any Law or Requirement, the Tenant must:
  - (i) obtain the written consent of the Landlord which is not to be unreasonably withheld and;
  - (ii) observe the provisions of this Lease.

### 10.2 Landlord may comply with Laws if Tenant defaults

If the Tenant fails to do so, the Landlord may comply with any Law or Requirement referred to in this Clause either in part or whole. If the Landlord does this:

- (a) any Costs incurred by the Minister must be paid or reimbursed to the Landlord by the Tenant;
- (b) it is without prejudice to any of the Landlord's other rights in respect of non-compliance by the Tenant with its obligations under this Lease.

## **PART 11. MAINTENANCE REPAIRS ALTERATIONS AND ADDITIONS**

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### 11.1 General repairing obligation

- (a) The Tenant at its Cost during the Term and any extension or holding over must keep the Premises and the Services in good repair and condition and clean and tidy. For the avoidance of doubt, the Tenant acknowledges that the Landlord will have no responsibility for any repairs and maintenance to the Premises and the Services. The Landlord retains responsibility for the inspection, maintenance, major pruning and removal of trees from the Premises.
- (b) For the purpose of clause 11.1(a), a tree is defined as either living or not and being at least 2 metres in height and with a trunk of at least 80mm in diameter.

- (c) Before carrying out any repairs or maintenance to the Premises, the Tenant must obtain the written approval of the Landlord and all relevant Authorities but the Tenant will not be required to obtain written or any form of approval from the Landlord for maintenance of a non-structural nature.

## **11.2 Landlord's right of inspection**

The Landlord or the Landlord's Agents may enter the Premises and view the state of repair and condition of the Premises and Services:

- (a) in the presence of the Authorised Officer of the Tenant if required by the Tenant;
- (b) at reasonable times upon giving to the Tenant reasonable notice in writing (except in the case of emergency when no notice is required).

## **11.3 Enforcement of repairing obligations**

The Landlord may serve on the Tenant a Notice:

- (a) specifying any failure by the Tenant to carry out any repair, replacement or cleaning of the Premises or the Services which the Tenant is required to do under this Lease; and/or
- (b) require the Tenant to carry out the repair, replacement or cleaning within a reasonable time. If the Tenant does not comply with the Notice, the Landlord may elect to carry out such repair, replacement or cleaning and any Costs incurred must be paid by the Tenant when demanded by the Landlord.

## **11.4 Landlord may enter to repair**

The Landlord, the Landlord's Agents and others authorised by the Landlord may at all reasonable times after giving the Tenant reasonable notice (except in the case of emergency when no notice is required) enter the Land and the Premises to carry out any works and repairs in the circumstances set out below. In doing so, the Landlord must endeavour not to cause undue inconvenience to the Tenant.

- (a) The circumstances for entry are:
  - (i) to carry out any repairs on or to the Premises or the Services, which the Landlord considers necessary or desirable or which relate to anything which the Landlord is obliged or entitled to do under this Lease;
  - (ii) if an Authority requires any repair or work to be undertaken on or to the Premises or the Services which the Landlord is either required or in the Landlord's discretion elects to do and for which the Tenant is not liable under this Lease; and/or
  - (iii) if the Landlord elects to carry out any repair work which the Tenant is required or liable to do under this Lease by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done.

## 11.5 Alterations to Premises

- (a) The Tenant must not and must not permit any other person to carry out any Proposed Work without the Landlord's prior written consent which must not be unreasonably withheld or delayed (this includes any car parking areas outside the leased area);
- (b) In seeking the Landlord's consent the Tenant must submit plans and specifications of the Proposed Work for the approval of the Landlord together with a list of the Persons (if any) from or to whom the Tenant proposes to call a tender or award a contract for the Proposed Work;
- (c) the Landlord may give consent subject to the Tenant satisfying the following requirements:
  - (i) any Proposed Work must be supervised by a Person approved by the Landlord;
  - (ii) any Proposed Work must be executed promptly and continuously in a proper and workmanlike manner, using the materials and by contractors or tradesmen approved by the Landlord, in accordance with all Laws and Requirements;
  - (iii) the Tenant must pay on demand all Costs incurred by the Landlord in considering or inspecting the Proposed Work and its supervision, including the reasonable fees of architects, engineers or other building consultants reasonably engaged by or on behalf of the Landlord;
  - (iv) the Tenant must obtain and keep current and comply with all necessary approvals or permits from all Authorities necessary to enable any Proposed Work to be lawfully effected, and must on request by the Landlord produce for inspection by the Landlord copies of all such approvals and permits;
  - (v) on completion of the Proposed Work the Tenant must immediately obtain and produce to the Landlord, any unconditional certificates of compliance or of satisfactory completion issued by relevant Authorities and, a certificate by a consultant approved by the Landlord that the Proposed Work has been carried out in accordance with the plans and specifications approved by the Landlord.

## 11.6 Notice to Landlord of damage, accident etc

The Tenant must immediately give Notice to the Landlord of any:

- (a) damage however caused, accident to or defects in the Premises or the Services;
- (b) circumstances likely to cause any damage or injury occurring within the Premises of which the Tenant has actual or constructive notice;
- (c) any fault in the Services; or

- (d) Notice from any Authority.

## **PART 12. ASSIGNMENT AND SUBLETTING**

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### **12.1 No disposal of Tenant's interest**

The Tenant must not without the prior written consent of the Landlord and the Minister:

- (a) assign, transfer, sub-let, grant any licence, mortgage, encumber, charge or part with or share the possession of or otherwise deal with or dispose of the Tenant's estate or interest in the Land or any part of the Land or the Premises;
- (b) declare itself trustee of the Land or any part of the Land or of any legal or equitable estate or interest in the Land or the Premises.

### **12.2 Deemed assignment on change of shareholding**

There is a deemed assignment under this Clause if the Tenant is a Corporation and there is any change in any of the following which results in a change in the effective control of the Tenant:

- (a) the membership of the Corporation or any holding Company of the Corporation;
- (b) the beneficial ownership of any shares in the capital of the Corporation or any holding Company of the Corporation; or
- (c) the beneficial ownership of the business or assets in the Corporation or part of it.

If any of these events occur then the Tenant must obtain the Landlord's written consent under this Clause. This does not apply in relation to the sale of shares in the Tenant or the Tenant's holding company that is listed on a recognised stock exchange.

### **12.3 Acceptance of Rent by Landlord**

The acceptance by the Landlord of any Rent or other payment from any Person other than the Tenant does not constitute an acknowledgment by the Landlord that it recognises that person as the Authorised assignee or sub tenant.

### **12.4 S.144 excluded**

Section 144 of the *Property Law Act 1958* does not apply to this Lease.

## **PART 13. INSURANCE AND INDEMNITIES**

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### **13.1 Insurances to be taken out by Tenant**

The Tenant must effect and maintain at the Tenant's Cost:

- (a) a standard public liability insurance policy endorsed to extend the indemnity under the policy to include the Tenant's liability under Clause 13.5. The policy must:
  - (i) be for an amount of not less than the Insured Sum or such higher amount as the Landlord may reasonably require in respect of any single occurrence;
  - (ii) be on terms that the insurer waives all rights of subrogation against the Landlord; and
  - (iii) be extended to include the public tennis courts during Club events or any other times when the public tennis courts are not made available to the public by the Tenant.
- (b) insurance for all Tenant's Improvements and all Tenant's property for their full replacement value; and
- (c) any other insurance reasonably required by the Landlord.

### **13.2 Tenant's insurance obligations**

The Tenant must:

- (a) ensure that all policies of insurance effected by the Tenant pursuant to this Clause are taken out with an insurance office or company authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia including policies underwritten by Lloyd's of London or otherwise approved by the Landlord.
- (b) by the 30<sup>th</sup> of July in each year of the Term, produce to the Landlord a certificate of currency; and
- (c) pay all premiums and other money payable in respect of the insurance policies when they become due and payable.

### **13.3 Non-vitiating of policies**

The Tenant must not do anything in, to or on the Premises and must use its best endeavours not to allow anything to be done which may vitiate or render void or voidable any Tenant's insurances or any condition of any insurance taken out by the Landlord of which the Tenant has been made aware in respect of the Premises or any property in or on it.

### **13.4 Exclusion of Landlord's liability**

- (a) In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Landlord or the Landlord's Agents, the Tenant acknowledges that all property which may be in or on the Premises will be at the sole risk of the Tenant and the Landlord will not be liable for any Claim that the Tenant or the Tenant's Employees or any Person claiming by, through or under the Tenant may incur or make or any which arises from:

- (i) any fault in the construction or state of repair of the Premises or any part of it; or
  - (ii) the collapse of the Premises irrespective of the cause; or
  - (iii) any defect in any Services; or
  - (iv) the flow, overflow, leakage, condensation or breakdown of any water, air-conditioning, gas, oil or other sources of energy or fuel, whether from the roof, walls, gutter, downpipes or other parts of the Premises.
- (b) In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Landlord or the Landlord's Agents, the Tenant agrees that the Landlord will not be responsible for and releases the Landlord, the Crown and the Landlord's Agents from liability in respect of any:
- (i) Claim relating to any property of the Tenant or any other Person in or on the Premises or any part of it however occurring; or
  - (ii) death, damage or injury to any Person or property in on or under the Premises or on any land near it suffered as a direct consequence of the construction, operation, presence or maintenance of the Premises and including, without limitation, damage or injury to any person or property resulting from any collision with or the collapse of the Premises.

### 13.5 Indemnities

In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Landlord or the Landlord's Agents and despite:

- (a) any Claims having resulted from anything which the Tenant may be authorised or obliged to do under this Lease; and/or
- (b) at any time any waiver or other indulgence having been given to the Tenant in respect of any obligation of the Tenant under this Clause,

the Tenant will indemnify and keep indemnified the Landlord, the Landlord's Agents and Officers and the Crown from and against all Claims for which any of them will or may be or become liable, during or after the Term, in respect of or arising from:

- (i) any cause whatever in respect of damage or injury to the Premises, to any property or to any Person or the death of any Person inside or outside the Premises caused or contributed to by any neglect or default of the Tenant or the Tenant's Employees under this Lease or by the use of the Premises by the Tenant or by the Tenant's Employees including, without limitation, injury or death to any Person or property resulting from any collision with or collapse of the Premises;

- (ii) the negligent or careless use or neglect of the Services and facilities of the Premises by the Tenant or the Tenant's Employees or any other Person claiming through or under the Tenant or of any trespasser while such trespasser is in or on the Premises caused or contributed to by any default or negligent act or omission of the Tenant;
- (iii) overflow or leakage of water (including rain water) or from any Services whether originating inside or outside the Premises caused or contributed to by any act or omission on the part of the Tenant or the Tenant's Employees or other Person claiming through or under the Tenant;
- (iv) failure of the Tenant to give Notice to the Landlord of any defect in any of the mechanical or any other Services in the Premises within a reasonable time of the Tenant becoming aware of it; and
- (v) damage to plate, float and other glass caused or contributed to by any act or omission on the part of the Tenant or the Tenant's Employees.

## **PART 14. DAMAGE AND DESTRUCTION**

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### **14.1 Tenant to reinstate Tenant's Improvements**

If the Tenant's Improvements or any part of them are at any time damaged or destroyed by any disabling cause then the Tenant must expeditiously re-instate the Tenant's Improvements and make them fit for the occupation and use by the Tenant as if it was Proposed Work.

### **14.2 Obligation to reinstate is absolute**

The Tenant's obligation under Clause 14.1 to reinstate the Tenant's Improvements applies irrespective of how the damage and destruction occurred and irrespective of whether any policy of insurance effected for the Premises is avoided or payment refused or reduced.

### **14.3 Rent and Rates and Taxes**

The Tenant must continue to pay the Rent and the Rates and Taxes even if the Tenant's Improvements are destroyed or damaged.

## **PART 15. LANDLORD'S COVENANT**

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### **15.1 Quiet Enjoyment**

If the Tenant pays the Rent and observes and performs in a timely fashion the covenants and conditions on its part contained in this Lease, the Tenant may occupy and enjoy the Land during the Term without any interruption by the Landlord or by any Person claiming through the Landlord except as provided in this Lease.

## **PART 16. TERMINATION AND DEFAULT**

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### **16.1 Events of Default**

The following are Events of Default:

- (a) if the Rent or any other money payable under this Lease is not paid within 30 days of the due date for payment whether legally demanded or not;
- (b) if the Tenant at any time fails to perform or observe any of its obligations under this Lease;
- (c) if the Tenant or the Guarantor are companies then if either the Tenant or the Guarantor:
  - (i) enter into any compromise or arrangement with any of its creditors or if an application is made to any court for an order summoning a meeting of creditors; or
  - (ii) has a receiver or receiver and manager or administrator or controller appointed of any of its assets; or
  - (iii) is wound up or dissolved or notice is given of intention to propose a resolution for winding up or an order is made or resolution passed or an application is made for winding up or dissolution; or
  - (iv) has a resolution of the directors passed that in their opinion the company can no longer continue its business; or
  - (v) calls a meeting of its creditors pursuant to the *Corporations Act 2001*; or
  - (vi) is placed under official management or if the members determine to convene a meeting of creditors for the purpose of placing the company under official management; or
  - (vii) has an inspector appointed pursuant to the *Australian Securities Commission Act 1989*; or
  - (viii) is unable to pay its debts as and when they fall due; or
  - (ix) makes an assignment for the benefit of or enters into an arrangement or composition or a moratorium whether formal or informal with its creditors or financiers; or
  - (x) has a provisional liquidator or a liquidator by any means appointed;
- (d) if any execution exceeding ten thousand dollars is issued, levied or enforced against the Tenant or the Guarantor or on any of the assets of the Tenant or the Guarantor unless such execution is fully paid or satisfied within seven days from the date of the issue, levy or enforcement, or appropriate legal proceedings to invalidate the execution are taken within seven days of the issue, levy or enforcement; and



- (e) if the Tenant or the Guarantor is a natural person and becomes or is made bankrupt or makes any assignment of his estate or any part of it for the benefit of creditors or otherwise seeks relief under or takes advantage of any Law for the time being in force relating to bankruptcy or insolvent debtors or causes or permits his goods to be levied on or under any execution or other legal process.

## **16.2 Forfeiture of Lease**

If an Event of Default occurs the Landlord may, without prejudice to any other Claim which the Landlord has or may have against the Tenant or any other Person at any time re-enter into and upon the Land or any part of it in the name of the whole and thereupon this Lease will be absolutely determined.

## **16.3 Re-entry**

The right of re-entry for breach of any covenant or condition to which section 146(1) of the *Property Law Act 1958* applies must not be exercised until the expiration of 30 days after the Landlord has served on the Tenant the notice required pursuant to that section.

## **16.4 Landlord may rectify**

If the Tenant is in default under this Lease and fails to commence to rectify that default within 7 days of the Landlord notifying the Tenant in writing of that default and requiring its rectification or, having commenced, fails to expeditiously complete that rectification within a reasonable time, the Landlord may, but will not be obliged to, remedy at any time without further notice any default by the Tenant under this Lease. If the Landlord so elects all reasonable Costs incurred by the Landlord (including legal costs and expenses) in remedying the default will constitute a liquidated debt and must be paid by the Tenant to the Landlord on demand.

## **16.5 Waiver**

- (a) The Landlord's failure to take advantage of any default or breach of covenant by the Tenant will not be or be construed as a waiver of it, nor will any custom or practice which may grow up between any of the Parties in the course of administering this Lease be construed to waive or to lessen the right of the Landlord to insist upon the timely performance or observance by the Tenant of any covenant or condition of this Lease or to exercise any rights given to the Landlord in respect of any such default;
- (b) A waiver by the Landlord of a particular breach is not deemed to be a waiver of the same or any other subsequent breach or default;
- (c) The demand by the Landlord for, or subsequent acceptance by or on behalf of the Landlord of, Rent or any other money payable under this Lease will not constitute a waiver of any earlier breach by the Tenant of any covenant or condition of this Lease, other than the failure of the Tenant to make the particular payment or payments of Rent or other moneys so accepted, regardless of the Landlord's knowledge of any earlier breach at the time of acceptance of such Rent or other moneys.

## **16.6 Tender after determination**

If the Landlord accepts money from the Tenant after the Landlord ends this Lease the Landlord may (in the absence of any express election of the Landlord) apply it:

- (a) first, on account of any Rent and other moneys accrued and due under this Lease but unpaid at the date the Lease is ended; and
- (b) secondly, on account of the Landlord's Costs of re-entry.

## **16.7 Essential terms**

The Landlord and the Tenant agree that each of the following covenants by the Tenant are essential terms of this Lease:-

- (a) to pay the Rent;
- (b) to keep the Premises open for use;
- (c) to carry on the Permitted Use;
- (d) to comply with Laws and Requirements;
- (e) subject to this Lease, to repair and maintain and, if necessary, reinstate or demolish the Tenant's Improvements;
- (f) not to assign this Lease or sub-let the Land or any part of it;
- (g) to take out and keep current those insurances required to be taken out by the Tenant;
- (h) to pay or reimburse Rates and Taxes.

## **16.8 Damages for Breach**

The Tenant covenants to compensate the Landlord for any breach of an essential term of this Lease. The Landlord may recover damages from the Tenant for such breaches. The Landlord's entitlement under this Clause is in addition to any other remedy or entitlement to which the Landlord is entitled (including to terminate this Lease).

## **16.9 Repudiation by Tenant**

- (a) The Tenant covenants to compensate the Landlord for any loss or damage suffered by reason of the Tenant's conduct (whether acts or omissions):
  - (i) constituting a repudiation of this Lease or of the Tenant's obligations under this Lease; or
  - (ii) breaching any Lease covenants.
- (b) The Landlord may recover damages against the Tenant in respect of repudiation or breach of covenant for the loss or damage suffered by the Landlord during the entire term of this Lease.

### **16.10 Acts by the Landlord not to constitute forfeiture**

The Landlord's entitlement to recover damages shall not be affected or limited if any of the following events occur:-

- (a) the Tenant abandons or vacates the Land; or
- (b) the Landlord elects to re-enter the Land or to terminate the Lease; or
- (c) the Landlord accepts the Tenant's repudiation; or
- (d) the Parties' conduct (or that of any of their servants or agents) constitutes a surrender by operation of law.

### **16.11 Mitigation**

Nothing in this Clause will operate to relieve the Landlord of any obligation which would otherwise apply to mitigate any loss or damage suffered by the Landlord.

## **PART 17. DETERMINATION OF TERM**

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### **17.1 Tenant's Improvement**

When this Lease ends (unless a new lease is granted to the Tenant) the Tenant's Improvements (except for the Tenant's trade fixtures, fittings and chattels) must be left on the Land in a condition which is in accordance with the Tenant's covenants. Any part of the Tenant's Improvements which have not vested in the Landlord by operation of Law revert to and become the absolute property of the Landlord without any payment or compensation.

### **17.2 Tenant not to cause damage**

- (a) The Tenant must not cause or contribute to any damage to the Land or the Tenant's Improvements in the demolition and removal of the Tenant's trade fixtures, fittings and chattels.
- (b) If the Tenant causes any such damage in the removal of the Tenant's trade fixtures, fittings and chattels, the Tenant must make good any such damage and must leave the Land in a condition that is acceptable to the Landlord and all Authorities.
- (c) If the Tenant fails to do so within a reasonable time, the Landlord may make good any such damage at the Cost of and as agent for the Tenant and recover from the Tenant the reasonable cost to the Landlord of doing so as a liquidated debt payable on demand.

### **17.3 Failure by Tenant to remove the Tenant's trade fixtures, fittings and chattels**

If the Tenant fails to remove the Tenant's trade fixtures, fittings and chattels in accordance with this Clause or if the Landlord re-enters the Land, the Landlord at the Landlord's option (without prejudice to any action or other remedy which the Landlord has) may:

- (a) remove the Tenant's trade fixtures, fittings and chattels; and

- (b) without being guilty of any manner of trespass, cause any of Tenant's trade fixtures, fittings and chattels to be removed and stored in such manner as is reasonable at the risk and at the Cost of Tenant and/or at the option of the Landlord sell it as the attorney of the Tenant and appropriate the proceeds of sale in payment of any Rent or other money owing by the Tenant to the Landlord and pay any residue without interest to the Tenant; or
- (c) treat the Tenant's trade fixtures, fittings and chattels as if the Tenant had abandoned its interest in it and it had become the property of the Landlord, and deal with it in such manner as the Landlord thinks fit without being liable in any way to account to the Tenant for them.

#### **17.4 Tenant to indemnify and pay Landlord's Costs**

The Tenant must:

- (a) indemnify and keep indemnified the Landlord in respect of the reasonable cost of the removal and storage of the Tenant's trade fixtures, fittings and chattels, and the cost of removing the Tenant's trade fixtures, fittings and chattels and also in respect of all Claims which the Landlord may suffer or incur at the suit of any Person (other than the Tenant) claiming an interest in the Premises or the Tenant's trade fixtures, fittings and chattels by reason of the Landlord acting in any manner permitted in this Clause; and
- (b) pay to the Landlord as a liquidated debt payable on demand any reasonable Costs incurred by the Landlord in exercising its rights pursuant to this Clause, including any excess of Costs over moneys received in disposal of the Tenant's property pursuant to the Landlord's rights contained in Clause 17.4 except to the extent caused by any negligent act or omission of the Landlord.

#### **17.5 Condition at Termination**

At the end of this Lease the Tenant must return the Premises to the Landlord in the condition required by this Lease.

#### **17.6 Earlier breaches**

The ending of this Lease does not prejudice or affect any rights or remedies of the Landlord against the Tenant in respect of any earlier breach by the Tenant of any Lease covenants and conditions.

### **PART 18. MISCELLANEOUS**

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#### **18.1 Notices**

- (a) Any Notice served or given by either Party pursuant to this Lease will be valid and effectual if signed by either Party or by any director, alternate director, secretary, executive officer, attorney, managing agent, Authorised Officer or solicitors for the time being of that Party or any other Person nominated from time to time by that Party.

- (b) Each Party must immediately provide the other Party with a Notice containing full particulars of the address and facsimile information of the Party giving the Notice and must update such notice in the event of any change.
- (c) Any Notice required to be served or which the Landlord may elect to serve on the Tenant shall be sufficiently served if:
  - (i) served personally
  - (ii) sent by facsimile transmission
  - (iii) forwarded by prepaid security post to the Tenant at its address in this Lease.
- (d) Any Notice required to be served on the Landlord shall be sufficiently served if:
  - (i) served personally
  - (ii) sent by facsimile transmission
  - (iii) forwarded by prepaid security post addressed to the Landlord to the Name and Notice Address.

All such Notices must be addressed to the Landlord at that address or at such other address as the Landlord from time to time nominates.

- (e) Any Notice is deemed to have been duly served if given:-
  - (i) by post, two Business Days after the day it was posted;
  - (ii) by facsimile, at the time of transmission to the Party's facsimile number unless the time of dispatch is later than 5.00 p.m. at the place to which the facsimile transmission is sent in which case it shall be deemed to have been received at the commencement of business on the next Business Day in that place. A copy of any Notice sent by facsimile transmission must also on the date of dispatch be sent by mail to the Party to whom it was sent by facsimile transmission;
  - (iii) personally, on the date of service.

## 18.2 Overholding

If the Tenant continues in occupation of the Land after the Term has expired without objection by the Landlord:

- (a) the Tenant will be deemed a tenant on the terms of this Lease from month to month for a period not exceeding the period permitted by the Act (if any) at a rent to be agreed and failing agreement at a rent to be determined by a qualified valuer acting as an expert and not as an arbitrator and his costs must be paid equally by the Parties;

- (b) either Party may end the Lease by giving to the other Party at any time one month's Notice.

### **18.3 Set-Off**

If the Tenant defaults in the payment of the Rent, the Rates and Taxes or any other money payable under this Lease to the Landlord or any Authority, the Landlord may set-off that amount against any moneys which may from time to time be payable by the Landlord to the Tenant on any account whatsoever but any set-off will not relieve the Tenant from its default for any non-payment of the Rent, the Rates and Taxes or other moneys under this Lease.

### **18.4 Easements**

The Landlord may grant rights of support and enter into any arrangement or agreement with any party with an interest in any adjacent land or with any Authority as the Landlord thinks fit for the purpose of:

- (a) public or private access to the Land; or
- (b) support structures erected on adjoining land;
- (c) the provision of Services.

The Landlord must not exercise any rights under this Clause if it substantially and permanently derogates from the enjoyment of the rights of the Tenant under this Lease.

### **18.5 Guarantee**

If a Guarantee and Indemnity is annexed to this Lease, the Tenant must on the same date as the execution of this Lease procure its execution by the Guarantors named in it and deliver the executed Guarantee and Indemnity to the Landlord. If that Landlord elects, this Lease will not take effect until the Guarantee and Indemnity has been properly executed by the Guarantors and delivered to the Landlord.

### **18.6 Waiver**

No waiver by one Party of a breach by or on behalf of the other Party of any obligation, provision or condition of this Lease expressed or implied shall operate as a waiver to or of any other breach of the same or any other obligation, provision or condition of this Lease expressed or implied.

## **PART 19. FURTHER TERM**

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### **19.1 Option for new lease**

The Landlord must grant the Tenant and the Tenant must take a new lease for the next Further Term if:

- (a) the Tenant gives the Landlord a renewal Notice not more than six months or less than three months before the Term expires;

- (b) there is no unremedied default of which the Landlord has given the Tenant written notice;
- (c) the Tenant has not persistently defaulted under this Lease throughout its Term and the Landlord has not given the Tenant Notices of the defaults; and
- (d) the Tenant does not default under this Lease after giving the Landlord the renewal Notice.

## **19.2 Terms of new lease**

The new lease will:

- (a) commence on the day after the Term expires;
- (b) be at an initial annual Rent from the commencement of the Further Term determined in the manner set out in this Lease and the Second Schedule; and
- (c) be on the terms and conditions contained in this Lease including any provision for the review of Rent but not including any provision for renewal if there are no Further Terms.

## **19.3 Execution of extension of lease**

The Landlord and the Tenant, at the option of the Landlord, must either execute a new lease or a renewal of lease to be prepared by at the direction of the Landlord and at the Tenant's Cost.

## **19.4 Guarantor to execute extension of lease or guarantee**

- (a) If the Tenant is a corporation, then the Tenant must procure the Guarantor to execute a guarantee of the Tenant's obligations under the new lease.
- (b) The Landlord does not have to grant the new lease if the Tenant does not procure the Guarantor to execute the guarantee in accordance with the preceding sub-Clause.

## **PART 20. BANK GUARANTEE**

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### **20.1 Tenant to provide Bank Guarantee**

If asked to do so by the Landlord, in order to secure the performance of the obligations of the Tenant under this Lease the Tenant must procure in favour of the Landlord a Bank Guarantee for the Guaranteed Sum. The following provisions apply to the Bank Guarantee:-

- (a) The Bank Guarantee will remain in force until the bank is notified in writing by the Landlord that it is no longer required.
- (b) The Bank Guarantee must be provided to the Landlord and come into effect on the Commencement Date;

- (c) If the Tenant is in breach of or fails to perform its obligations under this Lease the Landlord may, without prejudice to all other rights and remedies available to it, draw down the whole or any part of the Bank Guarantee and apply the proceeds drawn down to remedy or assist in remedying and to compensate the Landlord for that default and to assist the Landlord in exercising any or all of the Landlord's rights and remedies under this Lease;
- (d) If the Landlord is entitled to exercise any rights and remedies under this Lease the whole of the Bank Guarantee or such of it remaining may be drawn down and the amount deposited in an interest bearing bank account in the name and under the control of the Landlord and the amount together with interest applied to remedy or assist in remedying the default and to compensate the Landlord for the reasonable loss, cost, expense and damage resultant upon the Tenant's default and the Landlord having to exercise its rights and remedies and to assist in the exercise of any rights and remedies under this Lease;
- (e) The Bank Guarantee must require the bank to pay to the Landlord the Guaranteed Sum or such part of the Guaranteed Sum which has not already been paid to the Landlord without any form of deduction, counterclaim or set off whatsoever on receipt by the bank of a copy of a notice of default certified by or on behalf of the Landlord or its solicitors and without reference or regard to the Tenant or any communication or direction given by the Tenant to the bank to the contrary. The bank must have no responsibility to investigate the entitlement of the Landlord to terminate or seek specific performance of this Lease or demand the payment of any money under this Lease.

## **20.2 Return of Bank Guarantee**

The Landlord must return the Bank Guarantee to the Tenant when this Lease comes to an end and the Tenant has no outstanding obligations under this Lease or liability or potential liability in damages for any breach or non-performance of any obligations under this Lease.

## **20.3 Assignment or sale does not affect guarantee**

The Landlord will not be deemed to have waived or relinquished any right under the Bank Guarantee if the Tenant assigns this Lease. If that occurs, the Bank Guarantee will remain in full force and effect as if it had been provided by the assignee and it will be read accordingly. The Landlord may, as a condition of assignment, require the assignee to provide an equivalent replacement Bank Guarantee and if that occurs, the Landlord must return the Bank Guarantee provided by the Tenant assigning this Lease.



**SCHEDULE 1****REFERENCE TABLE**

<b>1</b>	<b>LANDLORD:</b>	<b>Hepburn Shire Council</b> ABN 76 845 763 535 of 76 Vincent Street, Daylesford 3640
<b>2</b>	<b>TENANT:</b>	<b>Mount Prospect District Tennis Association Inc</b> A0002335C ABN 16 807 817 886
<b>3</b>	<b>LAND:</b>	That part of the land known as the Mount Prospect Tennis Complex located at Park Lake Reserve, 35 Bridge Street, Creswick and described as Crown Allotment 15 Section 69 Creswick Township delineated on the plan annexed to this Lease at Appendix One
<b>4</b>	<b>COMMENCEMENT DATE:</b>	1 January 2015
<b>5</b>	<b>TERM:</b>	5 years
<b>6</b>	<b>RENT:</b>	\$104.00 per annum payable in advance on the execution of this agreement and thereafter on the anniversary of the commencement date; on the commencement of the Further Term/s and on the anniversary of the commencement of the Further Term/s  The Rent shall be revised on the Rent Review Dates in accordance with Schedule 2 – Not Applicable
<b>7</b>	<b>PERMITTED USE:</b>	Organised tennis matches and ancillary uses, including but not limited to meetings, fundraising and other activities as may be approved by the Landlord from time to time.
<b>8</b>	<b>FURTHER TERM:</b>	Two (2) further Terms each of five (5) years duration
<b>9</b>	<b>GUARANTEED SUM:</b>	N/A
<b>10</b>	<b>REVIEW DATE(S):</b>	N/A

- 11 NAME AND NOTICE ADDRESS:**
- Landlord:**  
Hepburn Shire Council  
PO Box 21  
Daylesford Vic 3460
- Tenant:**  
Mount Prospect District Tennis Association Inc  
of 35 Bridge Street, Creswick 3363
- 12 INSURED SUM:** \$20 Million
- 13 RESERVATION:** Public Garden and offices and conveniences connected therewith
- 14 PAYMENT ADDRESS:** PO Box 21, Daylesford VIC 3460
- 15 TENANT'S IMPROVEMENTS:** Nil
- 16 ADDITIONAL PROVISIONS:** Refer to Schedules 2 and 3

**SCHEDULE 2****FURTHER OBLIGATIONS****1. Emergency Management**

- 1.1. The Hepburn Shire Council "Code Red Fire Warning Procedure" annexed to this Lease at Appendix 2 applies to and is to be read in conjunction with this Lease.
- 1.2. The Tenant must prepare and maintain during the Term an emergency management plan which must describe:
  - 1.2.1. the measures to be taken to reduce emergency risks so far as is reasonably practicable; and
  - 1.2.2. response measures in the event of an emergency; and
  - 1.2.3. an evacuation procedure.

**2. Risk Management Plan**

- 2.1. The Tenant must have in place prior to the commencement of this Lease a risk management plan having regard to:
  - 2.1.1. a risk assessment conducted to identify, analyse and evaluate risks associated with the premises and the permitted use;
  - 2.1.2. any matters required by, or in guidelines of the Tenant or its affiliated associations or governing bodies; and
  - 2.1.3. any requirements of the Tenant's insurer.

**3. Insurance**

In addition to its obligations under PART 13 of this Lease, the Tenant must also reimburse the Landlord for any building, structures and contents (industrial special risks) insurance premiums or excess paid by the Landlord in relation to the Premises within 30 days of receiving a request for payment of same.

**4. Tenant's Maintenance Obligations**

- 4.1. In addition to the Tenant's general repairing obligations in clause 11.1 and the Capital Works in Schedule 3, the Tenant must, during the Term:
  - 4.1.1. Maintain the public use tennis courts on the Land;
  - 4.1.2. Attend to minor tree pruning on a regular basis;
  - 4.1.3. Maintain the turf nursery adjacent to the tennis courts.
- 4.2. The Landlord agrees that the Tenant's general repairing obligations in clause 11.1 will be limited as follows:

- 4.2.1. During the initial Term of the Lease, being five (5) years starting on the Commencement Date, the Tenant shall be responsible for general repairs and maintenance up to the amount of \$13,000 per year;
- 4.2.2. During the first Further Term of the Lease, if this Lease is renewed for a further term of five (5) years, the Tenant shall be responsible for general repairs and maintenance up to the amount of \$15,000 per year; and
- 4.2.3. During the second Further Term of the Lease, if this Lease is renewed for a further term of five (5) years, the Tenant shall be responsible for general repairs and maintenance up to the amount of \$17,000 per year;
- 4.3. If the general repairs and maintenance necessary in any given year during the Term exceed the amounts in clause 4.2, the Tenant may apply in writing to the Landlord requesting that the further repairs and maintenance be carried out by the Landlord at the Landlord's expense. Each application for further repairs and maintenance to be carried out by the Landlord will be assessed against other maintenance priorities across other Hepburn Shire Council facilities to determine whether it can be undertaken. Council's decision whether to undertake the further repairs and maintenance shall be final and binding upon the parties.

## **5. Use of Water from Lake**

- 5.1. The Landlord, in its capacity as the Committee of Management for the Land and the adjacent park land, approves the Tenant to draw water from the Creswick Park Lake in order to water the grass tennis courts and turf nursery.
- 5.2. The Landlord reserves the right to direct the Tenant to restrict or suspend the drawing of water from Creswick Park Lake if the Landlord deems in its sole discretion the water level to have dropped to unsatisfactory levels that may have aesthetic, structural or environmental impacts. Where this is required, the Landlord will consult with the tenant, seek alternative supplies water supplies if they are available, and provide written advice to the Tenant.

## **6. Financial Reports**

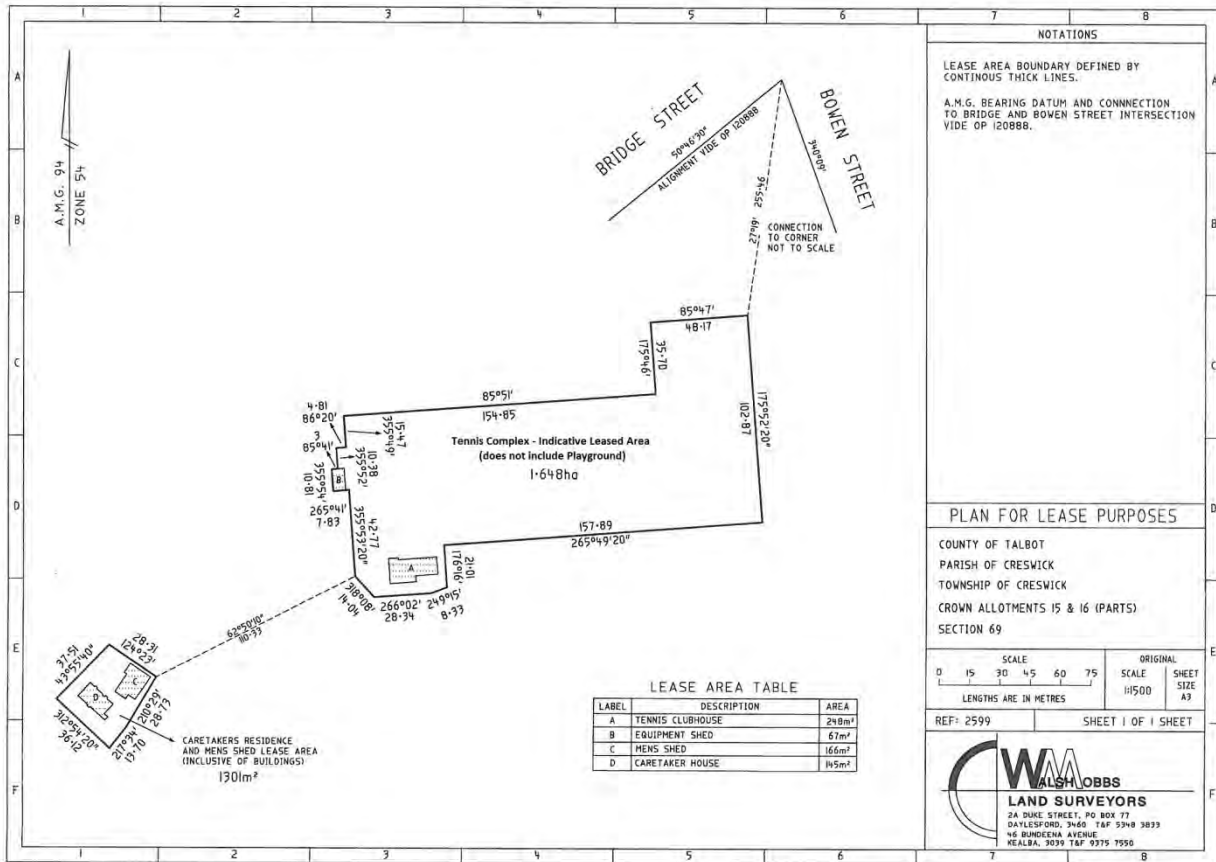
The Tenant will, upon request of the Landlord to do so, provide copies of annual financial reports and supporting documentation to the Landlord.

**SCHEDULE 3****CAPITAL WORKS**

The following works are to be carried out by the Tenant during the Term and the Further Terms. The Tenant must not alter the Capital Works Schedule without the Landlord's prior written consent which must not be unreasonably withheld or delayed.

<b>Term: 2015 – 2020</b>
Paint internal brickwork
Install internal blinds throughout
Construction of a store room for tables and chairs
Other items as required and agreed with Council's Asset Manager
<b>Further Term 1: 2020 – 2025</b>
Construction of a BBQ Room
Other items as required and agreed with Council's Asset Manager
<b>Further Term 2: 2025 – 2030</b>
Install glass bi-fold doors
Replace perimeter netting fencing
Other items as required and agreed with Council's Asset Manager

## APPENDIX ONE PLAN OF LAND



### LEASED AREA – ACTUAL



**APPENDIX TWO**  
**CODE RED FIRE WARNING PROCEDURE**

# Code Red Fire Warning Procedure



## **Purpose**

This procedure is designed to assist in maintaining the health and safety of Hepburn Shire Council employees during the bush fire season and to minimise the risks to staff either at work or travelling to and from work when weather conditions are such that a fire danger rating of Code Red is issued by the Bureau of Meteorology.

This procedure will also form part of Council's Business Continuity Plan.

## **Scope**

This procedure is enacted when a *Code Red* warning is issued for the Central District only and then applies to all Hepburn Shire staff, contractors and volunteers.

## **Definitions**

*Hepburn Shire Council* – refers to all Council depots, offices and any other work locations.

*Code Red* warnings are based on the information provided by the Bureau of Meteorology via the CFA website at [www.cfa.vic.gov.au](http://www.cfa.vic.gov.au)

## **Procedure**

When a Code Red warning is issued for the Central District, all Hepburn Shire Council work locations will close and all services will be suspended in the designated "high risk" townships of Daylesford, Creswick, Trentham and Hepburn Springs from 12 midnight to 12 midnight.

On Code Red days, non-emergency management employees will not attend work in these towns, except staff trained in appropriate emergency management operations; all staff will be paid as normal. Due to travel requirements, all Aged and Disability Care Services will be suspended beyond these towns to all clients across the Shire.

Staff involved in Emergency Management will undertake their roles and responsibilities in accordance with the Emergency Management procedures. On declared Code Red days, Hepburn Shire Council emergency management personnel will be stationed in the Municipal

Emergency Coordination Centre (MECC) in readiness for any incidents. Emergency staff will also be able take calls from community members whilst on standby status.

Staff should take the necessary personal precautions and preparations during the fire season.

On days other than those declared as Code Red for the Central District, staff who due to fire conditions are unable to attend work or who decide to stay and defend their property must advise their manager as soon as practicable. The normal range of leave provisions will apply in these circumstances.

This procedure must be read in conjunction with the Municipal Emergency Management Plan (MEMP).





# Code Red Fire Warning Procedure

## Responsibilities

The Chief Executive Officer will determine when Hepburn Shire Council will close.

General Managers / Managers / Supervisors will:

- advise staff when Hepburn Shire Council will close as a result of a Code Red warning being issued for the Central District.
- ensure all employees are aware of and adhere to fire ban restrictions
- ensure that all employees are aware of and trained in the fire evacuation procedures
- ensure staff who are working at non office or depot locations have a suitable plan to protect themselves on days of fire risk.

All Staff will

- ensure they do not take undue risk to travel to or from work
- maintain regular checks on emergency radio broadcasts relevant to their area on (ABC radio AM 774 or FM 107.9)
- regularly check the Bureau of Meteorology website <http://www.bom.gov.au> and the CFA website <http://www.cfa.vic.gov.au>/especially if there are fires in their area.
- inform their supervisor of any fire risk in their area and if they are unable to travel
- Maintain hydration

**11.4. APPLICATION FOR APPROVAL TO OPERATE B-DOUBLE AND HIGHER MASS LIMIT VEHICLES ON LOCAL COUNCIL ROADS**

**GENERAL MANAGER INFRASTRUCTURE**

*In providing this advice to Council as the Project Engineer - Development, I Inoka Sanjeewanie have no interests to disclose in this report.*

**PURPOSE**

The purpose of this report is for Council to consider applications for consent to use B-Double and/or Higher Mass Limit (HML) vehicles on local Council roads.

**BACKGROUND**

The following new and renewal referrals for consent to use B-Double and/or HML vehicles on local Council roads have been received from the National Heavy Vehicle Regulator (NHVR).

Ref	Organisation	Vehicles	Roads	Time Frame
Renewal/Amendment Requests				
26492	Boral Resources Vic Pty Ltd	B-Doubles at HML	East St – Daylesford (between Midland Highway and 6 East Street)	Until 13/10/2017

**ISSUE/DISCUSSION**

Council officers have assessed the applications considering the following:

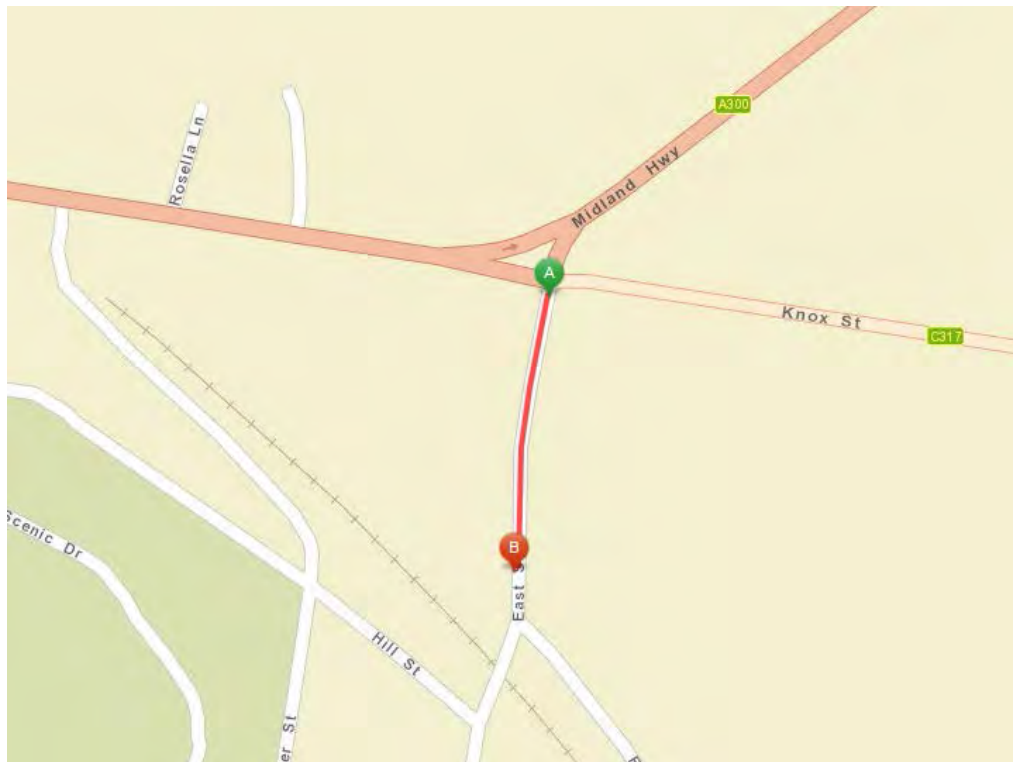
- Community Safety
- Local Amenity
- Physical Limitations of the network
- Economic benefits
- Alternative access
- Cost implications to Council.

The results of the assessment are provided below along with any recommended conditions to be applied to any consent granted by Council.

## RENEWAL/AMENDMENT REQUESTS

### a) Boral Resources Vic Pty Ltd (Request Number 26492)

Boral Resources Pty Ltd requests Council to amend its existing permit to include vehicles operating at HML 49.5 tonnes in East St, Daylesford for transporting bulk quarry products. The section of East St that is proposed for use is marked in red in below map.



The proposed section of East Street is a council managed road, is already permitted for other B-Double and HML operators and is capable of catering for B-Double vehicles at HML. Therefore, it is considered that access is possible and acceptable.

It is recommended that Council approves Boral Resources Vic Pty Ltd to use B-Doubles at HML on East Street, Daylesford (between Midland Highway and 6 East Street) to transport quarry products to 6 East Street, Daylesford, subject to the following conditions:

- Hours of Operation shall be 7:00am to 6:00pm.
- The use of compression brakes is to be avoided.

## COUNCIL PLAN/LEGISLATIVE COMPLIANCE

*Council Plan 2013:2017:*

Strategic Objective – *Sustainable Environment and a Vibrant Economy*

Key Strategic Activity:

12. Support and develop existing businesses within Hepburn Shire and continue to explore opportunities to diversify Hepburn Shire's Economic base.

## FINANCIAL IMPLICATIONS

There are no expected financial implications of granting approval to Boral Resources Vic Pty Ltd to use this portion of road for B-Doubles access at HML

## RISK IMPLICATIONS

There are no expected risk implications of granting approval to Boral Resources Vic Pty Ltd.

## ENVIRONMENTAL/SOCIAL/ECONOMIC IMPLICATIONS

There are expected to be economic benefits for local business and economic development through the granting of consent for access however this is not able to be measured.

## COMMUNITY AND STAKEHOLDER ENGAGEMENT

No external engagement was undertaken in relation to this request. Relevant internal roads and natural resource management staff have been involved in assessing these requests.

## CONCLUSION

Council has received one permit referral from the National Heavy Vehicle Regulator for consent to operate B-Double vehicles at HML on portion of East Street Daylesford.

Following a review of the referral, conditional consent is recommended for the operator as detailed.

Ref	Organisation	Vehicles	Roads	Conclusion
Renewal Requests				
26492	Boral Resources Vic Pty Ltd	B-Doubles at HML	East St – Daylesford (between Midland Highway and 6 East Street)	Conditional Approval

#### OFFICER'S RECOMMENDATION

11.4.1 That Council approves Boral Resources Vic Pty Ltd to use B-Double vehicles at Higher Mass Limits on East Street (From Midland Hwy to 6 East St) in Daylesford for a period of three years commencing 23 December 2014 and expiring on 22 December 2017, subject to the following conditions.

- Hours of Operation shall be 7:00am to 6:00pm.
- The use of compression brakes is to be avoided.

#### MOTION

11.4.1. *That Council approves Boral Resources Vic Pty Ltd to use B-Double vehicles at Higher Mass Limits on East Street (From Midland Hwy to 6 East St) in Daylesford for a period of three years commencing 23 December 2014 and expiring on 22 December 2017, subject to the following conditions.*

- *Hours of Operation shall be 7:00am to 6:00pm.*
- *The use of compression brakes is to be avoided.*

**Moved:** Councillor Bill McClenaghan  
**Seconded:** Councillor Greg May  
**Carried.**

**11.5. APPOINTMENT OF COMMITTEE MEMBER TO THE CRESWICK MUSEUM  
SPECIAL COMMITTEE  
GENERAL MANAGER CORPORATE SERVICES**

*In providing this advice to Council as the Governance and Corporate Support Officer, I Mary Dancuk have no interests to disclose in this report.*

**PURPOSE**

The purpose of this report is to recommend to Council the appointment of a community member to the Creswick Museum Special Committee.

**BACKGROUND**

In accordance with current Instrument of Delegation, the Committee shall be comprised of at least seven community members.

Following two recent resignations, the Committee currently has six members. A call for membership nominations was advertised in *The Advocate* on 15 October to fill recent vacancies. Applications closed on 28 November 2014.

**ISSUE/DISCUSSION**

Council received one nomination from Miss Phyllis Wright.

Miss Wright is a fifth generation local resident who has lived in Creswick her entire life. Miss Wright has been a museum volunteer for over 30 years, has a good knowledge of local history and would bring this experience to this committee.

**COUNCIL PLAN / LEGISLATIVE COMPLIANCE**

*Local Government Act 1989* – Council has the power to appoint members to Special Committees of Council.

**FINANCIAL IMPLICATIONS**

None identified.

**RISK IMPLICATIONS**

None identified.

**ENVIRONMENTAL / SOCIAL / ECONOMIC IMPLICATIONS**

No change to current arrangements.

## COMMUNITY AND STAKEHOLDER ENGAGEMENT

Council advertised a call for membership nominations for the Creswick Museum Special Committee in *The Advocate* on 15 October 2014, closing on 28 November 2014.

## CONCLUSION

The appointment of Miss Phyllis Wright to the Creswick Museum Special Committee results in the committee meeting the minimum requirement for seven members.

## OFFICER'S RECOMMENDATION

That Council:

- 11.5.1 Appoints Miss Phyllis Wright to the Creswick Museum Special Committee for a period commencing Wednesday 17 December 2014 to Tuesday 30 August 2016.
- 11.5.2 Pursuant to section 81(2A) of the Local Government Act 1989, exempts the above Special Committee member from being required to submit a primary return or ordinary return.

## MOTION

*That Council:*

- 11.5.1. *Appoints Miss Phyllis Wright to the Creswick Museum Special Committee for a period commencing Wednesday 17 December 2014 to Tuesday 30 August 2016.*
- 11.5.2. *Pursuant to section 81(2A) of the Local Government Act 1989, exempts the above Special Committee member from being required to submit a primary return or ordinary return.*

**Moved:** Councillor Don Henderson  
**Seconded:** Councillor Bill McClenaghan  
**Carried.**

**11.6. RECORD OF ASSEMBLIES OF COUNCILLORS – NOVEMBER 2014  
GENERAL MANAGER CORPORATE SERVICES**

*In providing this advice to Council as the Governance and Corporate Support Officer, I Mary Dancuk have no interests to disclose in this report.*

**PURPOSE**

The purpose of this report is for Council to receive and note Assemblies of Councillors.

**BACKGROUND**

*The Local Government Act 1989 defines Assembly of Councillors as*

*...a meeting of an advisory committee of the Council, if at least one Councillor is present, or a planned or scheduled meeting of at least half of the Councillors and one member of Council staff which considers matters that are intended or likely to be*

-

- (a) the subject of a decision of the Council; or*
- (b) subject to the exercise of a function, duty of power of the Council that has been delegated to a person or committee –*

*but does not include a meeting of the Council, a special committee of the Council, as audit committee established under Section 139, a club, association, peak body, political party of other organisation.*

**ISSUE / DISCUSSION**

The *Local Government Act 1989* (as amended) requires the record of an Assembly of Councillors to be:

1. reported at an Ordinary Meeting of the Council; and
2. incorporated in the minutes of that Council Meeting.

For this purpose, the following records of Assemblies of Councillors are reported:

Assemblies of Councillors		
Date	Location	Committee Name
5 November 2014	Council Chamber, Daylesford	Councillor Briefing
11 November 2014	Council Chamber, Daylesford	Councillor Briefing
18 November 2014	Drummond Hall	Councillor/CEO Meeting



Assemblies of Councillors		
Date	Location	Committee Name
18 November 2014	Drummond Hall	Pre Council Meeting Briefing

#### **COUNCIL PLAN / LEGISLATIVE COMPLIANCE**

*Local Government Act 1989, Section 80A*

#### **FINANCIAL IMPLICATIONS**

Nil

#### **RISK IMPLICATIONS**

There are implications with regards to Council's compliance with the *Local Government Act 1989* (as amended) if written records of Councillor Assemblies are not reported to Council.

#### **ENVIRONMENTAL / SOCIAL / ECONOMIC IMPLICATIONS**

The inclusion of the attached record of Councillor Assemblies in the Council Agenda and their availability to the public will increase awareness of the activities of Council and could increase community involvement in decision making at Council level.

#### **COMMUNITY AND STAKEHOLDER ENGAGEMENT**

Using Council's adopted Community Engagement Framework, International Public Participation Consultation, this report presents information via the Council Agenda.

#### **CONCLUSION**

Information provided for noting.

#### **OFFICER'S RECOMMENDATION**

11.6.1 That Council receives and notes the Records of Assemblies of Councillors for the month of November 2014.

**MOTION**

11.6.1. *That Council receives and notes the Records of Assemblies of Councillors for the month of November 2014.*

**Moved:** Councillor Neil Newitt  
**Seconded:** Councillor Sebastian Klein  
**Carried.**

ATTACHMENT 2 - RECORDS OF ASSEMBLIES OF COUNCILLORS –  
NOVEMBER 2014

**RECORD OF ASSEMBLY OF COUNCILLORS**

This record is required under Section 80A of the *Local Government Act 1989*

Title of Meeting: Councillor Briefing  
 Date: Wednesday 5 November 2014  
 Time: 11:30 am

Venue:  Council Chamber Daylesford  
 Senior Citizens Centre Daylesford  
 Other (specify)

**Councillors present:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Cr Don Henderson    | <input checked="" type="checkbox"/> Cr Greg May    |
| <input checked="" type="checkbox"/> Cr Kate Redwood AM  | <input checked="" type="checkbox"/> Cr Neil Newitt |
| <input checked="" type="checkbox"/> Cr Sebastian Klein  | <input type="checkbox"/> Cr Pierre Niclas          |
| <input checked="" type="checkbox"/> Cr Bill McClenaghan |  |

**Members of Council Staff present:**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> CEO Aaron van Egmond   | Cultural and Community Development Officer, Kate Gerritsen |
| <input type="checkbox"/> GM Corporate Services Grant Schuster  | Acting Manager Strategic Asset Management, Steve Millard   |
| <input checked="" type="checkbox"/> GM Community Services Kathleen Brannigan   | Manager Planning, Justin Fiddes                            |
| <input type="checkbox"/> GM Infrastructure Bruce Lucas   |  |
| <input checked="" type="checkbox"/> Other, please specify:<br>Manager Community & Economic Development, Adam McSwain |  |

**Conflict of Interest Disclosures:**

Councillor Name	Time Left and Returned
CR BILL MCCLENAGHAN	4.00 - 4.10 pm
CR DON HENDERSON	12.05 - 12.10 pm

**Matters Considered:**

Agenda Attached

**Name and title of Officer responsible for this written record:**

- |  |  |
|--|--|
| <input type="checkbox"/> CEO Aaron van Egmond                                | <input type="checkbox"/> GM Infrastructure Bruce Lucas |
| <input type="checkbox"/> GM Corporate Services Grant Schuster                | <input type="checkbox"/> Other, please specify:        |
| <input checked="" type="checkbox"/> GM Community Services Kathleen Brannigan |  |

Signature: 

**Note: This form MUST be completed by the attending Council Officer and returned immediately to Governance Officer for filing.**

CONFIDENTIAL  
 ► COUNCILLOR BRIEFING AGENDA  
 WEDNESDAY 5 NOVEMBER 2014

Wednesday 5 November 2014  
 Council Chamber, Daylesford Town Hall  
 11:30am – 4:45pm

**PRESENT:**

Councillors	Don Henderson, Kate Redwood AM, Sebastian Klein, Greg May, Bill McClenaghan, Neil Newitt, Pierre Niclas
Officers	Chief Executive Officer, General Manager Corporate Services, General Manager Community Services and other officers as required

**CHAIR:** Mayor Cr Don Henderson

**APOLOGIES:** General Manager Infrastructure

No.	Time	Agenda Item		Presenter	No.
1.	11:30am	External Briefing	Daylesford Lawn Tennis Club Redevelopment Options	Greg Malcher	Page 4
	11:50am	Discussion	<i>(following external briefing)</i>		
2.	12:00pm	Presentation	Community Grants – Recommendations – Round One 2014/15	Manager Community & Economic Development	Page 5
	12:45pm	<b>Lunch Break - Lunch will be provided</b>			
3.	1:15pm	External Briefing	Bullarto Public Hall Committee Of Management	Marlene & Len Orr Graeme Orr Allan Pearce	Page 6
	1.45pm	Discussion	<b>Attachment 1 – Letter from Bullarto Public Hall Committee</b> <i>(following external briefing)</i>		Page 8

No.	Time	Agenda Item		Presenter	No.
4.	2:00pm	Report	Meals on Wheels Update	General Manager Community Services	Page 13
5.	2:15pm	Report	Booktown – Memorandum of Understanding	Manager Community & Economic Development	Page 14
			<b>Attachment 2 – Booktown Festival – Draft Memorandum of Understanding</b>		Page 16
6.	2:45pm	Report	Council Meeting Dates 2015	GM Corporate Services	Page 28
7.	3:00pm	Presentation	Clunes Community Centre Special Committee	Manager Community & Economic Development	Page 31
8.	3:30pm	Report	Councillor Representation on Committees and Other Bodies and Officer Representation on Daylesford & Macedon Ranges Regional Tourism Board	GM Corporate Services	Page 33
			<b>Attachment 3 – Councillor Representation – External Bodies, Special Committees and Advisory Committees</b>		Page 34
	3:45pm	<b>Break</b>			
9.	4:00pm	Report	Hepburn Bathhouse – Community Pricing Increase – 2015	Property Officer	Page 37
			<b>Attachment 4 – Community Services Agreement – Amending Agreement 2015</b>		Page 40
10.	4:15pm	Presentation	Planning Update <ul style="list-style-type: none"> <li>• VCAT Update</li> <li>• Dwellings in Farming Zone</li> </ul>	Manager Planning	Page 44

CONFIDENTIAL

▶ COUNCILLOR BRIEFING AGENDA  
WEDNESDAY 5 NOVEMBER 2014

No.	Time	Agenda Item		Presenter	No.
11.	4:45pm	For Noting	Agenda Items - Next Council Meeting	GM Corporate Services	Page 45
12.	4:45pm	<b>CLOSE OF MEETING</b>			Page 46

DISCLOSURE OF CONFLICT OF INTEREST

I, Councillor ~~DOON~~ DOW HENDERSON hereby disclose  
a conflict of interest in the following matter COMMUNITY GRANTS

This matter is being considered at a meeting of

- Council Meeting
- Councillor Briefing
- Special Committee
- Audit and Risk Advisory Committee
- Assembly of Councillors

on

The class of the interest is (tick appropriate box)

- a direct interest
- OR
- an indirect interest  (see below)

Please select from the following types of indirect interest:

- Indirect interest - close association (section 78)
- Indirect financial interest (section 78A)
- Indirect interest – conflicting duty (section 78B)
- Indirect interest – applicable gift(s) (section 78C)
- Indirect interest – party to matter (civil proceedings) (section 78D)
- Indirect interest – impact on residential amenity (section 78E)

NB All references to sections are references to sections in the Local Government Act 1989.

The nature of the interest is as follows:

PRESIDENT of A GROUP APPLYING FOR GRANT

Print Name: DON HENDERSON

Signed: *[Signature]*

Date: 5/11/2014



DISCLOSURE OF CONFLICT OF INTEREST

I, Councillor BILL McCLENAGHAN hereby disclose  
a conflict of interest in the following matter PLANNING CONDITIONS  
AMENDMENT FOR WATER BORES INSTALLATION  
AT WHEELERS HILL RD MUSK

This matter is being considered at a meeting of

- Council Meeting
- Councillor Briefing
- Special Committee .....
- Audit and Risk Advisory Committee .....
- Assembly of Councillors .....

on WED 05 NOV 14

The class of the interest is (tick appropriate box)

- a direct interest
- OR
- an indirect interest  (see below)

Please select from the following types of indirect interest:

- Indirect interest - close association (section 78)
- Indirect financial interest (section 78A)
- Indirect interest – conflicting duty (section 78B)
- Indirect interest – applicable gift(s) (section 78C)
- Indirect interest – party to matter (civil proceedings) (section 78D)
- Indirect interest – impact on residential amenity (section 78E)

NB All references to sections are references to sections in the Local Government Act 1989.

The nature of the interest is as follows:

AS A BOARD MEMBER OF THE CENTRAL  
HIGHLANDS TOURIST RAILWAY, WHICH WAS  
A PARTY TO THE RECENT VCAT HEARING  
I HAVE AN INDIRECT CONFLICT OF INTEREST

Print Name: CR BILL McCLENAGHAN

Signed: [Signature]

Date: 05 NOV 14

**RECORD OF ASSEMBLY OF COUNCILLORS**

This record is required under Section 80A of the *Local Government Act 1989*

Title of Meeting: Councillor Briefing  
 Date: Tuesday 11 November 2014  
 Time: 3:00 pm

Venue:  Council Chamber Daylesford  
 Senior Citizens Centre Daylesford  
 Other (specify)

**Councillors present:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Cr Don Henderson    | <input checked="" type="checkbox"/> Cr Greg May      |
| <input checked="" type="checkbox"/> Cr Kate Redwood AM  | <input checked="" type="checkbox"/> Cr Neil Newitt   |
| <input checked="" type="checkbox"/> Cr Sebastian Klein  | <input checked="" type="checkbox"/> Cr Pierre Niclas |
| <input checked="" type="checkbox"/> Cr Bill McClenaghan |  |

**Members of Council Staff present:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> CEO Aaron van Egmond                     | <input type="checkbox"/> Other, please specify: |
| <input checked="" type="checkbox"/> GM Corporate Services Grant Schuster     |   |
| <input checked="" type="checkbox"/> GM Community Services Kathleen Brannigan |   |
| <input checked="" type="checkbox"/> GM Infrastructure Bruce Lucas            |   |

**Conflict of Interest Disclosures:**

Councillor Name	Time Left and Returned

**Matters Considered:**

Hepburn Community and Council Services Hub Concept Design

Agenda Attached

**Name and title of Officer responsible for this written record:**

- |  |  |
|--|--|
| <input type="checkbox"/> CEO Aaron van Egmond                            | <input type="checkbox"/> GM Infrastructure Bruce Lucas |
| <input checked="" type="checkbox"/> GM Corporate Services Grant Schuster | <input type="checkbox"/> Other, please specify:        |
| <input type="checkbox"/> GM Community Services Kathleen Brannigan        |  |

Signature: 

*Note: This form MUST be completed by the attending Council Officer and returned immediately to Governance Officer for filing.*

**RECORD OF ASSEMBLY OF COUNCILLORS**

This record is required under Section 80A of the *Local Government Act 1989*

Title of Meeting: Councillor/CEO Meeting  
 Date: Tuesday 18 November 2014  
 Time: 2:00 pm

Venue:  Council Chamber Daylesford  
 Senior Citizens Centre Daylesford  
 Other (specify) – Drummond Hall

**Councillors present:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Cr Don Henderson    | <input checked="" type="checkbox"/> Cr Greg May    |
| <input checked="" type="checkbox"/> Cr Kate Redwood AM  | <input checked="" type="checkbox"/> Cr Neil Newitt |
| <input checked="" type="checkbox"/> Cr Sebastian Klein  | <input type="checkbox"/> Cr Pierre Niclas          |
| <input checked="" type="checkbox"/> Cr Bill McClenaghan |  |

**Members of Council Staff present:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> CEO Aaron van Egmond          | <input type="checkbox"/> Other, please specify: |
| <input type="checkbox"/> GM Corporate Services                    |   |
| <input type="checkbox"/> GM Community Services Kathleen Brannigan |   |
| <input type="checkbox"/> GM Infrastructure Bruce Lucas            |   |

**Conflict of Interest Disclosures:**

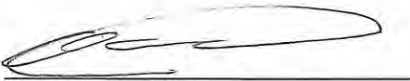
Councillor Name	Time Left and Returned

**Matters Considered:**

Agenda Attached

**Name and title of Officer responsible for this written record:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> CEO Aaron van Egmond          | <input type="checkbox"/> Other, please specify: |
| <input type="checkbox"/> GM Corporate Services                    |   |
| <input type="checkbox"/> GM Community Services Kathleen Brannigan |   |
| <input type="checkbox"/> GM Infrastructure Bruce Lucas            |   |

Signature: 

*Note: This form MUST be completed by the attending Council Officer and returned immediately to Governance Officer for filing.*

▶ MEETING AGENDA

COUNCILLOR + CEO MEETING

Tuesday 18 November 2014

Drummond Hall

2:00PM

PRESENT: Councillors Kate Redwood AM, Neil Newitt, Don Henderson, Pierre Niclas, Greg May, Bill McClenaghan, Sebastian Klein  
CEO, Aaron van Egmond

CHAIR: Councillor Kate Redwood AM

APOLOGIES: N/A

No.	Time	Agenda Item	Presenter
1.	2:00PM	"Anzac 100" decorations to facade of Town Hall	Aaron van Egmond
2.		CVGA Board Nomination	Aaron van Egmond
3.		Calembeen Park Dive Tower update	Cr Bill McClenaghan
4.		Any Expressions of Interest currently advertised	Cr Bill McClenaghan
5.		Community Facilities at Bullarto	Cr Bill McClenaghan
6.		Hepburn Wind Rates update	Cr Bill McClenaghan
7.		Whealers Hill pine plantation (that was) and communication issues	Cr Bill McClenaghan
8.		Ken Stockfeld- former Daylesford and Glenlyon Shire Councillor passing and funeral	Aaron van Egmond
9.		Daylesford Show	Cr Kate Redwood
10.		Projects lobbying	Cr Kate Redwood
11.		Chinese Delegation - Sister City Delegation	Cr Kate Redwood

**RECORD OF ASSEMBLY OF COUNCILLORS**

This record is required under Section 80A of the *Local Government Act 1989*

Title of Meeting: Pre Council Meeting Briefing  
Date: Tuesday 18 November 2014  
Time: 3:30 pm

Venue:  Council Chamber Daylesford  
 Senior Citizens Centre Daylesford  
 Other (specify) – Drummond Hall

**Councillors present:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Cr Don Henderson    | <input checked="" type="checkbox"/> Cr Greg May    |
| <input checked="" type="checkbox"/> Cr Kate Redwood AM  | <input checked="" type="checkbox"/> Cr Neil Newitt |
| <input checked="" type="checkbox"/> Cr Sebastian Klein  | <input type="checkbox"/> Cr Pierre Niclas          |
| <input checked="" type="checkbox"/> Cr Bill McClenaghan |  |

**Members of Council Staff present:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> CEO Aaron van Egmond                     | <input checked="" type="checkbox"/> Other, please specify:          |
| <input checked="" type="checkbox"/> GM Corporate Services Grant Schuster     | <del>Acting Manager Strategic Asset</del>                           |
| <input checked="" type="checkbox"/> GM Community Services Kathleen Brannigan | <del>Management, Steve Millard</del>                                |
| <input checked="" type="checkbox"/> GM Infrastructure Bruce Lucas            | <i>Acting Manager Community and Economic Development, Elie Beer</i> |

**Conflict of Interest Disclosures:**

Councillor Name	Time Left and Returned
<i>Cr Bill McClenaghan</i>	<i>3:53pm - 3:58pm</i>

**Matters Considered:**

Council Meeting Agenda – Tuesday 18 November 2014

Agenda Attached

**Name and title of Officer responsible for this written record:**

- |   |   |
|---|---|
| <input type="checkbox"/> CEO Aaron van Egmond                     | <input type="checkbox"/> Other, please specify: |
| <input checked="" type="checkbox"/> GM Corporate Services         |   |
| <input type="checkbox"/> GM Community Services Kathleen Brannigan |   |
| <input type="checkbox"/> GM Infrastructure Bruce Lucas            |   |

Signature: *[Handwritten Signature]*

Note: This form **MUST** be completed by the attending Council Officer and returned immediately to Governance Officer for filing.

DISCLOSURE OF CONFLICT OF INTEREST

I, Councillor BILL MCCLENAGHAN hereby disclose  
a conflict of interest in the following matter ITEM 11.4 - PROPOSED EAST  
STREET RAILWAY UNDERPASS ACCESS IMPROVEMENT

This matter is being considered at a meeting of

- Council Meeting
- Councillor Briefing
- Special Committee
- Audit and Risk Advisory Committee
- Assembly of Councillors

on TUESDAY 18 NOV 14

The class of the interest is (tick appropriate box)

- a direct interest
- OR
- an indirect interest  (see below)

Please select from the following types of indirect interest:

- Indirect interest - close association (section 78)
- Indirect financial interest (section 78A)
- Indirect interest – conflicting duty (section 78B)
- Indirect interest – applicable gift(s) (section 78C)
- Indirect interest – party to matter (civil proceedings) (section 78D)
- Indirect interest – impact on residential amenity (section 78E)

NB All references to sections are references to sections in the Local Government Act 1989.

The nature of the interest is as follows:

AS A DIRECTOR OF THE CENTRAL HIGHLANDS  
TOURIST RAILWAY THAT MANAGES LEASED  
VIC TRAIL RAILWAY LAND INCLUDING THE  
BRIDGE AND ADJACENT FORMATION, I HAVE AN  
INDIRECT CONFLICT  
OF INTEREST.

Print Name: CR. BILL MCCLENAGHAN

Signed: [Signature]

Date: 18 NOV 14

## 12. COUNCIL SPECIAL COMMITTEES (SECTION 86)

### 12.1. MINUTES OF SPECIAL COMMITTEES (SECTION 86) GENERAL MANAGER CORPORATE SERVICES

*In providing this advice to Council as the Governance and Corporate Support Officer, I Mary Dancuk have no interests to disclose in this report.*

#### PURPOSE

The purpose of this report is for Council to note the minutes and recommendations from Council's Special Committees (Section 86).

#### BACKGROUND

Special Committees are established by Council under section 86 of the *Local Government Act 1989* and their function and responsibilities outlined in an Instrument of Delegation. Under the Instruments of Delegation, special committees are required to maintain minutes of meetings held and provide a copy of the minutes to Council for review.

#### ISSUE/DISCUSSION

Please see listed below the minutes and other reports of Special Committees, as provided by the committees over the past month, for your information:

- Minutes from the Dean Recreation Reserve and Tennis Courts Special Committee – Annual General Meeting – 7/08/2014.
- Minutes from the Dean Recreation Reserve and Tennis Courts Special Committee – General Meeting – 7/08/2014.
- Minutes from the Creswick Museum Special Committee – 3/11/2014.
- Minutes from the Lee Medlyn Home of Bottles Special Committee – 5/11/2014.
- Minutes from the Lyonville Hall Special Committee – 18/11/2014.
- Minutes from The Warehouse – Clunes Special Committee – 20/11/2014.
- Minutes from the Drummond Hall Special Committee – 5/12/2014.

These minutes have been previously provided to Councillors under a separate cover.

The following advice has been received by Council and is presented for Council to consider:

#### COUNCIL PLAN / LEGISLATIVE COMPLIANCE

Nil

#### FINANCIAL IMPLICATIONS

Nil

#### RISK IMPLICATIONS

Nil

#### ENVIRONMENTAL / SOCIAL / ECONOMIC IMPLICATIONS

Nil

#### COMMUNITY AND STAKEHOLDER ENGAGEMENT

Members of the community are represented on these committees.

Council advertised membership nominations for the Creswick Museum Special Committee in The Advocate on Wednesday 15 October to fill recent vacancies.

#### CONCLUSION

Minutes and reports have been provided for noting.

#### OFFICER'S RECOMMENDATION

That Council:

12.1.1 Receives and notes the following minutes of Special Committees (Section 86) which have been distributed under separate cover:

- Minutes from the Dean Recreation Reserve and Tennis Courts Special Committee – Annual General Meeting – 7/08/2014
- Minutes from the Dean Recreation Reserve and Tennis Courts Special Committee – General Meeting – 7/08/2014
- Minutes from the Creswick Museum Special Committee – 03/11/2014.
- Minutes from the Lee Medlyn Home of Bottles Special Committee – 5/11/2014.
- Minutes from the Lyonville Hall Special Committee – 18/11/2014
- Minutes from The Warehouse – Clunes Special Committee – 20/11/2014.
- Minutes from the Drummond Hall Special Committee – 5/12/2014.



MOTION

12.1.1. *That Council receives and notes the following minutes of Special Committees (Section 86) which have been distributed under separate cover:*

- *Minutes from the Dean Recreation Reserve and Tennis Courts Special Committee – Annual General Meeting – 7/08/2014*
- *Minutes from the Dean Recreation Reserve and Tennis Courts Special Committee – General Meeting – 7/08/2014*
- *Minutes from the Creswick Museum Special Committee – 03/11/2014.*
- *Minutes from the Lee Medlyn Home of Bottles Special Committee – 5/11/2014.*
- *Minutes from the Lyonville Hall Special Committee –18/11/2014*
- *Minutes from The Warehouse – Clunes Special Committee – 20/11/2014.*
- *Minutes from the Drummond Hall Special Committee – 5/12/2014.*

**Moved:** Councillor Pierre Niclas  
**Seconded:** Councillor Greg May  
**Carried.**

### 13. COUNCIL ADVISORY COMMITTEES

#### 13.1. MINUTES OF ADVISORY COMMITTEES GENERAL MANAGER CORPORATE SERVICES

*In providing this advice to Council as the Governance and Corporate Support Officer, I Mary Dancuk have no interests to disclose in this report.*

##### **PURPOSE**

The purpose of this report is for Council to note the minutes received from Council's Advisory Committees.

##### **BACKGROUND**

Advisory committees are established by Council and their responsibilities outlined in Terms of Reference. Advisory Committees are required to maintain minutes of meetings held and provide a copy of the minutes to Council for review.

##### **ISSUE/DISCUSSION**

Please see listed below the minutes and other reports from Advisory Committees, as provided by the Committees

- Audit and Risk Advisory Committee – 24/11/2014.

These minutes have been provided to Councillors under separate cover.

##### **COUNCIL PLAN / LEGISLATIVE COMPLIANCE**

Nil

##### **FINANCIAL IMPLICATIONS**

Nil

##### **RISK IMPLICATIONS**

Nil

##### **ENVIRONMENTAL / SOCIAL / ECONOMIC IMPLICATIONS**

Nil

##### **COMMUNITY AND STAKEHOLDER ENGAGEMENT**

Members of the community are represented on these committees.

## CONCLUSION

Minutes have been provided for noting.

## OFFICER'S RECOMMENDATION

13.1.1 That Council receives and notes minutes of the following Advisory Committees which have been distributed under separate cover:

- Audit and Risk Advisory Committee – 24/11/2014.

## MOTION

13.1.1. *That Council receives and notes minutes of the following Advisory Committees which have been distributed under separate cover:*

- *Audit and Risk Advisory Committee – 24/11/2014.*

**Moved:** Councillor Pierre Niclas

**Seconded:** Councillor Neil Newitt

**Carried.**

## 14. CONFIDENTIAL ITEMS

### 14.1. CLOSURE OF MEETING TO MEMBERS OF THE PUBLIC

That pursuant to the provisions of Section 89(2) of the Local Government Act 1989, the meeting be closed to the public in order to consider:

- Contractual matters; and
- (h) Any other matter which the Council or special committee considers would prejudice the Council or any person.

#### RECOMMENDATION

That the meeting be closed to members of the public under Section 89(2) of the Local Government Act 1989, specifically the following sub-sections:

##### 14.1.1 89(2)(d) Contractual matters

Contract H522-2014 – Municipal Valuation Services 2016

Contract H530-2014 - Creswick Hub – Building Refurbishment;

and

##### 14.1.2 89(2)(h) Any other matter which the Council or Special Committee considers would prejudice the Council or any person.

Australia Day Awards 2015.

**MOTION**

*That the meeting be closed to members of the public under Section 89(2) of the Local Government Act 1989, specifically the following sub-sections:*

14.1.1. *89(2)(d) Contractual matters*

*Contract H522-2014 – Municipal Valuation Services 2016*

*Contract H530-2014 - Creswick Hub – Building Refurbishment;*

*and*

14.1.2. *89(2)(h) Any other matter which the Council or Special Committee considers would prejudice the Council or any person.*

*Australia Day Awards 2015.*

**Moved:** Councillor Neil Newitt  
**Seconded:** Councillor Bill McClenaghan  
**Carried.**

The Meeting closed to Members of the Public at 7:46 pm.

15. RE-OPENING OF MEETING TO PUBLIC

RECOMMENDATION

- 15.1 That Council, having considered the confidential items, re-opens the Meeting to members of the public.

MOTION

15.1. *That Council, having considered the confidential items, re-opens the Meeting to members of the public.*

**Moved:** Councillor Neil Newitt  
**Seconded:** Councillor Pierre Niclas  
**Carried.**

The Meeting re-opened to Members of the Public at 7:54 pm.

In accordance with Council's resolution, the following information is provided to the public on matters considered during the confidential section of the meeting.

- 14.2.1 *That Council awards the Tender for Contract H522-2014 – Municipal Valuation Services 2016 for the lump sum of \$131,455.00 (exc GST) to Rating Valuation Services.*
- 14.3.1 *That Council awards the Tender for Contact H530-2014 – Creswick Hub – Building Refurbishment Tender Option 3 Library and Council Office Refurbishment works and alterations to Creswick Town Hall, Museum and ramp construction for the lump sum of \$615,278.00 to Q Construction.*

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16. CLOSE OF MEETING

The Meeting closed at 7:54 pm.

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