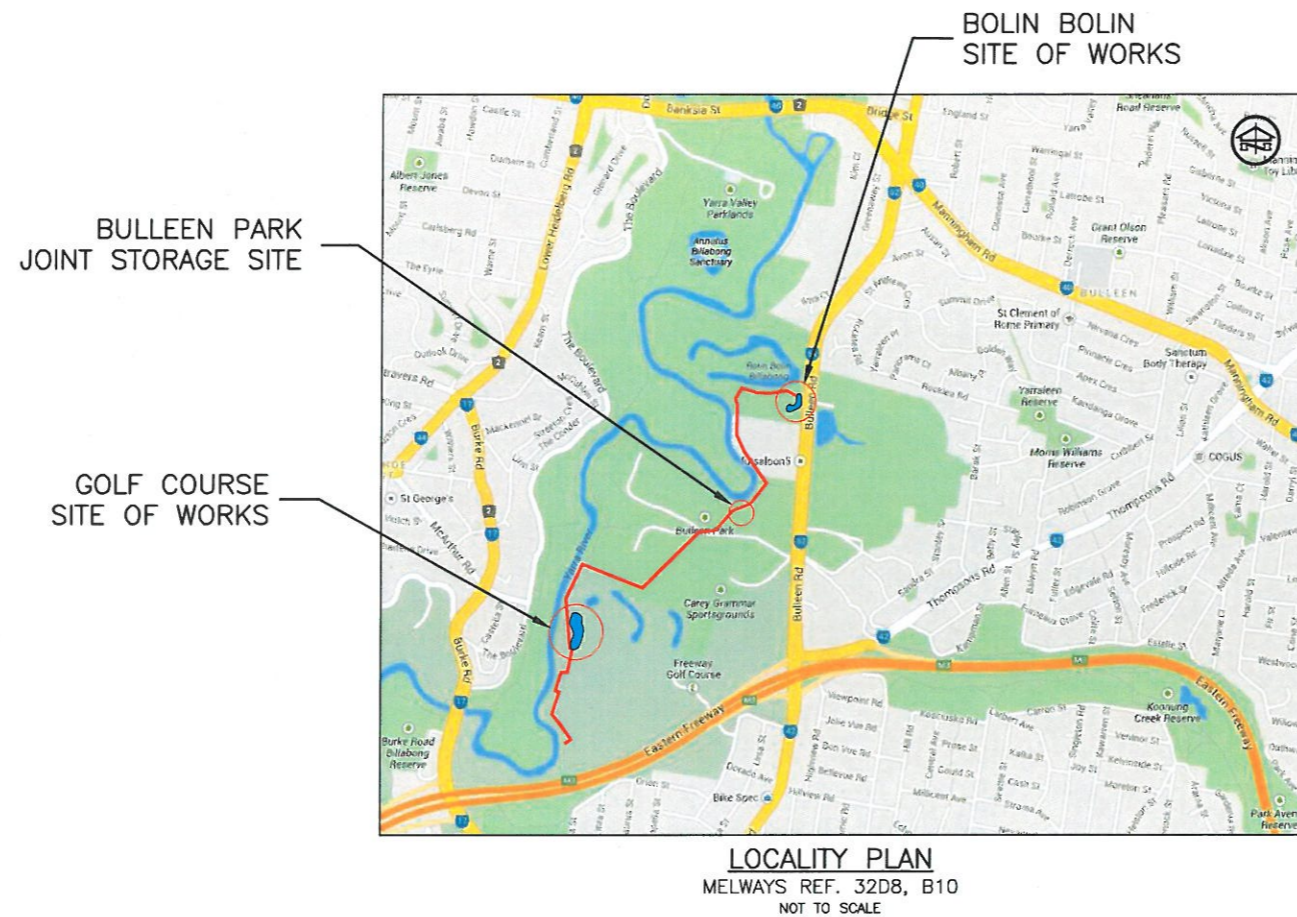


LOCALITY PLAN
MELWAYS REF. 32D8, B10
NOT TO SCALE

1534-DD-COVER



MANNINGHAM CITY COUNCIL BOLIN BOLIN BILLABONG WETLAND PROJECT STORMWATER HARVESTING DESIGN BULLEEN PARK, BULLEEN VIC



SHEET & REVISION INDEX		
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S03	GENERAL NOTES 2/2	E
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P05	EXISTING CONDITIONS - BOLIN BOLIN STORAGE SITE	E
P06	GENERAL LAYOUT PLAN - BOLIN BOLIN STORAGE	E
P07	DETAIL PLAN - BOLIN BOLIN STORAGE BASIN	E
P08	EXISTING CONDITIONS - BULLEEN PARK STORAGE SITE	E
P09	GENERAL LAYOUT PLAN - BULLEEN PARK JOINT STORAGE	E
P10	DETAIL PLAN - BULLEEN PARK JOINT STORAGE	E
P11	GENERAL LAYOUT PLAN - NORTHERN GOLF COURSE AND BULLEEN PARK	E
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Rev.	Revision Description	Designed	Date
E	ALTERATIONS AS PER COUNCIL AUDIT (31/03/2015)	P.JESCHKE	15.04.2015
D	ALTERATIONS AS PER COUNCIL AUDIT (30/11/2015)	P.JESCHKE	05.02.2015
C	ALTERATIONS AS PER COUNCIL AUDIT (11/12/2014)	P.JESCHKE	18.12.2014
B	ALTERATIONS AS PER COUNCIL AUDIT (12/05/2014)	P.JESCHKE	30.05.2014
A	ALTERATIONS AS PER COUNCIL AUDIT (11/04/2014) / BULLEEN PARK STORAGE DESIGN ADDED	P.JESCHKE	07.05.2014

Designed: P.J. / T.P.
 Authorised: R. WIESE
 Checked: R. WIESE
 Approved: 01.06.2014
 Not to scale
 Original sheet size A1

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 SYDNEY SUITE 18, 12 TRYON ROAD, LINDFIELD, NSW 2070 P 02 9498 4333
 CAD FILE: 1534_DD_OP.E.dwg

CLIENT: MANNINGHAM CITY COUNCIL
 699 DONCASTER RD
 DONCASTER VIC 3108
 CONTACT: JOHN TINKLER
 PH: 0400 137 442

BOLIN BOLIN SWH DETAILED DESIGN
 DETAILED DESIGN
 BULLEEN PARK, BULLEEN VIC
 LOCALITY PLAN, SHEET & REVISION INDEX
 Date 01.06.2015 Drawing No. 1534-DD-COVER Sheet 01 of 32

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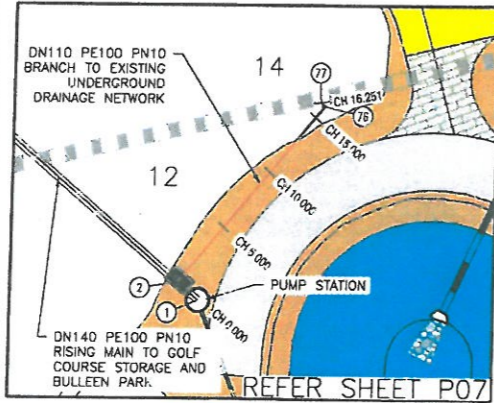
1534-DD-P04

RIISING MAIN SETOUT TABLE

POINT	EASTING	NORTHING	DESCRIPTION
1	330766.263	5817928.995	BOLIN BOLIN PUMP WELL
2	330764.781	5817930.238	BRANCH TO EXISTING DRAINAGE
3	330742.898	5817948.549	HORIZ. BEND
4	330733.881	5817945.965	TANGENT
5	330669.881	5817933.098	HORIZ. BEND
6	330616.356	5817934.629	HORIZ. BEND
7	330566.184	5817947.129	TANGENT
8	330545.256	5817953.290	HORIZ. BEND
9	330542.516	5817951.797	HORIZ. BEND
10	330540.863	5817931.270	HORIZ. BEND
11	330545.127	5817889.448	HORIZ. BEND
12	330538.485	5817881.219	HORIZ. BEND
13	330539.114	5817767.891	HORIZ. BEND
14	330573.863	5817695.715	HORIZ. BEND
15	330617.404	5817643.395	HORIZ. BEND
16	330662.043	5817575.625	HORIZ. BEND
17	330588.281	5817495.042	HORIZ. BEND
18	330529.327	5817486.058	HORIZ. BEND
19	330475.284	5817400.794	BULLEEN PARK OFFTAKE
20	330466.953	5817390.251	HORIZ. BEND
21	330397.892	5817380.884	HORIZ. BEND
22	330179.875	5817162.422	HORIZ. BEND
23	330082.268	5817195.681	HORIZ. BEND
24	330075.606	5817186.000	HORIZ. BEND
25	329997.778	5817226.489	HORIZ. BEND
26	329967.367	5817240.715	HORIZ. BEND
27	329935.028	5817233.490	HORIZ. BEND
28	329917.156	5817193.221	HORIZ. BEND
29	329909.632	5817179.942	HORIZ. BEND
30	329903.334	5817162.086	HORIZ. BEND
31	329896.622	5817105.894	HORIZ. BEND
32	329889.244	5817020.732	HORIZ. BEND
33	329895.578	5816970.069	HORIZ. BEND
34	329895.538	5816960.801	HORIZ. BEND
35	329894.203	5816953.204	HORIZ. BEND
36	329890.588	5816941.869	HORIZ. BEND
37	329897.376	5816934.630	HORIZ. BEND
38	329886.804	5816825.323	HORIZ. BEND
39	329897.851	5816817.184	HORIZ. BEND
40	329898.815	5816808.091	HORIZ. BEND
41	329903.383	5816804.681	CONNECTION TO GOLF COURSE PUMP WELL 2
42	329909.390	5816803.963	GOLF COURSE PUMP WELL 1
43	329902.839	5816892.169	HORIZ. BEND
44	329900.279	5816870.282	HORIZ. BEND
45	329897.774	5816851.113	HORIZ. BEND
46	329895.772	5816840.754	HORIZ. BEND
47	329894.202	5816834.482	HORIZ. BEND
48	329891.781	5816828.494	HORIZ. BEND
49	329885.485	5816822.286	HORIZ. BEND
50	329878.734	5816817.156	HORIZ. BEND
51	329874.190	5816812.821	HORIZ. BEND
52	329860.482	5816790.346	HORIZ. BEND
53	329852.037	5816789.803	HORIZ. BEND
54	329843.816	5816748.748	HORIZ. BEND
55	329851.728	5816739.890	HORIZ. BEND
56	329856.555	5816735.272	HORIZ. BEND
57	329860.517	5816732.486	HORIZ. BEND
58	329854.801	5816712.030	HORIZ. BEND
59	329850.551	5816709.267	HORIZ. BEND
60	329848.780	5816703.867	HORIZ. BEND
61	329847.682	5816692.941	HORIZ. BEND

RIISING MAIN SETOUT TABLE

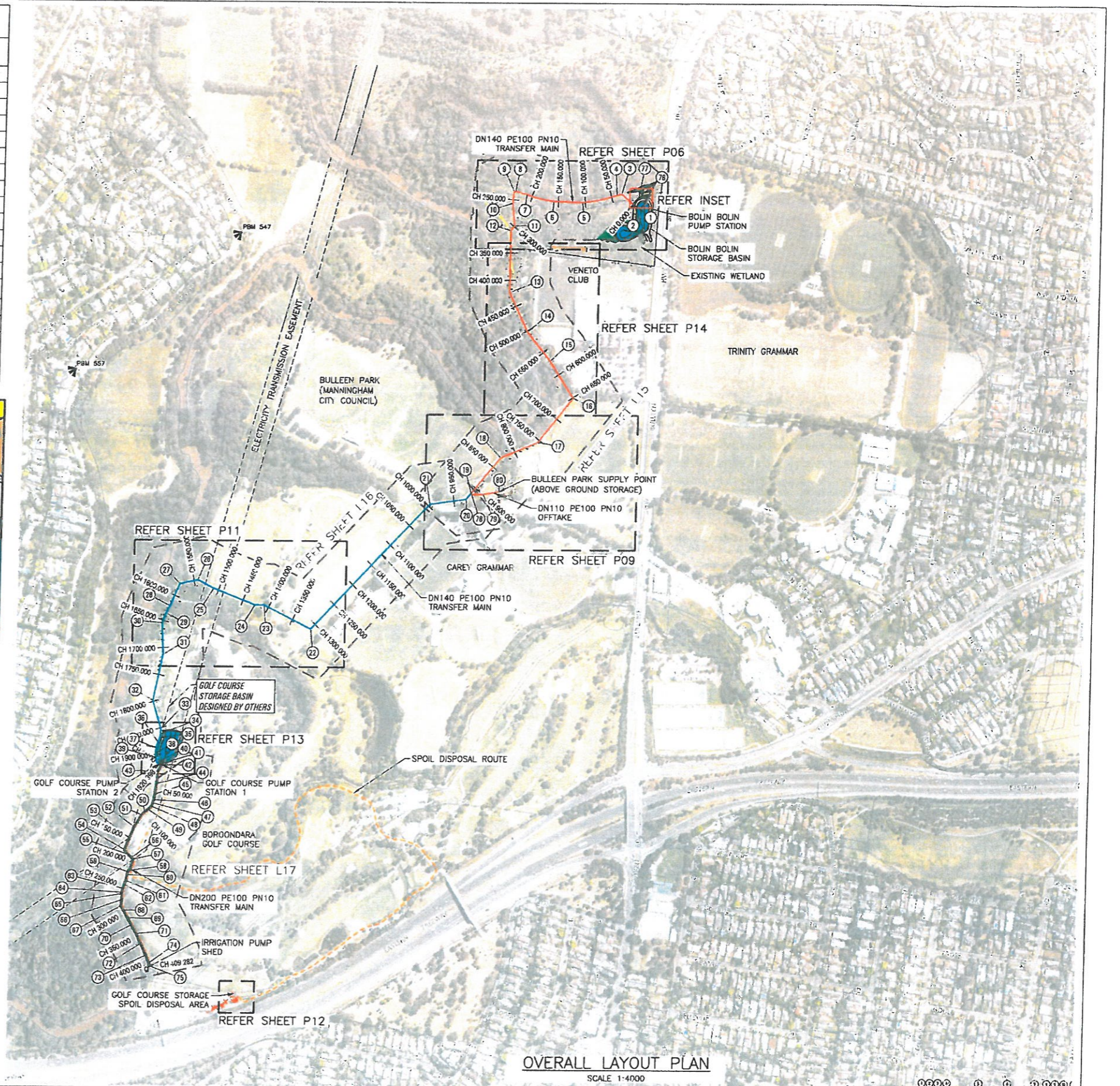
POINT	EASTING	NORTHING	DESCRIPTION
62	329845.141	5816685.831	HORIZ. BEND
63	329842.823	5816678.781	HORIZ. BEND
64	329840.883	5816671.558	HORIZ. BEND
65	329840.647	5816668.628	HORIZ. BEND
66	329841.413	5816658.898	HORIZ. BEND
67	329839.333	5816647.453	HORIZ. BEND
68	329844.844	5816638.846	HORIZ. BEND
69	329852.681	5816626.500	HORIZ. BEND
70	329859.435	5816613.328	HORIZ. BEND
71	329868.793	5816597.178	HORIZ. BEND
72	329877.452	5816579.833	HORIZ. BEND
73	329887.778	5816558.343	HORIZ. BEND
74	329893.782	5816544.583	HORIZ. BEND
75	329894.577	5816538.073	CONNECTION TO EXISTING IRRIGATION SYSTEM
76	330775.069	5817842.528	HORIZ. BEND
77	330774.742	5817842.803	CONNECTION TO EXISTING DRAINAGE
78	330476.825	5817399.519	HORIZ. BEND
79	330498.154	5817399.519	HORIZ. BEND
80	330528.093	5817405.001	CONNECTION TO BULLEEN PARK STORAGE



INSET
SCALE 1:250

LEGEND

- New one-directional rising main
- New two-directional rising main
- Existing DN160 rising main
- Spoil disposal route
- Existing drains
- Existing drainage invert
- Existing drainage pits
- P.S.M
- Concrete entry/apron
- Existing road pavement
- Existing footpath
- Scour Protection
- Batter
- Batter in cut
- Batter in fill
- Gravel maintenance track
- Armoured maintenance track



OVERALL LAYOUT PLAN
SCALE 1:4000

Rev.	Description	Designed	Date
E	ALTERATIONS AS PER COUNCIL AUDIT (31/03/2015)	P.JESCHKE	15.04.2015
D	ALTERATIONS AS PER COUNCIL AUDIT (30/01/2015)	P.JESCHKE	05.02.2015
C	ALTERATIONS AS PER COUNCIL AUDIT (11/12/2014)	P.JESCHKE	18.12.2014
B	ALTERATIONS AS PER COUNCIL AUDIT (12/05/2014)	P.JESCHKE	30.05.2014
A	ALTERATIONS AS PER COUNCIL AUDIT (11/04/2014) BULLEEN PARK STORAGE DESIGN ADDED	P.JESCHKE	07.05.2014

Designed:	P.J. / T.P.	Authorised:	R. WIESE
Checked:	R. WIESE	Approved:	01.06.2014
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P 02 9499 4333

CLIENT: MANNINGHAM CITY COUNCIL
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DONCASTER VIC 3108

CONTACT: JOHN TINKLER
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BOLIN BOLIN SWH DETAILED DESIGN
DETAILED DESIGN
BULLEEN PARK, BULLEEN VIC

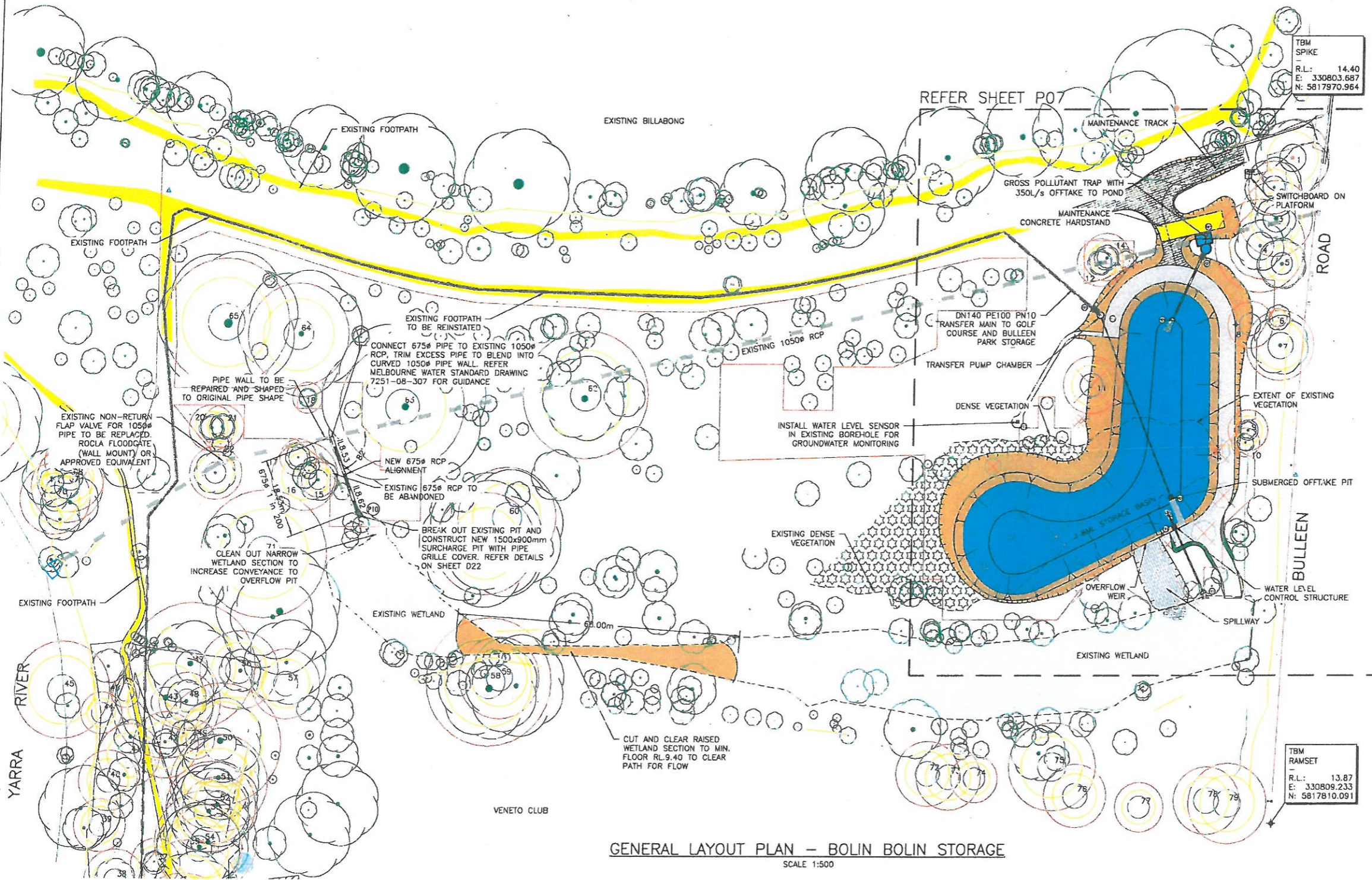
OVERALL LAYOUT PLAN & WATER RETICULATION WORKS

Date 01.06.2015 Drawing No. 1534-DD-P04 Sheet 04 of 32

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CAD FILE: 1534_DD_DP_E.dwg



- LEGEND:**
- RL4.28 - Reduced Level
 - IL4.28 - Invert Level
 - - - Existing drains
 - - - Existing drainage invert
 - - - Existing drainage pits
 - ▲ P.S.M
 - △ T.B.M
 - - Bollards to Council standards
 - - Concrete entry/apron
 - - Existing footpath
 - - Scour Protection
 - ⊗ - Existing tree to be removed
 - ⊙ - Existing trees to be protected
 - - - Tree protection fencing
 - ⌒ - Batter
 - - Batter in cut
 - - Batter in fill
 - - Gravel maintenance track
 - - Armoured maintenance track
 - - Existing wetland
 - - Tree protection zone / Tree number
 - (red) - TPZ (red)
 - (orange) - Reduced TPZ (orange)
 - (purple) - SRZ (purple)

TBM SPIKE
R.L.: 14.40
E: 330803.687
N: 5817970.964

TBM RAMSET
R.L.: 13.87
E: 330809.233
N: 5817810.091

GENERAL LAYOUT PLAN - BOLIN BOLIN STORAGE
SCALE 1:500

Rev.	Revision Description	Designed	Date
E	ALTERATIONS AS PER COUNCIL AUDIT (3/03/2015)	P. JESCHKE	15.04.2015
D	ALTERATIONS AS PER COUNCIL AUDIT (20/11/2015)	P. JESCHKE	06.02.2016
C	ALTERATIONS AS PER COUNCIL AUDIT (11/12/2014)	P. JESCHKE	18.12.2014
B	ALTERATIONS AS PER COUNCIL AUDIT (12/05/2014)	P. JESCHKE	30.05.2014
A	ALTERATIONS AS PER COUNCIL AUDIT (11/04/2014) / BULLEEN PARK STORAGE DESIGN ADDED	P. JESCHKE	07.05.2014

Designed: P.J. / T.P.	Authorised: R. WIESE
Checked: R. WIESE	Approved: 01.06.2014

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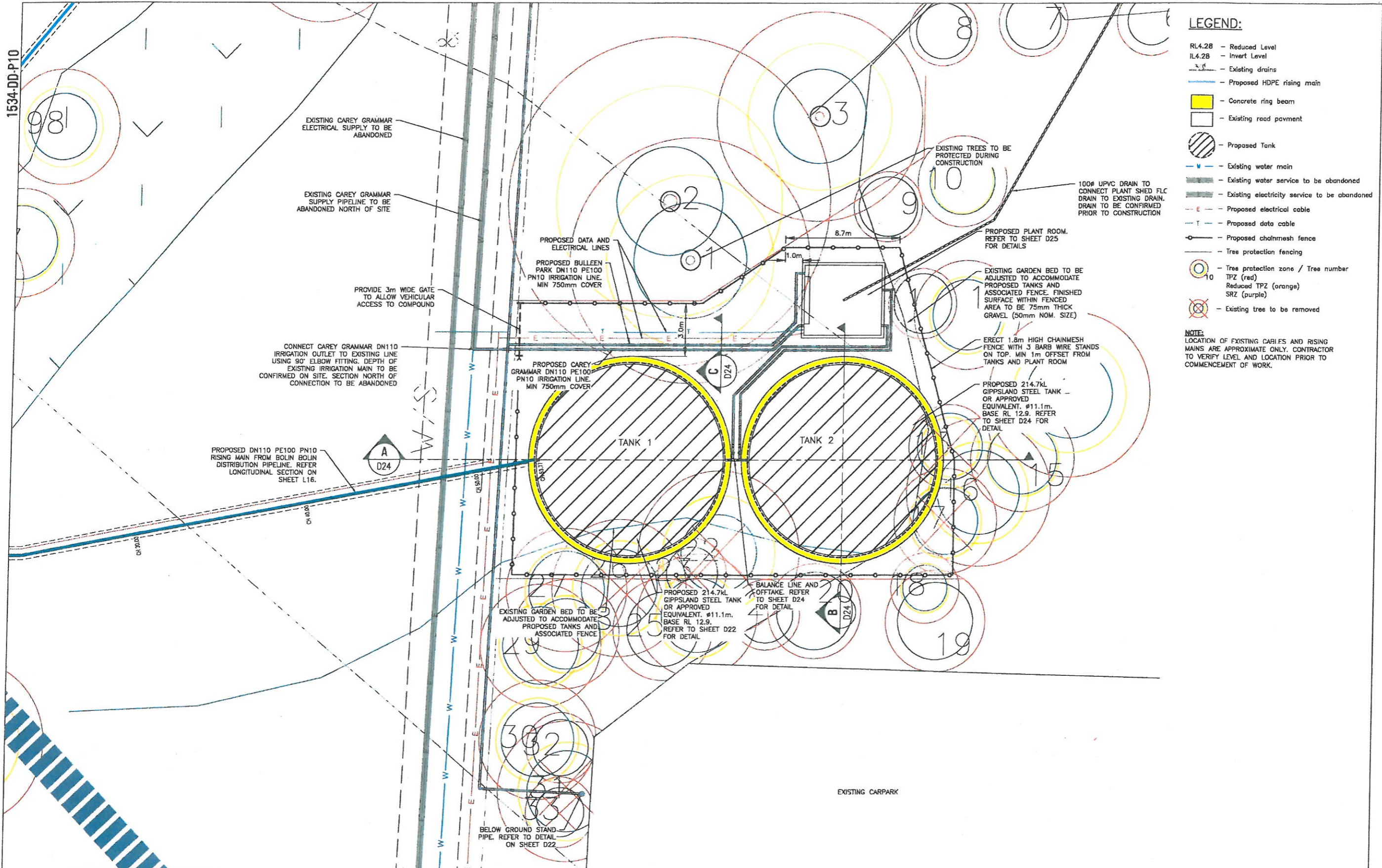
BOLIN BOLIN SWH DETAILED DESIGN
DETAILED DESIGN
BULLEEN PARK, BULLEEN VIC

GENERAL LAYOUT PLAN - BOLIN BOLIN STORAGE

Date 01.06.2015 Drawing No. 1534-DD-P06 Sheet 06 of 32

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Rev.	Description	Designed	Date
A	ALTERATIONS AS PER COUNCIL AUDIT (1/04/2014) / BULLEEN PARK STORAGE DESIGN ADDED	P. JESCHKE	07.05.2014
B	ALTERATIONS AS PER COUNCIL AUDIT (1/20/2014)	P. JESCHKE	30.06.2014
C	ALTERATIONS AS PER COUNCIL AUDIT (1/12/2014)	P. JESCHKE	18.12.2014
D	ALTERATIONS AS PER COUNCIL AUDIT (30/01/2015)	P. JESCHKE	05.02.2015
E	ALTERATIONS AS PER COUNCIL AUDIT (31/03/2015)	P. JESCHKE	15.04.2015

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Checked:	R. WIESE	Approved:	01.06.2014
Original sheet size A1		1:100	

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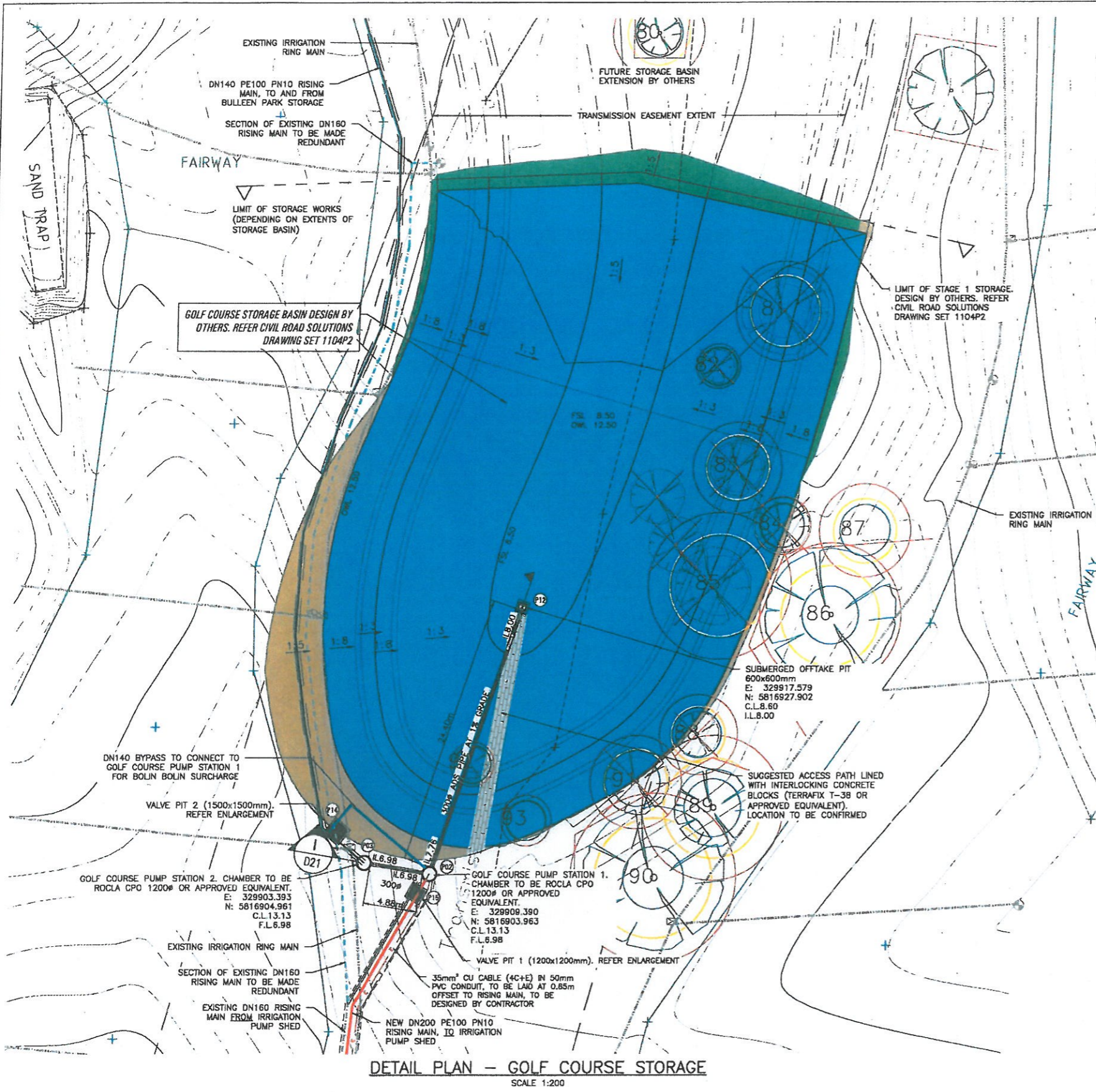
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BOLIN BOLIN SWH DETAILED DESIGN
DETAILED DESIGN
BULLEEN PARK, BULLEEN VIC

DETAIL PLAN - BULLEEN PARK JOINT STORAGE

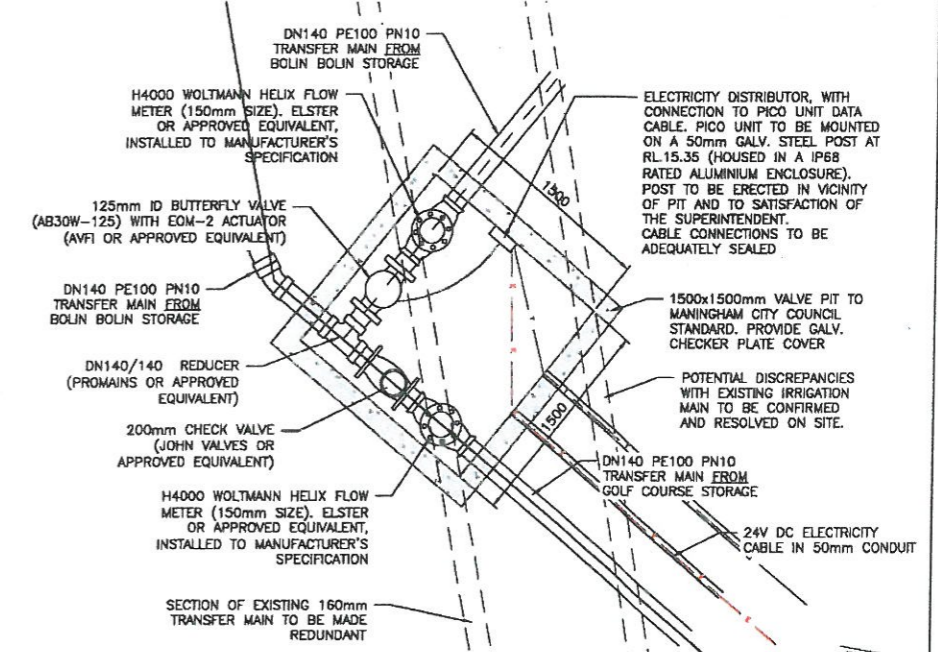
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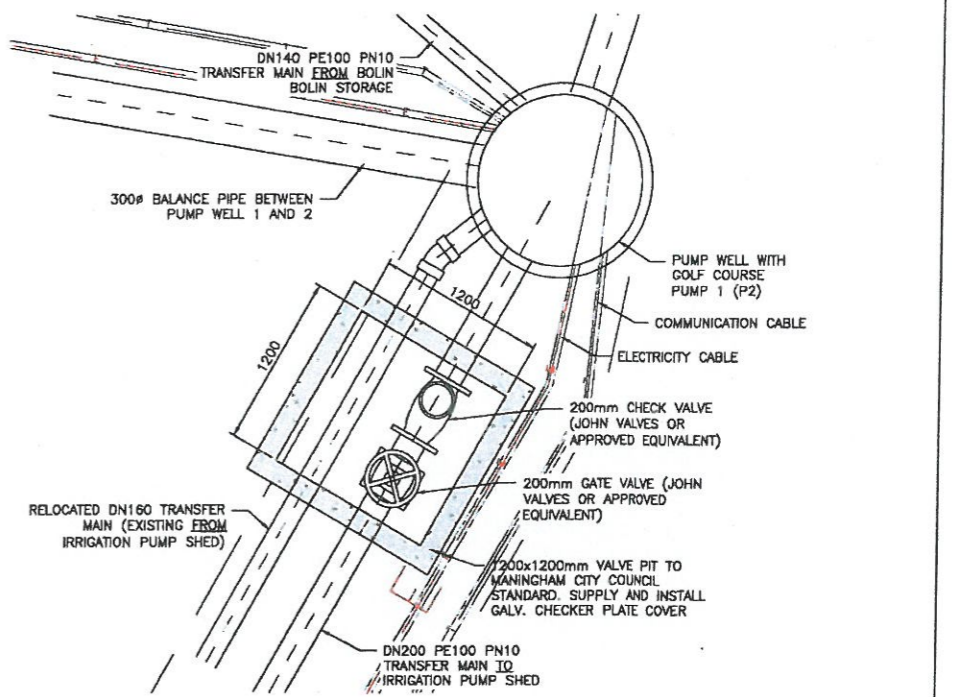


DETAIL PLAN - GOLF COURSE STORAGE
SCALE 1:200

- LEGEND:**
- Concrete entry/apron
 - Existing road pavement
 - Existing footpath
 - Scour Protection
 - Batter in cut
 - Batter in fill
 - Existing tree to be removed
 - Existing tree to be protected
 - Tree protection fencing
 - Tree protection zone / Tree number
 - TPZ (red)
 - Reduced TPZ (orange)
 - SRZ (purple)
 - Interlocking concrete blocks
 - New DN140 rising main
 - New DN200 rising main
 - Existing DN160 rising main
 - Existing rising main to be made redundant
 - Existing irrigation ring main
 - Electricity supply line



ENLARGEMENT - VALVE PIT 2
SCALE 1:25



ENLARGEMENT - VALVE PIT 1
SCALE 1:25

<table border="1"> <tr> <td>E</td> <td>ALTERATIONS AS PER COUNCIL AUDIT (31/03/2015)</td> <td>P.JESCHKE</td> <td>15.04.2015</td> </tr> <tr> <td>D</td> <td>ALTERATIONS AS PER COUNCIL AUDIT (30/01/2015)</td> <td>P.JESCHKE</td> <td>05.02.2015</td> </tr> <tr> <td>C</td> <td>ALTERATIONS AS PER COUNCIL AUDIT (11/12/2014)</td> <td>P.JESCHKE</td> <td>18.12.2014</td> </tr> <tr> <td>B</td> <td>ALTERATIONS AS PER COUNCIL AUDIT (12/05/2014)</td> <td>P.JESCHKE</td> <td>30.05.2014</td> </tr> <tr> <td>A</td> <td>ALTERATIONS AS PER COUNCIL AUDIT (11/04/2014) / BULLEEN PARK STORAGE DESIGN ADDED</td> <td>P.JESCHKE</td> <td>01.05.2014</td> </tr> <tr> <td>Rev.</td> <td>Revision Description</td> <td>Designed</td> <td>Date</td> </tr> </table>	E	ALTERATIONS AS PER COUNCIL AUDIT (31/03/2015)	P.JESCHKE	15.04.2015	D	ALTERATIONS AS PER COUNCIL AUDIT (30/01/2015)	P.JESCHKE	05.02.2015	C	ALTERATIONS AS PER COUNCIL AUDIT (11/12/2014)	P.JESCHKE	18.12.2014	B	ALTERATIONS AS PER COUNCIL AUDIT (12/05/2014)	P.JESCHKE	30.05.2014	A	ALTERATIONS AS PER COUNCIL AUDIT (11/04/2014) / BULLEEN PARK STORAGE DESIGN ADDED	P.JESCHKE	01.05.2014	Rev.	Revision Description	Designed	Date	Designed: P.J. / T.P. Checked: R. WIESE Authorised: R. WIESE Approved: 01.06.2014	4 2 0 4 8 1:200 North	Original sheet size A1
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Rev.	Revision Description	Designed	Date																								

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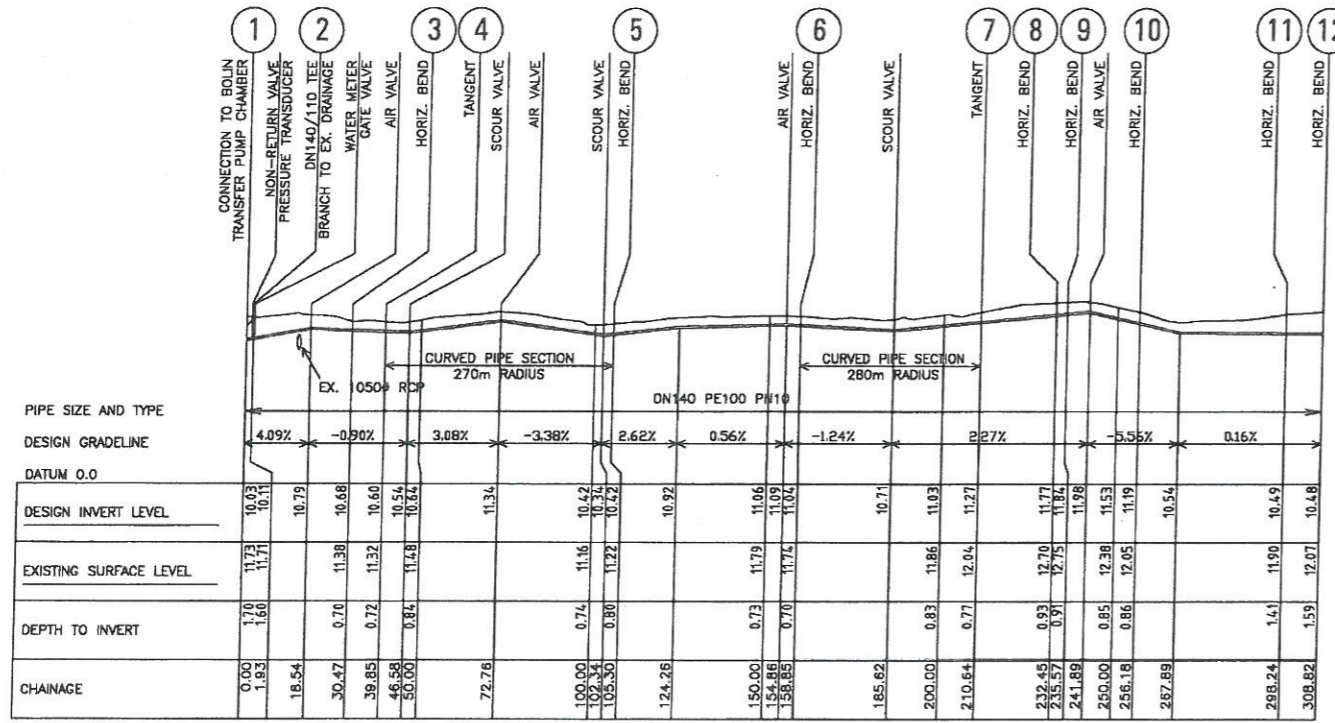
MELBOURNE UNIT 7, 84 CHURCH ST, RICHMOND VIC 3121 P 03 9208 0111
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BOLIN BOLIN SWH DETAILED DESIGN

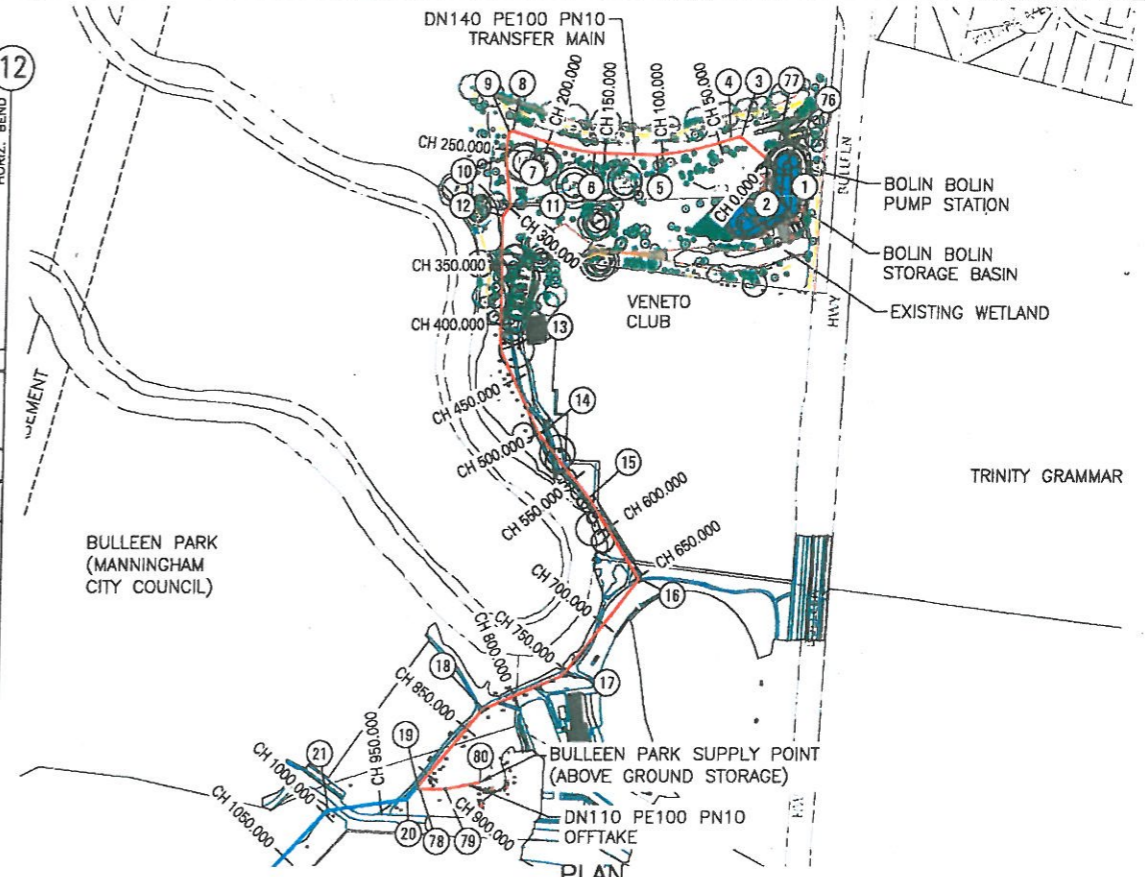
DETAILED DESIGN
 BULLEEN PARK, BULLEEN VIC

DETAIL PLAN - GOLF COURSE STORAGE BASIN



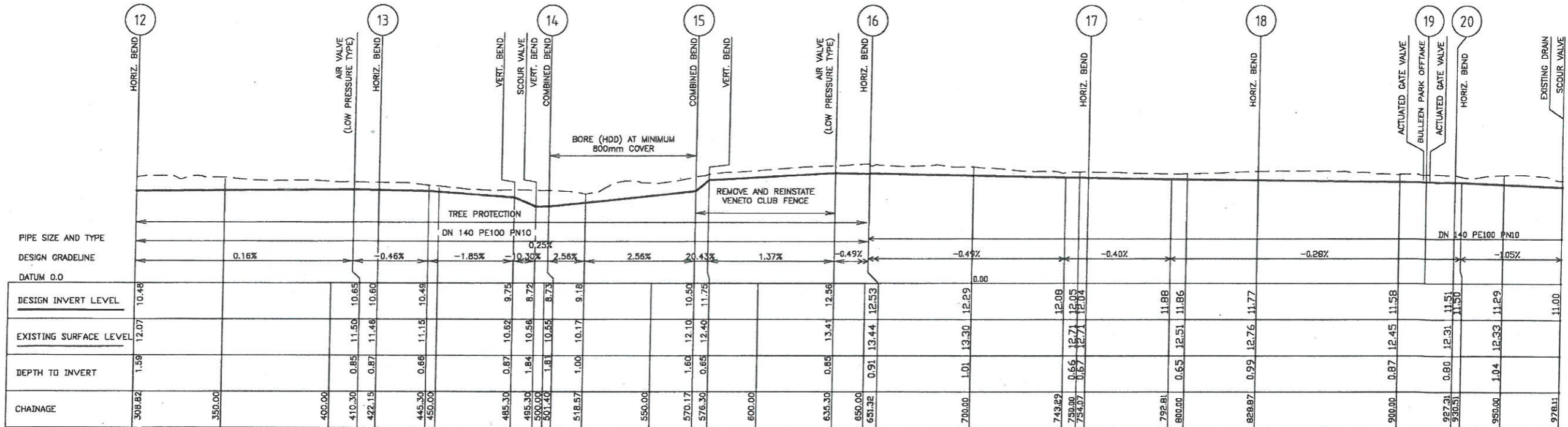
LONGITUDINAL SECTION - RISING MAIN (CH.0.00 - CH.308.82)

HOR. SCALE 1:1000
VER. SCALE 1:250



BOLIN BOLIN TO GOLF COURSE - CH.0.00-CH.977.58

SCALE 1:3000



LONGITUDINAL SECTION - RISING MAIN (CH.308.82 - CH.978.11)

HOR. SCALE 1:1000
VER. SCALE 1:250

Rev.	Revision Description	Designed	Date
E	ALTERATIONS AS PER COUNCIL AUDIT (31/03/2015)	P.JESCHKE	15.04.2015
D	ALTERATIONS AS PER COUNCIL AUDIT (30/01/2015)	P.JESCHKE	05.02.2015
C	ALTERATIONS AS PER COUNCIL AUDIT (11/12/2014)	P.JESCHKE	18.12.2014
B	ALTERATIONS AS PER COUNCIL AUDIT (12/05/2014)	P.JESCHKE	30.05.2014
A	ALTERATIONS AS PER COUNCIL AUDIT (11/04/2014) / BULLEEN PARK STORAGE DESIGN ADDED	P.JESCHKE	07.05.2014

Designed: P.J. / T.P. Authorised: R. WIESE
Checked: R. WIESE Approved: 01.06.2014



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BOLIN BOLIN SWH DETAILED DESIGN

DETAILED DESIGN
BULLEEN PARK, BULLEEN VIC

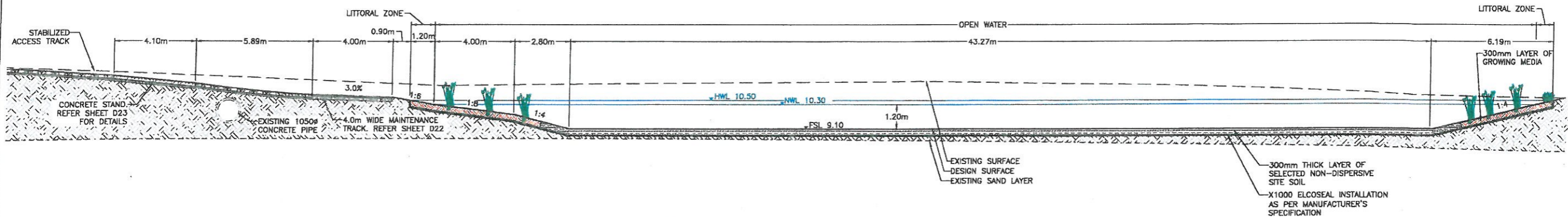
SECTIONS - RISING MAIN CH. 0.00 - 978.11
Date 01.06.2015 Drawing No. 1534-DD-L15 Sheet 15 of 32

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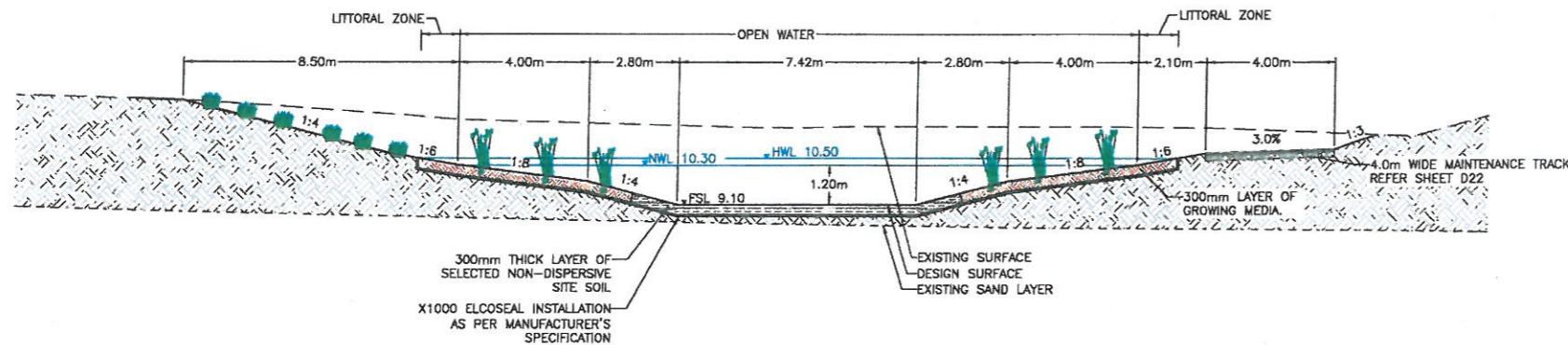
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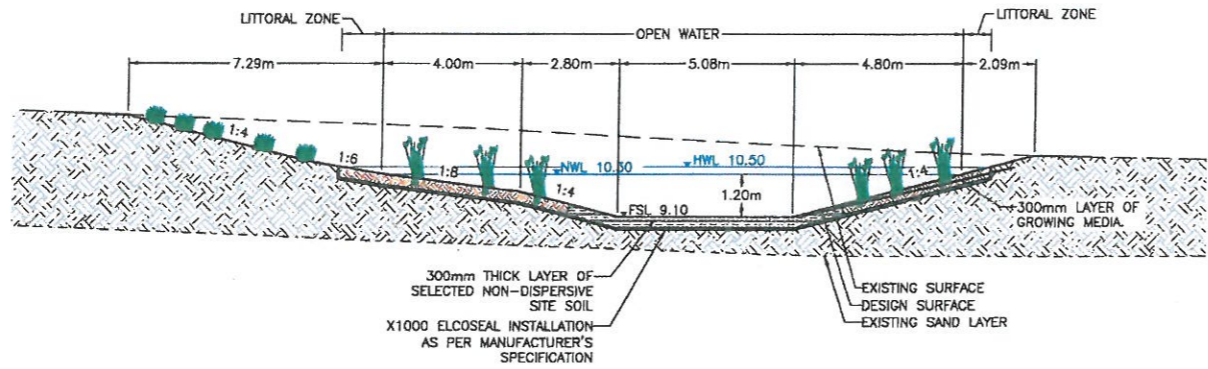
1534-DD-C18



SECTION A - BOLIN BOLIN STORAGE BASIN
SCALE 1:100



SECTION B - BOLIN BOLIN STORAGE BASIN
SCALE 1:100



SECTION C - BOLIN BOLIN STORAGE BASIN
SCALE 1:100

LEGEND:

- Growing media
- X1000 Elcoseal or approved equivalent
- Selected non-dispersive site soil
- Existing sand layer
- Fine crushed rock layer
- Concrete

Rev.	Revision Description	Designed	Date
E	ALTERATIONS AS PER COUNCIL AUDIT (3/03/2015)	P.JESCHKE	15.04.2015
D	ALTERATIONS AS PER COUNCIL AUDIT (30/01/2015)	P.JESCHKE	06.02.2015
C	ALTERATIONS AS PER COUNCIL AUDIT (11/12/2014)	P.JESCHKE	18.12.2014
B	ALTERATIONS AS PER COUNCIL AUDIT (12/05/2014)	P.JESCHKE	30.05.2014
A	ALTERATIONS AS PER COUNCIL AUDIT (11/04/2014) / BULLEEN PARK STORAGE DESIGN ADDED	P.JESCHKE	07.05.2014

Designed: P.J. / T.P. Authorised: R. WIESE
 Checked: R. WIESE Approved: 01.06.2014
 2 1 0 2 4 1:100
 Original sheet size A1

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CAD FILE: 1534_00_DP_E.dwg

CLIENT: MANNINGHAM CITY COUNCIL
 699 DONCASTER RD
 DONCASTER VIC 3108

CONTACT: JOHN TINKLER
 PH: 0400 137 442

BOLIN BOLIN SWH DETAILED DESIGN
 DETAILED DESIGN
 BULLEEN PARK, BULLEEN VIC

SECTIONS - BOLIN BOLIN STORAGE BASIN
 Date 01.06.2015 Drawing No. 1534-DD-C18 Sheet 18 of 32

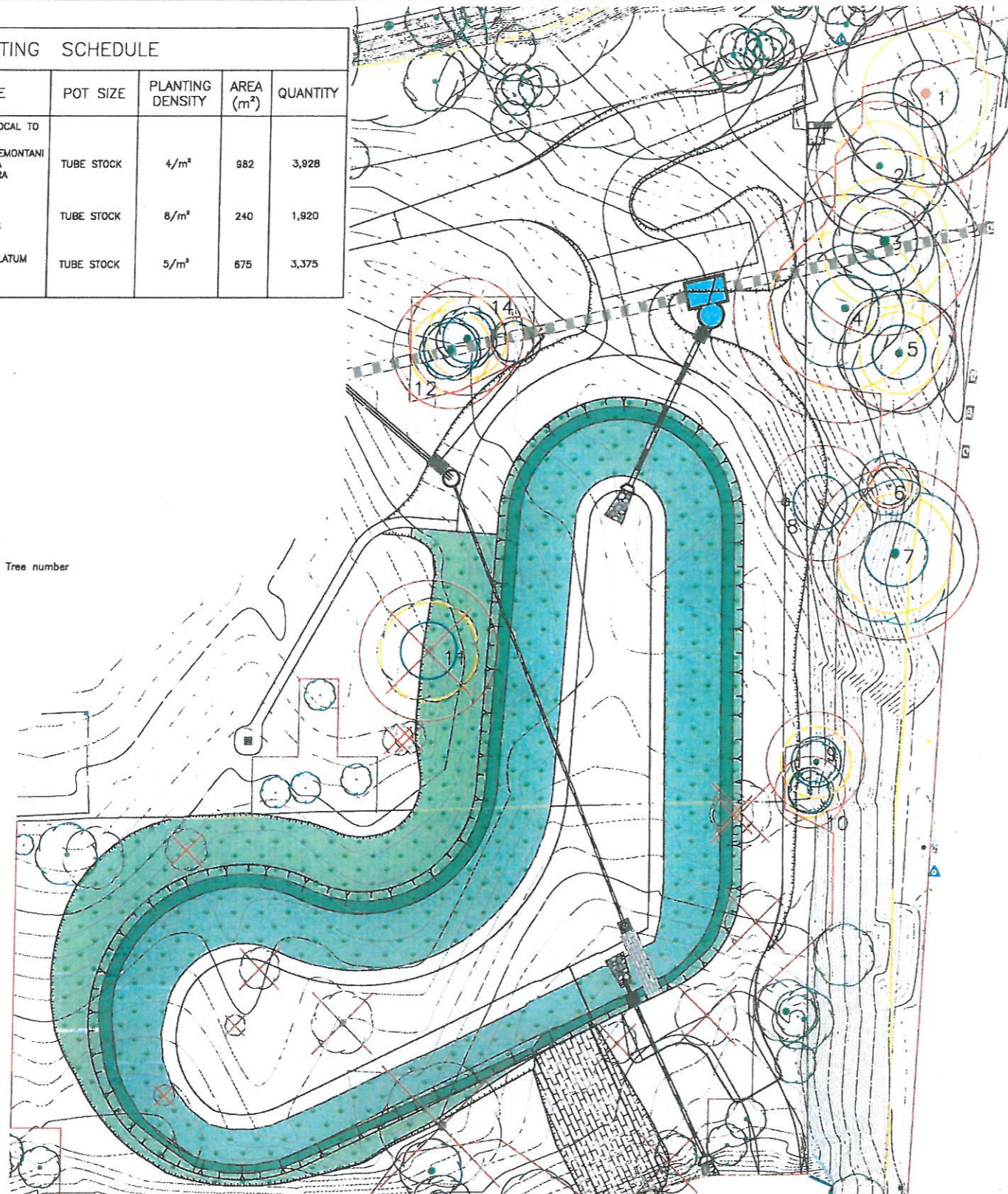
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1534-DD-D24

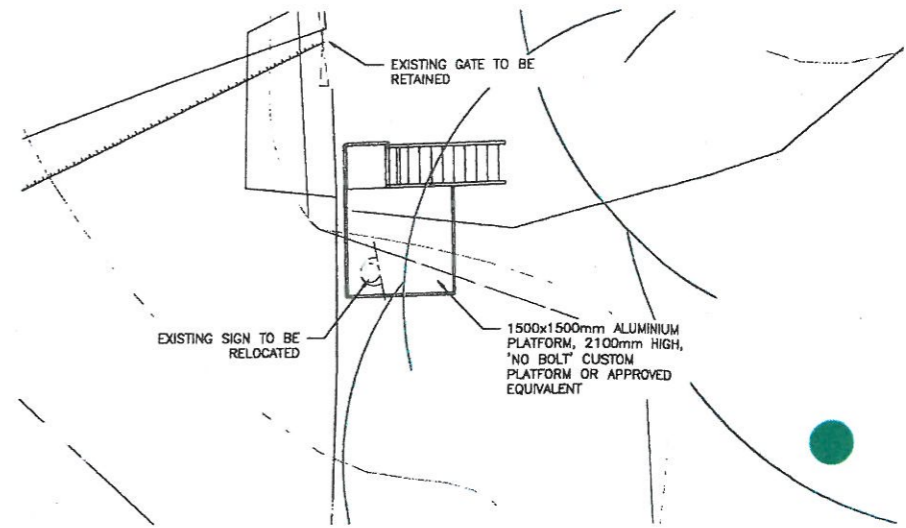
PLANTING SCHEDULE					
KEY	BOTANICAL NAME	POT SIZE	PLANTING DENSITY	AREA (m ²)	QUANTITY
	EQUAL MIX OF SPECIES LOCAL TO MELBOURNE: SCHOENOPLECTUS TABERNAEMONTANI BAUNEA ARTICULATA TROGLOCHIN PROCERA	TUBE STOCK	4/m ²	982	3,928
	CAREX APPRESSA JUNCUS ANABILIS CAREX BREVICULMIS	TUBE STOCK	8/m ²	240	1,920
	CHRYSOCEPHALUM APICULATUM LINUM MARGINALE	TUBE STOCK	5/m ²	675	3,375

LEGEND:

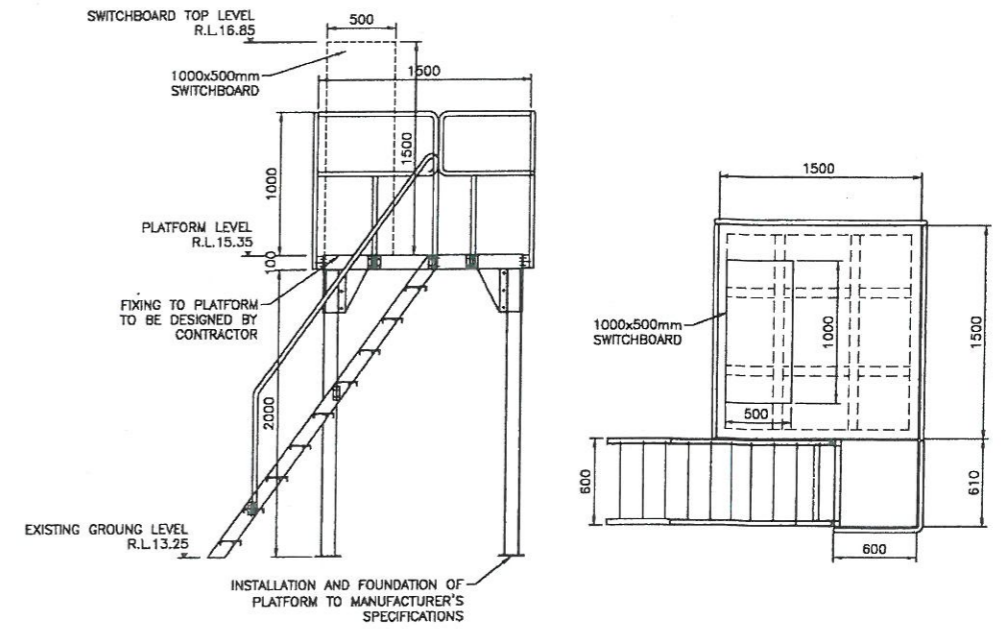
- Existing drains
- Existing drainage pits
- P.S.M
- T.B.M
- Scour Protection
- Existing tree to be removed by others
- Existing trees to be protected
- Baller
- Tree protection fencing
- Tree protection zone / Tree number
TPZ (red)
Reduced TPZ (orange)
SRZ (purple)



DETAIL PLAN - LANDSCAPING
SCALE 1:250



DETAIL PLAN - BOLIN BOLIN SWITCHBOARD PLATFORM
SCALE 1:50



ELEVATION PLAN
DETAILS - ALUMINIUM PLATFORM
SCALE 1:25

NOTE: PLATFORM TO BE DESIGNED BY OTHERS

Rev.	Revision Description	Designed	Date
E	ALTERATIONS AS PER COUNCIL AUDIT (31/03/2015)	P.JESCHKE	16.04.2016
D	ALTERATIONS AS PER COUNCIL AUDIT (30/01/2015)	P.JESCHKE	05.02.2015
C	ALTERATIONS AS PER COUNCIL AUDIT (11/11/2014)	P.JESCHKE	18.12.2014
B	ALTERATIONS AS PER COUNCIL AUDIT (12/05/2014)	P.JESCHKE	30.05.2014
A	ALTERATIONS AS PER COUNCIL AUDIT (11/04/2014) / BULLEEN PARK STORAGE DESIGN ADDED	P.JESCHKE	07.05.2014

Designed: P.J. / T.P. Authorised: R. WIESE
Checked: R. WIESE Approved: 01.06.2014



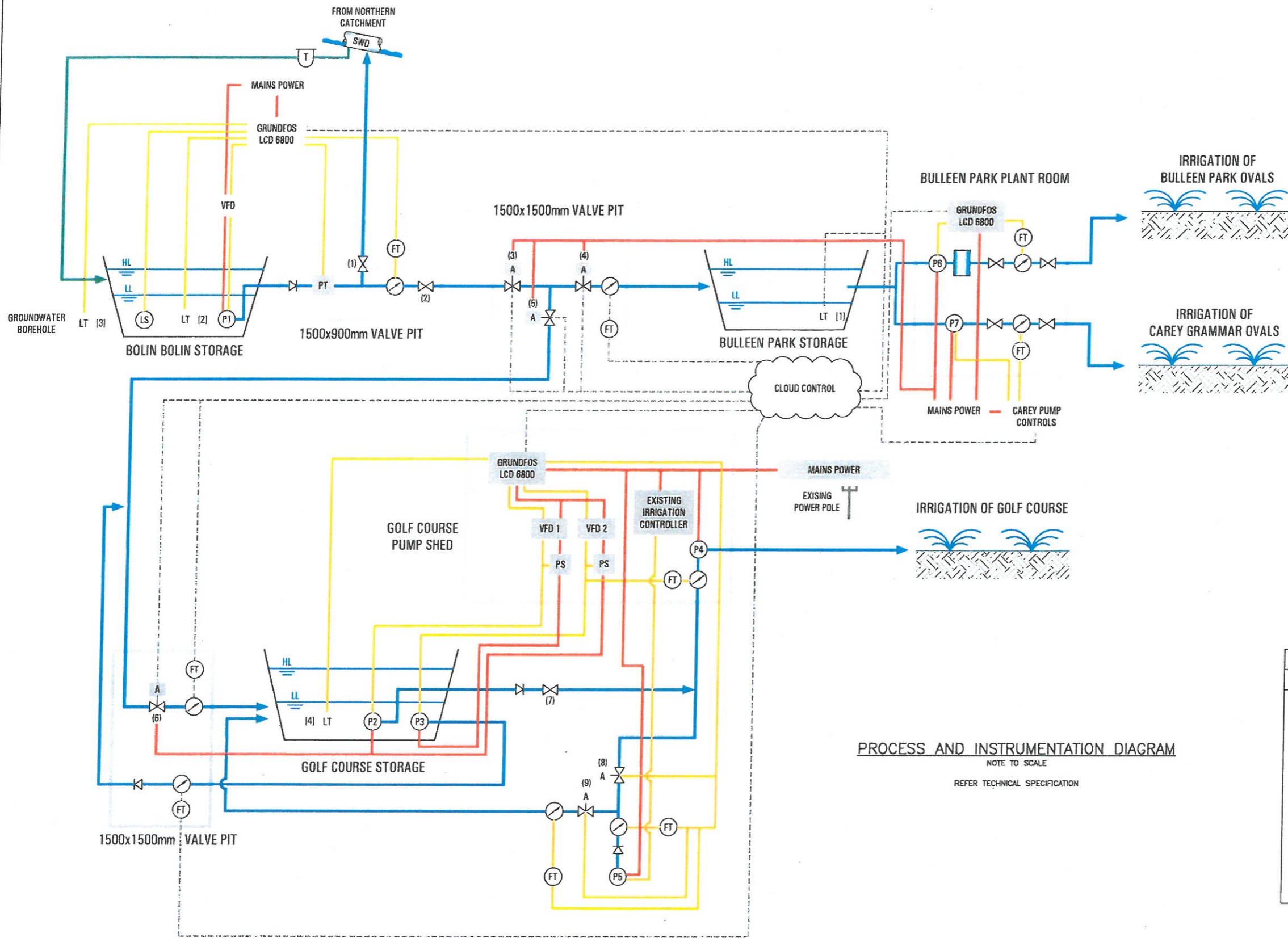
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699 DONCASTER RD
DONCASTER VIC 3108
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BOLIN BOLIN SWH DETAILED DESIGN
DETAILED DESIGN
BULLEEN PARK, BULLEEN VIC
DETAILS - LANDSCAPING + SWITCHBOARD PLATFORM
Date 01.06.2015 Drawing No. 1534-DD-D24 Sheet 24 of 32

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LEGEND	
SYMBOL	DESCRIPTION
	WATER MAIN
	POWER SUPPLY LINE
	DATA LINE
	TELEMETRY CONTROL SIGNAL
	STORMWATER DRAINAGE
	NON-RETURN VALVE
	GATE VALVE
	LEVEL SWITCH
	LEVEL TRANSMITTER - AQUAMETER AN420-5
	ACTUATED VALVE FITTED WITH OBSERVANT PICO UNIT
	PRESSURE TRANSDUCER
	FLOW TRANSMITTER
	WATER FLOW METER
	VARIABLE FREQUENCY DRIVE
	CONTROL CIRCUIT
	POWER SWITCH
	GROSS POLLUTANT TRAP
	PRESSURE VESSEL

PUMP SCHEDULE	
SYMBOL	DESCRIPTION
(P1)	BOLIN BOLIN PUMP
(P2)	GOLF COURSE PUMP 1 TO IRRIGATION PUMP
(P3)	GOLF COURSE PUMP 2 TO BULLEEN / CAREY
(P4)	IRRIGATION PUMP FOR GOLF COURSE (EXISTING)
(P5)	YARRA RIVER PUMP (EXISTING)
(P6)	BULLEEN PARK DUAL PUMP SYSTEM
(P7)	RELOCATED CAREY GRAMMAR PUMP

PROCESS AND INSTRUMENTATION DIAGRAM
NOTE TO SCALE
REFER TECHNICAL SPECIFICATION

Designed: P.J. / T.P.	Authorised: R. WIESE
Checked: R. WIESE	Approved: 01.06.2014

Rev.	Revision Description	Designed	Date
E	ALTERATIONS AS PER COUNCIL AUDIT (3/10/2015)	P.JESCHKE	15.04.2015
D	ALTERATIONS AS PER COUNCIL AUDIT (26/01/2015)	P.JESCHKE	05.02.2015
C	ALTERATIONS AS PER COUNCIL AUDIT (11/12/2014)	P.JESCHKE	18.12.2014
B	ALTERATIONS AS PER COUNCIL AUDIT (12/05/2014)	P.JESCHKE	30.05.2014
A	ALTERATIONS AS PER COUNCIL AUDIT (11/04/2014) / BULLEEN PARK STORAGE DESIGN ADDED	P.JESCHKE	07.05.2014

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PH: 0400 137 442

BOLIN BOLIN SWH DETAILED DESIGN
DETAILED DESIGN
BULLEEN PARK, BULLEEN VIC

PROCESS AND INSTRUMENTATION DIAGRAM
Date 01.06.2015 Drawing No. 1534-DD-D27 Sheet 27 of 32

Attachment C

Maddocks

Lawyers
140 William Street
Melbourne Victoria 3000 Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Project Agreement

Water infrastructure at Bolin Bolin Billabong Wetlands

Manningham City Council
and

Boroondara City Council
and

Carey Baptist Grammar School Limited
ACN 051 576 062

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Project Agreement

Dated

Parties

Name	Manningham City Council
Address	699 Doncaster Road, Doncaster 3108
Email	##To be inserted
Contact	##To be inserted
Short name	Manningham

Name	Boroondara City Council
Address	8 Inglesby Road, Camberwell 3124
Email	##To be inserted
Contact	##To be inserted
Short name	Boroondara

Name	Carey Baptist Grammar School Limited ACN 051 576 062
Address	349 Barkers Road, Kew 3101
Email	##To be inserted
Contact	##To be inserted
Short name	Carey

Background

- A. Manningham owns or controls the Manningham Land. Boroondara owns the Boroondara Land. Together, the Manningham Land and the Boroondara Land constitute the Project Land.
- B. The Parties enter into this Agreement to set out the terms and conditions on which Manningham will:
- B.1 procure the construction of the Infrastructure Works on the Project Land; and
 - B.2 operate and maintain the Project Infrastructure,
- on behalf of itself and the other Parties, to provide (in part) for their respective irrigation water needs.

The Parties Agree

1. Definitions

In this Agreement:

Boroondara Land means the land described as such in Schedule 1.

Business Day means a day other than a Saturday, Sunday or public holiday in Victoria.

CLRA means the *Crown Land (Reserves) Act 1978 (Vic)*.

End Date means the date determined under clause 6.3.

Infrastructure Works means the improvements to be constructed on the Project Land generally in accordance with the plans and specifications contained in Schedule 3. The majority of these items will be Project Infrastructure, however some items are intended to benefit one Party only, and will not form part of the Project Infrastructure. Clause 9 sets out how the items constructed as part of the Infrastructure Works will be classified.

Manningham Land means the land described as such in Schedule 1.

Minister means the Minister responsible for administering the CLRA from time to time.

MWC means Melbourne Water Corporation, a body corporate created under section 85 of the Water Act.

OMR Schedule means the schedule for the operation and maintenance of the Project Infrastructure contained in Schedule 4.

Operating Costs means all costs and expenses incurred by Manningham arising out of or in connection with the Project Infrastructure and any activities undertaken by Manningham in connection with this Agreement, including without limitation:

- costs of operating, repairing, managing, maintaining, replacing upgrading and insuring the Project Infrastructure; and
- costs of prosecuting or defending any claims relating to the Project Infrastructure.

Party means a party to this Agreement and includes the Party's successors and permitted assigns.

PCG has the meaning given to that term in clause 12.4.

Project means the design and construction of the Infrastructure Works and the operation and maintenance of the Project Infrastructure pursuant to this Agreement.

Project Infrastructure means, together:

- the water infrastructure and other improvements constructed by Manningham on the Project Land as part of the Infrastructure Works (with the exception of any items which are expressly stated in this Agreement as being for the sole benefit of one Party, and therefore not forming part of the Project Infrastructure); and
- any existing water infrastructure or other items owned by any Party on the Project Land which, under this Agreement, are to be made available to Manningham to

form part of the water system to be operated and maintained by Manningham pursuant to this Agreement.

– ##Description of these items may need to be developed further

Project Land means, together, the Manningham Land and the Boroondara Land.

Project Term means the period commencing on the date of this Agreement and ending on the End Date.

Respective Proportions means, unless the context provides otherwise, the proportions outlined in clause 5.

Secretary means the Secretary to the Department of Environment, Land, Water and Planning.

Water Act means the *Water Act 1989* (Vic).

2. Conditions precedent

2.1 Statement of conditions precedent

This Agreement is conditional upon:

- 2.1.1 Manningham and Boroondara (as the case may be) obtaining all necessary planning permits (or amendments to existing planning permits) to enable Manningham to develop and use the Project Land in accordance with this Agreement; and
 - 2.1.2 Manningham appointing a construction contractor and entering into a construction contract for the Infrastructure Works on terms satisfactory to Manningham,
- by ##insert date (**the Conditions Precedent Date**).

2.2 Manningham's statutory obligations

The parties acknowledge that Manningham's capacity to enter into a construction contract for the Infrastructure Works is subject to and conditional upon Council complying with its statutory obligations under the *Local Government Act 1989* (Vic).

2.3 Termination of Agreement

If any of the conditions precedent specified in clause 2.1 have not been satisfied by the Conditions Precedent Date, then at any time prior to satisfaction of the remaining conditions precedent, any Party may terminate this Agreement by notice to the other Parties. Upon such a termination:

- 2.3.1 subject to clause 2.3.2, each Party releases the other Parties from any claims for costs, damages, losses, compensation or expenses whatsoever in connection with this Agreement; and
- 2.3.2 Boroondara and Carey shall each reimburse Manningham on demand, without deduction or right of set off, for a proportion of the total costs and expenses incurred by Manningham up to and including the date of termination in respect of the design and other preliminary arrangements in relation to the Infrastructure Works (**Costs**). Manningham will provide Boroondara and Carey with details of the costs incurred (**Costs Notice**) and the Costs will be payable by Boroondara and

Carey within 10 Business Days after receipt of the Costs Notice borne by the Parties in the same proportions as their respective funding contributions set out in clause 13.

3. Roles of the parties

3.1 Purpose of clause

This clause summarises the Parties' respective roles in respect of the Project in broad terms. The Parties' obligations are set out in greater detail in the remainder of this Agreement.

3.2 Development phase

The following is a summary of the Parties' roles in developing the Project:

- 3.2.1 Manningham is to act as Project manager and construction authority for the Project. Manningham is responsible for managing the scoping, planning permit and approvals, acquisition, design, documentation, funding applications and agreement preparation during the development phase of the Project.
- 3.2.2 During construction, Manningham is responsible for the procurement, construction supervision, contract administration and implementation of the Project.
- 3.2.3 The financial arrangements for any expenditure in excess of the Project contingency are to be agreed between the Parties, prior to any expansion of the scope of the Project.
- 3.2.4 Manningham shall present regular updates to the other Parties.
- 3.2.5 Manningham shall establish a Project control group to oversee the development of the Project.
- 3.2.6 Boroondara and Carey shall provide assistance to Manningham in sourcing information, advocacy, negotiating of licence agreements etc during the development of the Project.
- 3.2.7 Each Party shall make financial contributions towards the construction of the Infrastructure Works in accordance with this Agreement.

3.3 Operational phase

The following is a summary of the Parties' roles in the operation and maintenance of the Project Infrastructure following completion of the Infrastructure Works:

- 3.3.1 The Parties shall partially surrender their existing Yarra River extraction licences to MWC, which will issue an amalgamated extraction licence to be held by Manningham, Boroondara and Carey jointly - to occur 12 months after construction.
- 3.3.2 Manningham shall act as asset manager for the Project Infrastructure for the term of the Project (ending on the End Date).
- 3.3.3 Each Party shall contribute funds, which Manningham shall hold and manage on behalf of the Parties, to ensure that the Project Infrastructure is operated and maintained in accordance with the OMR Schedule.

- 3.3.4 Manningham may operate and maintain the Project Infrastructure directly, or may engage contractors and/or another party to this Agreement to do so.
- 3.3.5 Manningham shall establish a committee to oversee the operation and maintenance of the Project Infrastructure, and shall provide annual reports to the committee. The committee shall meet periodically to review the operational, maintenance and capital replacement related costs, and to consider the need for adjustments to the total budgeted cost and/or the Parties' respective contributions.

4. Appointment and indemnity

4.1 Appointment

With effect from the date of this Agreement, Boroondara and Carey appoint Manningham, and Manningham accepts the appointment, to:

- 4.1.1 procure the construction of the Infrastructure Works on the Project Land;
- 4.1.2 hold the Project Infrastructure; and
- 4.1.3 operate and maintain the Project Infrastructure,

on behalf of all of the Parties in accordance with the terms of this Agreement.

4.2 Indemnity

Boroondara and Carey agree to severally indemnify Manningham in their Respective Proportions against all costs, claims, charges, liabilities or expenses incurred by Manningham on behalf of the Parties in accordance with this Agreement.

5. Respective Proportions

5.1 The Parties' Respective Proportions

The Parties agree that, subject to clause 5.2, their Respective Proportions shall be as follows:

- 5.1.1 Boroondara – 73.5% (based on 90ML/annum);
- 5.1.2 Carey – 14.7% (based on 18ML/annum); and
- 5.1.3 Manningham – 11.8% (based on 14.4ML/annum).

The above proportions and annual water amounts reflect the water demand (rather than water usage) of the Parties.

5.2 Alteration of Respective Proportions

The Respective Proportions in clause 5.1 may only be altered by the written agreement of all Parties.

6. Crown Licence Area

6.1 Application of clause

This clause 6 applies in relation to that part of the Manningham Land which, as at the date of this Agreement, is Crown land occupied by Manningham as licensee under a licence granted by the Secretary (**Crown Licence Area**).

6.2 Acknowledgment

The Parties acknowledge and agree as follows:

- 6.2.1 as at the date of this Agreement, the licence under which Manningham occupies the Crown Licence Area is for a term of 3 years commencing on ##insert date and expiring on ##insert date (**3 Year Licence**);
- 6.2.2 it is intended that:
- (a) Manningham will procure the construction of the Infrastructure Works on the Crown Licence Area at the start of the 3 Year Licence; and
 - (b) upon completion of the Infrastructure Works on the Crown Licence Area, Manningham will operate and maintain the Project Infrastructure on that land for the remainder of the term of the 3 Year Licence;
- 6.2.3 it is further intended that, following expiry of the 3 Year Licence, Manningham will continue to occupy the Crown Licence Area for a further 21 years under a lease granted by the Minister under the CLRA.

6.3 Crown Licence Area

- 6.3.1 Manningham will use its reasonable endeavours to secure a 21 year lease from the Minister under the CLRA in accordance with clause 6.2.3 or an extension of the 3 Year Licence if the Minister does not grant the 21 year lease, and Boroondara and Carey will provide any assistance reasonably requested by Manningham to enable Manningham to secure the 21 year lease or an extension to the 3 Year Licence (as the case may be).
- 6.3.2 Manningham has no liability to any other Party if it is unable to secure a 21 year lease or an extension of the 3 Year Licence from the Minister under the CLRA.

6.4 End Date

For the purpose of this Agreement, the **End Date** will be determined as follows:

- 6.4.1 if Manningham is able to secure a 21 year lease as referred to in clause 6.2.3, the End Date will be the expiry date of that 21 year lease; or
- 6.4.2 if Manningham is unable to secure a 21 year lease as referred to in clause 6.2.3, the End Date will be the later of:
- (a) the expiry date of the 3 Year Licence; or
 - (b) the expiry date of any subsequent licence under which Manningham continues to be entitled to occupy the Crown Licence Area following the expiry of the 3 Year Licence; or
- 6.4.3 such other date as the Parties agree in writing to be the End Date.



- (c) part of Boroondara's existing irrigation distribution network (transfer line);
##Clarify – which part?
- (d) ##Are there any other relevant items?

8.1.2 Carey shall hand over its existing electrical conduit running under the access road in Bulleen Park (part of the Manningham Land), which will be used to run a new electrical supply to the shared storage tank site powering both Bulleen Park and Carey's pumps.

8.2 Existing items to form part of Project Infrastructure

The items referred to in clause 8.1 shall be transferred to Manningham as soon as practical following the date of this Agreement at no cost, and will form part of the Project Infrastructure.

9. Classification of items constructed as part of Infrastructure Works

9.1 Items benefiting one Party

The Parties acknowledge that some of the items to be constructed as part of the Infrastructure Works will benefit only one Party. These items, and the Party to benefit from each item, are as follows:

Item	Party benefitting from item
##	##
##	##
##	##

In relation to each of the above items, the Parties agree that:

- 9.1.1 the item will not form part of the Project Infrastructure; and
- 9.1.2 the Party listed as benefitting from the item will be solely responsible at its own cost for operating, maintaining, repairing and insuring the item.

9.2 Items benefiting all Parties

The remaining items to be constructed as part of the Infrastructure Works (other than the items listed in clause 9.1) will benefit all 3 Parties. These items:

- 9.2.1 will be Project Infrastructure; and
- 9.2.2 will be held, operated and maintained by Manningham for the benefit of all Parties pursuant to this Agreement.

10. Summary of Project Infrastructure

10.1 Purpose of clause

This clause contains a summary of the Project Infrastructure on each part of the Project Land. Following completion of the Infrastructure Works, Manningham shall arrange for a comprehensive list of the Project Infrastructure to be prepared and distributed to the Parties.

10.2 Manningham Land - freehold land (Bulleen Park shared storage site)

The Project Infrastructure on this Land will comprise:

- Storage tanks;
- Flush out drains;
- Fencing;
- Pump sheds;
- Water distribution pipelines, valves etc upstream of/and inclusive of the isolation valves downstream of the storage tanks; and
- Electrical infrastructure grid side of the parties' pump (Bulleen Park and Carey) starting infrastructure,

and excludes:

- Irrigating party control or telemetry infrastructure, irrigating party pump and control systems and pipelines downstream from irrigating parties' pumps.

10.3 Manningham Land - Crown land (billabong site)

The Project Infrastructure on this Land will comprise:

- Open water storage;
- Inlet drainage pipes;
- Weirs and outlet pipes;
- Landscaping;
- Fencing and gates;
- Gross pollutant trap;
- Access paths and hardstand areas;
- Switchboards and platforms;
- Electrical and communication infrastructure;
- Bolin Bolin pump station and all associated control and telemetry infrastructure;
- Water distribution pipeline, valves etc; and

- Ground water level monitoring infrastructure,

and excludes:

- Existing drainage pipeline, drainage outlet works, drainage pits and realigned existing wetland overflow pit.

10.4 Boroondara Land (Freeway Golf Course / remote storage site)

The Project Infrastructure on this Land will comprise:

- Storage lake;
- Golf course pump stations 1 & 2 (adjacent to the golf course storage lake);
- Golf course river extraction pump (this is an existing infrastructure item to be made available by Boroondara);
- Water distribution pipelines, pits, valves etc that draw water from the Yarra River and/or supply water from the golf course storage lake (some of these are existing infrastructure items to be made available by Boroondara); and
- Electrical infrastructure that provides power to the shared valves, pumps etc, including the proposed golf course switchboard. (The mains power supply to the golf course is existing and will be used for the joint purpose of powering golf course assets and the Project Infrastructure – it is not Project Infrastructure itself. Boroondara will grant Manningham a licence to access and utilise this mains power supply in common with Boroondara in accordance with clause 7.2),

and excludes:

- Golf course irrigation pumps, pipelines, valves, filters, electrical supply/telemetry/control infrastructure related to the operation of the golf course irrigation system.

11. Ownership of Project Infrastructure

11.1 During Project Term

During the Project Term, Manningham shall own and manage all Project Infrastructure on behalf of the Parties.

11.2 At end of Project Term

The Parties agree that at the end of the Project Term (or any agreed further term/s):

- 11.2.1 the Parties shall surrender the amalgamated extraction licence referred to in clause 16.1.4 to MWC, and in accordance with clause 16.5, MWC shall re-issue individual extraction licences to each of the Parties;
- 11.2.2 Manningham shall decommission (or if mutually agreed between the Parties, augment) the Project Infrastructure (the cost of which shall form part of Operating Costs);
- 11.2.3 all Project Infrastructure located on freehold land owned by Manningham shall revert to Manningham;

- 11.2.4 all Project Infrastructure located on the Boroondara Land shall revert to Boroondara;
- 11.2.5 all Project Infrastructure located on Crown land managed by Manningham as committee of management shall revert to the Crown, unless otherwise agreed between Manningham and the Minister; and
- 11.2.6 all Project Infrastructure (other than drainage infrastructure) located on Crown land occupied by Manningham under lease or licence shall to revert to the Crown, or be removed or retained, depending on the requirements of the relevant lease or licence governing occupation of that Land by Manningham (with the cost to form part of Operating Costs). Any drainage infrastructure shall revert to Manningham.

12. Development phase

12.1 Design of the works

The Parties acknowledge that:

- 12.1.1 the design of the Infrastructure Works was completed prior to the date of this Agreement, and is reflected in the plans and specifications contained in Schedule 3; and
- 12.1.2 the design process was managed by Manningham in consultation with Boroondara and Carey, and was funded by MWC.

12.2 Procurement of Infrastructure Works

Manningham shall be responsible for procurement of the Infrastructure Works. Prior to appointing a construction contractor for the Infrastructure Works, Manningham shall conduct an open tender process in accordance with Manningham's procurement policy, and shall allow Boroondara and Carey to each appoint one representative to sit on the tender evaluation panel.

12.3 Responsibility for administration and enforcement of construction contract

When a construction contractor has been appointed in accordance with clause 12.2, Manningham shall be responsible for:

- 12.3.1 entering into the construction contract with the appointed contractor; and
- 12.3.2 administering and enforcing the construction contract,

on behalf of the Parties as principal under the construction contract, and as superintendent.

12.4 Establishment of PCG

As soon as practical following the date of this Agreement, Manningham shall establish a project control group (**PCG**) to oversee the construction of the Infrastructure Works. The PCG shall comprise:

- 12.4.1 1 representative of Manningham, who shall be the chairperson of the PCG;
- 12.4.2 1 representative of Boroondara;
- 12.4.3 1 representative of Carey;

12.4.4 if required by MWC, 1 representative of MWC; and

12.4.5 if required by the Department of Environment, Land, Water and Planning, 1 representative of that organisation.

12.5 Meetings of PCG

The PCG shall meet on a monthly basis during the construction of the Infrastructure Works, or at such other intervals as the Parties may mutually agree. Meetings of the PCG will be conducted according to such procedures as the Parties' representatives on the PCG may agree from time to time, but a representative of each of Manningham, Boroondara and Carey will be required for a quorum.

12.6 Manningham to provide reports

Prior to each PCG meeting, Manningham shall circulate a progress update regarding the construction of the Infrastructure Works including the status of the Infrastructure Works, the costs incurred in relation to the Infrastructure Works compared to the financial budget for the Infrastructure Works, and details of any increase in expenditure as required by clause 12.7.

12.7 PCG role in approving expenditure

The Parties acknowledge and agree as follows:

12.7.1 prior to the date of this Agreement, the Parties have established a financial budget for the Infrastructure Works, which sets out among other things, a contingency amount for these works;

12.7.2 Manningham may expend the contingency without approval of the PCG, but must include details of any such expenditure in the next report circulated to the PCG;

12.7.3 any increase in the overall construction budget (including any increase in the contingency) is subject to the Parties agreeing in writing on how the increased costs are to be shared between them; and

12.7.4 any expenditure above and beyond the agreed contingency amount is subject to PCG approval.

Arrangements to be confirmed in light of clause 15

13. Funding of Infrastructure Works

13.1 Acknowledgment

The parties acknowledge that:

13.1.1 funding for the Infrastructure Works is to be provided as follows:

Manningham	\$450,000 (plus GST);
Boroondara	\$300,000 (plus GST);
Carey	\$200,000 (plus GST);
MWC	\$500,000 (plus GST);
Federal Government	\$200,000 (plus GST);

exception of minor items which can be fully completed without material interference to the use of the Project Infrastructure pursuant to this Agreement.

14.4 Payment of contributions

- 14.4.1 Manningham must give notice in writing to Boroondara and Carey when the event triggering payment of the funding contribution in accordance with clauses 14.1 and 14.2 has occurred.
- 14.4.2 Boroondara and Carey must pay the funding contributions to Manningham in accordance with clauses 14.1 and 14.2 (as applicable) on the date being 10 Business Days following receipt in writing from Manningham of notification that the event triggering payment of the funding contributions has occurred.

14.5 Funding contributions to be held on trust

All funding contributions paid to Manningham in accordance with this clause 14 are to be held on trust by Manningham on behalf of the Parties. Manningham may draw on such funding as and when required to meet the cost of the Infrastructure Works.

15. Increases in cost of Infrastructure Works

15.1 Sharing of increases in cost

If the cost of the Infrastructure Works (including variations to the construction contract) exceeds the secured funding described in clause 13, then the excess costs shall be shared between the Parties in the same proportions as their respective contributions set out in that clause.

15.2 Costs of Infrastructure Works

Manningham must provide Boroondara and Carey with details of any excess costs incurred including a description of the nature of the work performed and the additional costs incurred.

16. Water extraction licences

16.1 Initial Extraction Licences

The Parties acknowledge that as at the date of this Agreement:

- 16.1.1 Manningham, Boroondara and Carey each hold individual extraction licences issued by MWC (**Initial Extraction Licences**);
- 16.1.2 the Existing Extraction Licences allow for the extraction of water from separate locations along the Yarra River;
- 16.1.3 the MWC reference numbers for the Initial Extraction Licences, and the water allocations under those licences, are as follows:
- (a) Manningham holds licence no. BEE019620 (12ML/annum);
 - (b) Boroondara holds licence no. 464/500/0035 (138ML/annum); and
 - (c) Carey holds licence no. BEE019591 (72ML/annum); and

16.1.4 the total of the water allocations under the Initial Extraction Licences is 222ML/annum.

16.2 Initial arrangements

From the date of this Agreement until the Project Infrastructure has been constructed and has been operational for 12 months, each Party shall continue to utilise its Initial Extraction Licence.

16.3 Surrender of Initial Extraction Licences and issue of Amalgamated Extraction Licence

To facilitate the better utilisation of the Project Infrastructure pursuant to this Agreement, when the Project Infrastructure has reached practical completion and has been operational for 12 months the Parties shall request MWC to issue a new amalgamated extraction licence in accordance with this clause 16.3. Subject to MWC agreeing to issue a new amalgamated extraction licence in accordance with clause 16.3.2:

16.3.1 each Party shall promptly surrender its Initial Extraction Licence to MWC; and

16.3.2 upon the surrender of the Initial Extraction Licences, MWC shall issue a new amalgamated extraction licence for a water allocation of 155.4ML/annum in the joint names of Manningham, Boroondara and Carey, with Manningham to be noted as the primary contact (**Amalgamated Extraction Licence**). The Amalgamated Extraction Licence shall adopt the extraction point under Boroondara's Initial Extraction Licence as the sole extraction point.

The Parties acknowledge that the water allocation under the Amalgamated Extraction Licence represents a 30% reduction when compared with the total of the former water allocations under the Initial Extraction Licences.

16.4 Sources of water to be supplied by Project Infrastructure

The Parties acknowledge that the water to be supplied from the Project Infrastructure includes:

16.4.1 harvested stormwater; and

16.4.2 extractions from the Yarra River.

16.5 Arrangements at end of Agreement

At the expiry or earlier termination of this Agreement the Parties will request MWC to cancel the Amalgamated Extraction Licence and re-issue individual extraction licences in accordance with this clause 16.5. Subject to MWC agreeing to re-issue individual extraction licences in accordance with clause 16.5.2, at the expiry or earlier termination of this Agreement:

16.5.1 the Amalgamated Extraction Licence shall be surrendered to MWC; and

16.5.2 MWC will re-issue individual extraction licences to each of the Parties in accordance with the provisions of the Water Act for water allocations as follows (**End-Date Extraction Licences**):

(a) Manningham: 8.4ML/annum;

(b) Boroondara: 96.6ML/annum; and

(c) Carey: 50.4ML/annum.

The Parties acknowledge that the total of the water allocations under the End-Date Extraction Licences is equivalent to the water allocation under the Amalgamated Extraction Licence, and in each case represents a 30% reduction when compared with the respective water allocations under the Initial Extraction Licences.

16.6 Provision if no re-issue of individual extraction licences

If MWC fails or refuses to agree to re-issue individual extraction licences to each of the Parties in accordance with clause 16.5.2, the Parties will maintain the Amalgamated Extraction Licence and will continue to be entitled to extract water in accordance with the Amalgamated Extraction Licence with the entitlements of each Party as set out in clause 16.5.2.

16.7 Extraction points

Any Party wishing to establish one or more new extraction points to apply under the End-Date Extraction Licences will need to make its own arrangements with MWC.

##Other end date obligations?

17. Operational phase

17.1 Operation and maintenance of Project Infrastructure

On completion of the Infrastructure Works, Manningham will operate and maintain the Project Infrastructure in accordance with the OMR Schedule for the remainder of the Project Term.

17.2 Renewal of Agreement

The Parties may agree to extend the operation of the Project Infrastructure beyond the End Date, however no Party is obliged to do so. If agreement is reached, then the Parties will enter into a new agreement to record the agreed arrangements for the continued operation of the Project Infrastructure.

18. Sinking Fund

18.1 Manningham will establish and administer a sinking fund (**Sinking Fund**) in order to fund the anticipated cost of carrying out major repairs and works in relation to the Project Infrastructure (including carrying out of capital repairs and replacement of items of a capital nature) as required from time to time.

18.2 The Sinking Fund shall be held in a special purpose bank account established by Manningham on behalf of the Parties. Manningham may draw down from the Sinking Fund, any amounts necessary to pay for major items of repair, maintenance and replacement of the Project Infrastructure.

18.3 Prior to making any draw down from the Sinking Fund in accordance with clause 18.2, Manningham will provide notice in writing to Boroondara and Carey of the works to be carried out and the amount to be drawn down.

18.4 The Parties shall make financial contributions to the Sinking Fund in their Respective Proportions as part of the Operating Costs.

23.2.2 administration and enforcement of the maintenance contract,
in accordance with relevant Manningham procurement policies.

24. Storage, delivery and use of water

24.1 Manningham's role

Manningham will operate and maintain the Project Infrastructure to extract, harvest, store, treat and reticulate water for use for irrigation by the Parties, subject to:

- 24.1.1 the availability of stormwater and Yarra River extraction flows; and
- 24.1.2 the conditions of any applicable extraction licences.

24.2 Roles of other Parties

Each Party shall properly manage and maintain any water infrastructure of its own which is designed to receive water from the Project Infrastructure.

25. Limits on entitlements to water

25.1 Design of Project Infrastructure

The Parties acknowledge and agree that the Project Infrastructure has been designed to meet the following demands:

- 25.1.1 Boroondara – 90ML/annum;
- 25.1.2 Carey – 18ML/annum;
- 25.1.3 Manningham – 14.4ML/annum; and
- 25.1.4 increased extraction from the Yarra River to account for occasional demand increases (eg: re-sowing of fields).

No Party is entitled to take water from the system in excess of their above entitlement during any period, if any other Party is unable to take their full entitlement during that period as a result of there being insufficient water in the system.

If there is insufficient water in the system during any period to enable each Party to take their full entitlement as set out in this clause 25.1, the allocation of each Party will be reduced pro rata to their respective entitlements in clause 25.1 consistent with the total volume of water available in the system.

25.2 Excess water

If there is excess water in the system, then unless the Parties agree otherwise, the excess water shall be allocated between the Parties pro rata to their respective entitlements set out in clause 25.1.

25.3 Method of receiving water

The Parties acknowledge that:



- 25.3.1 Manningham and Carey receive water by drawing from shared storage tanks in Bulleen Park; and
- 25.3.2 the Boroondara system is different in that the water is pumped (by a Project pump) direct to the inlet of the existing pumps at the Freeway Golf Course. The Boroondara system has been designed to provide water at a rate up to 35 litres per second, to match the existing golf course irrigation pump rate as at the date of this Agreement.

25.4 Water availability

The Parties acknowledge that the water available to the Parties from the system is dependent on prevailing rainfall levels. If due to low rainfalls there are no stormwater inflows to be harvested, and/or no access to water extracted from the Yarra River (eg because the river levels are below those required for extraction), then there shall be no obligation on Manningham as the manager of the Project Infrastructure to provide water to the Parties from other sources. In this event, each Party will need to rely on potable water consumption.

25.5 Ban days

Automatic 'Ban Day' shut-down of extraction pump. ##Council to clarify what is intended here

26. Operating Costs

26.1 Contribution to Operating Costs

The Parties will contribute to the Operating Costs in their Respective Proportions for each financial year.

26.2 Estimate of Operating Costs

Prior to the commencement of each financial year, Manningham will give Boroondara and Carey a reasonable estimate of their Respective Proportions of the Operating Costs for the coming financial year (**Estimate**) taking into account any recommendations contained in the Annual Report prepared in accordance with clause 19.

26.3 Payment of estimated Operating Costs

Within 14 days after receiving the Estimate, Boroondara and Carey must each pay to Manningham, without deduction or right of set off, the estimated amounts of their Respective Proportions of Operating Costs for the coming financial year as set out in the Estimate (and pro-rata for any period less than 1 year).

26.4 Statement of actual Operating Costs

- 26.4.1 As soon as practical following the end of each financial year, Manningham will give Boroondara and Carey a statement detailing the actual Operating Costs for that financial year.
- 26.4.2 Manningham must keep proper books of account and all other financial records in relation to the Operating Costs.
- 26.4.3 Manningham must allow Boroondara and Carey to examine, audit and inspect all records relating to the Operating Costs and must promptly respond to any queries raised by Boroondara or Carey in relation to the Operating Costs.

26.5 Adjustments

Where the actual amount of Operating Costs for any financial year exceeds the estimated amount, Boroondara and Carey must each pay to Manningham, their Respective Proportions of any such increase within 14 days after Manningham providing the statement of the actual Operating Costs. If the actual amount of Operating Costs is less than the estimated amount, then Manningham will promptly credit or refund the relevant overpaid amount as soon as practical.

27. Water quality and usage

27.1 Water quality

The Parties acknowledge that:

27.1.1 the Project Infrastructure is not designed to provide harvested water at any particular defined quality (eg 'class AA'); and

27.1.2 the system is designed so that water is filtered to reduce wear and tear on Project Infrastructure (pumps, valves etc) and passed through a vegetated pond to reduce nutrient load.

27.2 Manningham's obligations

Nothing in this Agreement requires Manningham to provide water at a defined quality. Manningham's obligation are limited to:

27.2.1 using reasonable endeavours to ensure that the filter mechanisms in the system operate according to their design specification; and

27.2.2 undertaking regular water quality testing and making the data obtained from such testing available to the other Parties.

The Parties acknowledge that the above testing by Manningham will not be sufficient to enable the Parties to make informed decisions on the use of the water. The Parties will need to undertake their own further water quality testing, and implement management strategies of their own, to ensure that water is used safely.

27.3 Usage of water

In using water from the system, the Parties will comply with relevant legislation, guidelines and industry best practice.

28. Default

28.1 Events of Default

For the purpose of this clause, a Party commits an **Event of Default** if:

28.1.1 the Party fails to pay any money on time as required under this Agreement; or

28.1.2 the Party fails to perform any of its obligations in accordance with this Agreement.

28.2 No termination

If a Party commits an Event of Default, then:

- 28.2.1 no Party shall be entitled to terminate this Agreement based on the Event of Default, it being the intention of the Parties that this Agreement will continue notwithstanding any Events of Default; and
- 28.2.2 at the request of any Party, the Parties will consult in good faith in relation to the establishment and implementation of a plan to remedy the default.

28.3 Non-payment

Where the Event of Default relates to the non-payment of money to Manningham pursuant to this Agreement, Manningham may in its discretion do any one or more of the following:

- 28.3.1 charge penalty interest on the outstanding amount at the rate prescribed under the *Penalty Interest Rates Act 1983* (Vic);
- 28.3.2 recover the outstanding moneys as a debt due; or
- 28.3.3 cease supplying the defaulting Party with water from the system while the outstanding amount remains unpaid.

28.4 Events of Default by Manningham

Where the Event of Default relates to a failure by Manningham to perform any obligation in relation to the construction, operation or maintenance of the Project Infrastructure:

- 28.4.1 the other Parties' rights will be limited to taking the action referred to in clause 28.2.2; and
- 28.4.2 no Party will be entitled to recover damages from Manningham (whether in contract, tort or otherwise) for any losses suffered by them arising out of or in connection with the Event of Default, and the other Parties hereby release Manningham from all such claims.

29. Risk allocation

29.1 Risk Assessment Document

The Parties acknowledge that prior to the date of this Agreement, they undertook a risk assessment in respect of the key risks affecting the Project, and developed a risk assessment document, a copy of which is contained in Schedule 5 (**Risk Assessment Document**).

29.2 Identification and allocation of risks

The Parties agree that the Risk Assessment Document:

- 29.2.1 identifies a number of the key risks affecting the Project, including:
 - (a) upfront risks (planning, design etc);
 - (b) risks during the development phase of the Project; and
 - (c) risks during the operational phase of the Project; and

29.2.2 sets out, for each risk identified:

- (a) how it is intended that the risk is to be allocated between the Parties; and
- (b) the actions to be taken by the Parties to mitigate the risk.

The Risk Assessment Document is binding on the Parties and each Party will bear the risk of, and will not have any claim against any other Party in respect of, any risk allocated to that Party under the Risk Assessment Document. The Parties must take all actions set out in the Risk Assessment Document for which that Party is responsible as necessary to mitigate the risk identified in the Risk Assessment Document.

30. Exit provisions

30.1 Parties' intention

The Parties acknowledge that as at the date of this Agreement, it is intended that this Agreement will continue to apply as between all of the Parties for the entire Project Term.

30.2 No release

If any Party wishes to be released as a party to this Agreement during the Project Term, then this is subject to the mutual agreement of all Parties. No Party is obliged to agree to any such release.

31. Assignment / novation of rights and obligations

31.1 Definition

In this clause 31, **Land** means any Project Land, or any adjacent land which receives water from the system.

31.2 Agreement binding on successors

Any party wishing to transfer its Land (referred to in this clause as a **Transferor**) must:

- 31.2.1 obtain the prior written consent of the other Parties, which will not be unreasonably withheld where the Transferor establishes that the proposed transferee has the financial resources and expertise to meet the transferring party's obligations under this Agreement; and
- 31.2.2 procure the transferee to enter into an accession deed, to ensure that this Agreement continues to be enforceable as between the transferee and the other Parties to this Agreement.

31.3 Dealing with land

Each Party covenants not to deal with its Land (including subdivision, sale, lease or usage of the Land), or its rights under this Agreement, in a manner which is inconsistent with the continued operation of this Agreement during the Project Term.

31.4 Manningham Land

Manningham must not transfer its Land unless arrangements acceptable to the other Parties are put in place, for the continued operation and management of the Project Infrastructure.

32. Force majeure

32.1 Definition

In this clause **Event of Force Majeure** means any one or more of the following events or causes:

- 32.1.1 changes in the law or the amalgamation of councils;
- 32.1.2 pollution or other 'upstream' events or circumstances affecting the Yarra River outside the system of Project Infrastructure;
- 32.1.3 acts of God, specifically storms, hurricanes, cyclones, earthquakes, landslides, mudslides and natural disasters;
- 32.1.4 civil riots, rebellions, revolutions, terrorism, insurrections, acts of sabotage, acts of a public enemy and war;
- 32.1.5 any other event which prevents Manningham from constructing the Infrastructure Works, or operating or maintaining the Project Infrastructure, pursuant to this Agreement.

32.2 Notice

If Manningham becomes aware that an Event of Force Majeure has occurred, then Manningham will:

- 32.2.1 notify the other Parties as soon as practical that the Event of Force Majeure has occurred; and
- 32.2.2 provide reasonable details of the nature of the Event of Force Majeure and its effect on Manningham's ability to carry out its obligations under this Agreement;

32.3 Manningham's obligations to abate

Upon the occurrence of an Event of Force Majeure, Manningham's obligation to carry out any obligations under this Agreement which are affected by the Event of Force Majeure will abate while the Event of Force Majeure continues.

32.4 Consultation

The Parties will consult as often as reasonably necessary, to discuss the consequences of the Event of Force Majeure including:

- 32.4.1 the likely duration of the Event of Force Majeure and its impact on Manningham's obligations under this Agreement;
- 32.4.2 the steps to be taken to overcome or minimise effects of Event of Force Majeure; and
- 32.4.3 whether the Event of Force Majeure is covered by any insurance policy held by any Party.

32.5 Manningham not liable

Manningham is not liable to any other Party for any losses arising out of or in connection with an Event of Force Majeure.

32.6 Termination

- 32.6.1 If an Event of Force Majeure persists for a continuing period of ## Business Days, and Manningham reasonably believes that the occurrence of the Event of Force Majeure will prevent Manningham from performing its obligations under this Agreement, then Manningham may at its election terminate this Agreement by giving written notice of termination to the other Parties.
- 32.6.2 Manningham must not terminate this Agreement in accordance with clause 32.6.1 unless the Parties have discussed the consequences of the Event of Force Majeure in accordance with clause 32.4.

##For discussion

33. Insurance

33.1 Manningham to insure

During the Project Term Manningham will take out the following insurance policies (**Policies**):

- 33.1.1 public liability insurance in respect of the Project Infrastructure;
- 33.1.2 insurance to cover the Project Infrastructure against damage and destruction;
- 33.1.3 such other insurances as may be determined by Manningham from time to time, acting reasonably, having regard to the risks associated with the Project Infrastructure and this Agreement.

33.2 Matters to be covered

The Policies will cover each of the Parties for their respective rights and interests, and will cover claims as between the Parties and claims by third parties.

33.3 Costs

The cost of the Policies will form part of the Operating Costs.

33.4 Ownership and application of insurance proceeds

The Parties agree that:

- 33.4.1 Manningham owns the proceeds of any payout under any Policies on behalf of all Parties; and
- 33.4.2 Manningham will determine how any such proceeds will be applied, following consultation with the other Parties, and having regard to the respective costs and expenses incurred by each Party as a consequence of the occurrence of the insurable event to which the payout relates.

33.5 Individually Owned Assets

Nothing in this Agreement requires Manningham to insure any of the following assets (**Individually Owned Assets**):

- 33.5.1 any items listed in clause 9.1; or

33.5.2 any other assets owned by any Party which do not form part of the Project Infrastructure.

The Party which owns the Individually Owned Asset is solely responsible at its own cost for insuring that asset. The costs of such insurance will not form part of the Operating Costs.

34. Legal liability

34.1 Liability to third parties

Costs incurred by Manningham in:

34.1.1 prosecuting claims against any person (other than a Party); or

34.1.2 defending claims by any person (other than a Party),

arising out of or in connection with the Project Infrastructure and/or this Agreement, will form part of the Operating Costs and will be allocated between the parties in accordance with their Respective Proportions.

34.2 Liability as between the Parties

A Party to this Agreement is only liable to any other Party (whether in contract, tort or otherwise) in respect of loss or damage arising out of or in connection with the Project Infrastructure and/or this Agreement, to the extent that the relevant liability is satisfied out of the proceeds of insurance taken out pursuant to clause 33.

35. Environmental matters

35.1 Definitions

In this clause:

35.1.1 **Contamination** includes any solid, liquid, gas, radiation or substance which makes or may make the condition of any land or groundwater beneath or part of the surrounding environment:

(a) unsafe, unfit or harmful for habitation by persons or animals; or

(b) unfit for any use permitted under any applicable planning scheme as amended from time to time,

or which is defined as such in any Environmental Protection Legislation; and

35.1.2 **Environmental Protection Legislation** means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or subordinate legislation, past, present or future, relating to pollutants and contaminants, use of land, human health and safety or protection of the environment.

35.2 Report

As soon as practical following the date of this Agreement, Manningham will appoint a suitably qualified consultant to prepare a report establishing the current environmental condition of the Project Land.

35.3 Comply with Environmental Protection Legislation

The Parties must, in their use of:

35.3.1 the Project Land; and

35.3.2 any other land which receives water from the Project Infrastructure,

comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

35.4 Not permit Contamination

The Parties must not spill or deposit, or carry out any activities on any land which may cause any Contamination, or permit any Contamination to escape in any other way into or on or from the Project Land, drainage or surrounding environment.

35.5 Notify of and clean up Contamination

If a Party causes any Contamination in breach of clause 35.3 or 35.4 (or exacerbates any existing Contamination during the Project Term), which affects any Project Land or Project Infrastructure, that Party must at its own cost:

35.5.1 immediately notify the other Parties, the Environment Protection Authority and any other relevant authority, and provide reasonable details of the Contamination caused;

35.5.2 promptly clean up the Contamination and do everything necessary to minimise harm; and

35.5.3 promptly comply with any notice, order, direction or requirement of Manningham and any other authority in relation to any such Contamination.

36. No relationship

No Party to this Agreement has the power to obligate or bind any other Party. Nothing in this Agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the Parties. Nothing in this Agreement will be deemed to authorise or empower any of the Parties to act as agent for or with any other Party.

37. Dispute resolution

37.1 Dispute

37.1.1 If a bona fide difference or dispute (together called a **Dispute**) between the Parties arises in connection with the subject matter of this Agreement, the Parties must, in good faith, attempt to resolve the Dispute.

37.1.2 If the Parties cannot resolve the Dispute, then any Party may give the other Parties a written notice of Dispute identifying and providing details of the Dispute and the attempts made to resolve the Dispute.



37.1.3 Once a notice has been served under clause 37.1.2, the Chief Executive Officers, General Manager or Managing Director of each Party (or his or her delegate) must attempt to resolve the Dispute in good faith.

37.2 Mediation

37.2.1 Any Dispute between the Parties arising in connection with the subject matter of this Agreement which cannot be settled by negotiation between the Parties or their representatives within 21 days of giving the written notice of the Dispute under clause 37.1.2 will be submitted to mediation in accordance with The Institute of Arbitrators and Mediators, Australia Expert Determination Rules.

37.2.2 Except where the Parties otherwise agree in writing, each Party to the Dispute will bear its own costs and pay an equal proportion of the mediation costs.

37.3 No proceedings until dispute resolution process followed

A Party must not start any legal or other proceedings in respect of a Dispute unless the Dispute has been referred to mediation in accordance with clause 37.2 and the mediation has failed to resolve the Dispute.

37.4 Continued performance

Each Party must continue to perform its obligations under this Agreement despite the existence of a Dispute.

[## Note: Should there be an Expert determination/arbitration process if mediation does not resolve any Dispute?]

38. Regulatory capacity

38.1 No liability

Manningham and Boroondara will not be liable under this Agreement:

38.1.1 to one another; or

38.1.2 to Carey,

for any acts or omissions undertaken by either of them in their capacity as a public body or authority including (without limitation) in exercising any powers under the *Local Government Act 1989* (Vic) or the *Planning and Environment Act 1987* (Vic).

38.2 No fettering

Nothing in this Agreement fetters Manningham or Boroondara in the exercise of any power or discretion under the *Local Government Act 1989* (Vic), the *Planning and Environment Act 1987* (Vic) or any other legislation.



39. GST

39.1 Definitions

In this clause:

39.1.1 words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and

39.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

39.2 GST exclusive

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

39.3 Increase in consideration

If GST is payable, or a GST equivalent is voluntarily resolved to be paid in accordance with section 5 of the *National Taxation Reform (Consequential Provisions) Act 2000* (Vic), in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

39.4 Payment of GST

Subject to clause 39.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

39.5 Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 39.4.

39.6 Reimbursements

If this Agreement requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

39.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

39.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

39.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Agreement:

39.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

39.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

42. Interpretation

42.1 Words and headings

In this Agreement, unless expressed to the contrary:

- 42.1.1 words denoting the singular include the plural and vice versa;
- 42.1.2 the word 'includes' in any form is not a word of limitation;
- 42.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 42.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Agreement; and
- 42.1.5 no rule of construction applies to the disadvantage of the Party preparing this Agreement on the basis that it prepared or put forward this Agreement or any part of it.

42.2 Specific references

In this Agreement, unless expressed to the contrary, a reference to:

- 42.2.1 a gender includes all other genders;
- 42.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 42.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 42.2.4 writing includes writing in digital form;
- 42.2.5 'this Agreement' is to this Agreement as amended from time to time;
- 42.2.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 42.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Agreement;
- 42.2.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 42.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 42.2.10 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 42.2.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

Schedule 1 Project Land - Particulars

1. Manningham Land

1.1 The Manningham Land comprises the following parcels of land as shown on the plan in Schedule 2:

- the ##whole/part of the land contained in certificates of title volume ## folio ## and volume ## folio ## as shown on the plan as 'Manningham Freehold Land – Bulleen Park';
- the area shown on the plan as 'Crown Land – Bolin Bolin Billabong', which is Crown land permanently/temporarily reserved for ## purposes by an Order in Council of ## (vide Victoria Government Gazette dated ## at page ##).

1.2 In relation to the Crown land referred to in clause 1.1 above, the Parties acknowledge that as at the date of this Agreement:

- Manningham manages part of the Crown land as committee of management appointed pursuant to the CLRA; and
- Manningham occupies the remainder of this Crown land as licensee under a licence dated ## granted by the Secretary pursuant to section ## of the CRLA.

2. Boroondara Land

The Boroondara Land comprises the ##whole/part of the land contained in certificates of title volume ## folio ## and volume ## folio ## as shown on the plan as 'Boroondara Freehold Land – Freeway Golf Course'.

##Details to be confirmed



Schedule 2 Project Land - Plan

DRAFT



Schedule 3 Infrastructure Works

DRAFT



Schedule 4 OMR Schedule

DRAFT



Schedule 5 Risk Assessment Document

DRAFT



Signing Page

Executed by the Parties

The Common Seal of Manningham City Council was hereunto affixed in the presence of:)
)
)

..... Mayor/Councillor

..... Chief Executive Officer

The Common Seal of the Boroondara City Council was hereunto affixed in the presence of:)
)
)

..... Councillor

..... Chief Executive Officer

Executed by **Carey Baptist Grammar School Limited ACN 051 576 062** in accordance with s 127(1) of the *Corporations Act 2001*:)
)
)
)

.....
Signature of Director

.....
Signature of Director (or Company Secretary)

.....
Print full name

.....
Print full name



Department of Environment & Primary Industries

Port Phillip Region
Level 7, 8 Nicholson St, East Melbourne
DX210098
PO Box 500, East Melbourne, Victoria, 8002
e-mail: property.portphillip@dse.vic.gov.au
www.dse.vic.gov.au
ABN 90 719 052 204

31 July 2014

Chris Sfetkidis
PO Box 1
Doncaster
VIC 3108

Ref: 2011832

Dear Mr Sfetkidis

COMMITTEE OF MANAGEMENT OVER YARRA VALLEY PARKLANDS

I refer to your letter dated 5 June 2014 to Ms Sally Burgess, regarding Yarra Valley Parklands at 191 Bullen Road, Bulleen.

I am pleased to inform you that that your application has been successful and the Minister for Environment and Climate Change, the Hon Ryan Smith MP has, by delegation, appointed Manningham City Council as the Committee of Management over part of Yarra Valley Parklands.

A copy of the 'Certificate of Appointment' is attached for your information.

Should you require any further information about this matter please do not hesitate to contact me on 9637 9364 or email dejana.marjanovic@depi.vic.gov.au

Yours sincerely

Dejana Marjanovic
Senior Policy and Project Officer

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Information Privacy Act 2000. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Manager Privacy, Department of Sustainability & Environment, PO Box 500, East Melbourne, 3002.





**Department of
Environment and Primary Industries**

COMMITTEE OF MANAGEMENT CERTIFICATE OF APPOINTMENT

MANNINGHAM CITY COUNCIL

PART YARRA VALLEY PARKLANDS

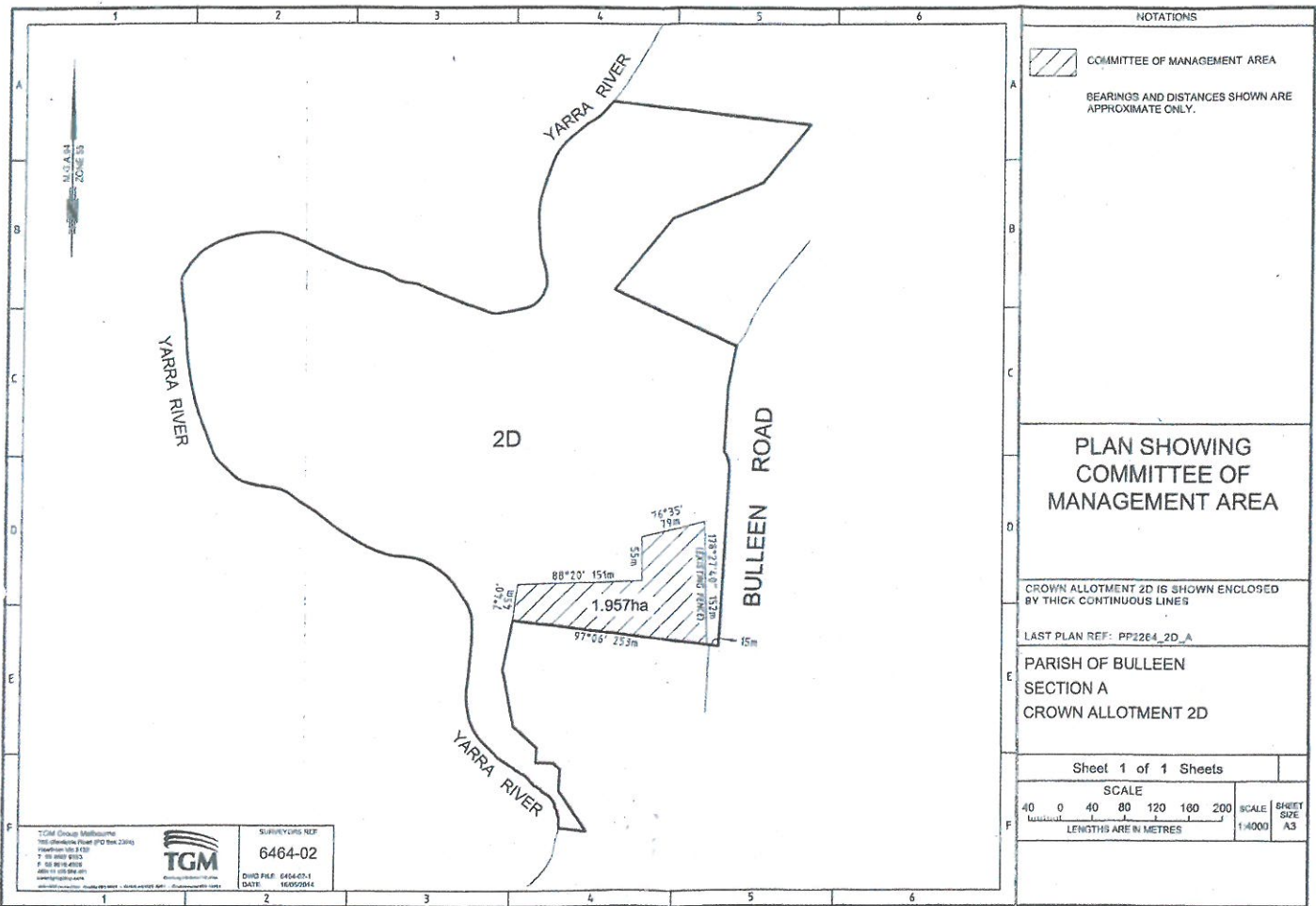
Under sections 14(2) and 14(3) of the *Crown Land (Reserves) Act 1978*, and pursuant to the delegation of 15 July 2013, I hereby appoint, on behalf of the Minister for Environment and Climate Change, Manningham City Council as the committee of management, over part of the land temporary reserved for conservation recreation leisure and tourism by Order in Council of 4 December 2001, published in the government gazette on 4 December 2001, page 02, being part of Crown land Allotment 2D Section A, Parish of Bulleen and hatched on the plan labelled *Plan Showing Committee of Management Area* attached.

This appointment is in lieu of all previous appointments and management agreements relating to the said land which are hereby revoked.


2011832

TRAVIS DOWLING
Regional Director, Port Phillip Region
(As delegate of the Minister for Environment and Climate Change)

Date: 28/07/14



NOTATIONS

 COMMITTEE OF MANAGEMENT AREA
 BEARINGS AND DISTANCES SHOWN ARE APPROXIMATE ONLY.

PLAN SHOWING
 COMMITTEE OF
 MANAGEMENT AREA

CROWN ALLOTMENT 2D IS SHOWN ENCLOSED BY THICK CONTINUOUS LINES

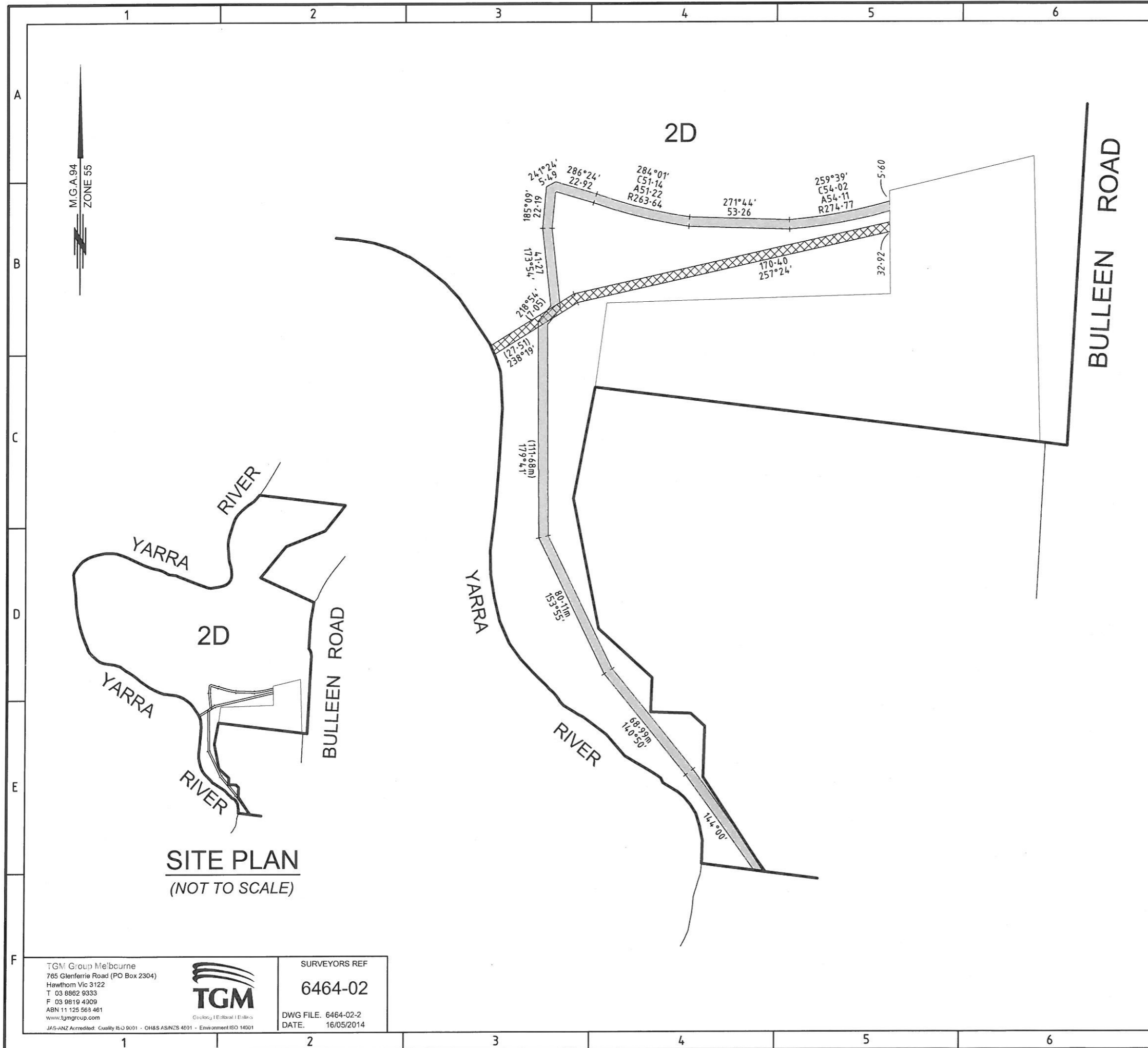
LAST PLAN REF: PP1264_2D_A

PARISH OF BULLEEN
 SECTION A
 CROWN ALLOTMENT 2D

Sheet 1 of 1 Sheets



SCALE		SCALE	SHEET SIZE
40	0 40 80 120 160 200		
LENGTHS ARE IN METRES			

<p>TGM Group Melbourne 160 Glenville Road (PO Box 2316) Springvale Vic 3172 T: 03 9594 4333 F: 03 9594 4335 www.tgm.com.au</p> 	<p>SURVEYORS REF 6464-02 DWG FILE 6464-02-1 DATE 16/05/2014</p>
---	---



NOTATIONS

LEGEND

-  TRANSFER MAIN (5m WIDE)
-  COUNCIL DRAIN (5m WIDE)

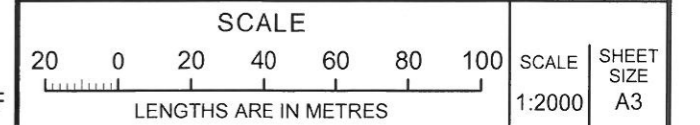
PLAN SHOWING AREA OF ASSETS TO BE MAINTAINED UNDER LICENCE

CROWN ALLOTMENT 2D IS SHOWN ENCLOSED BY THICK CONTINUOUS LINES

LAST PLAN REF: PP2264_2D_A

PARISH OF BULLEEN
SECTION A
CROWN ALLOTMENT 2D

Sheet 1 of 1 Sheets



TGM Group Melbourne
765 Glenferrie Road (PO Box 2304)
Hawthorn Vic 3122
T 03 8862 9333
F 03 9819 4309
ABN 11 125 569 461
www.tgmgroup.com



SURVEYORS REF
6464-02
DWG FILE: 6464-02-2
DATE: 16/05/2014

JAS-ANZ Accredited: Quality ISO 9001 - OH&S AS/NZS 4501 - Environment ISO 14001

Attachment F



19 December 2014

Mr Chris Sfetkidis
Technical Services Engineer
Manningham City Council
PO Box 1
DONCASTER VIC 3108

Dear Mr Sfetkidis,

RE: Bolin Bolin Billabong Wetland Project – Yarra River Extraction Licences

Thankyou for your letter of 1 December 2014 in respect to the above project and outlining the preferred management of associated water licences currently held by City of Boroondara, Carey Baptist Grammar School and Manningham City Council.

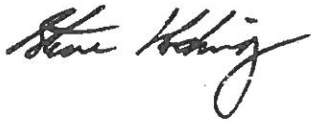
I am happy to confirm that Melbourne Water will support all of the proposed arrangements as further outlined below:

- Amalgamation of the three existing licences into a single licence, jointly held by all parties with Manningham City Council as nominated primary contact. This will simply require the transfer of the existing volumes into a single licence within the Victorian Water Register and attached to the relevant parties. To enact this component Melbourne Water will request confirmation from each party that they are happy to proceed along the lines put forward by Manningham. As further contribution we will waive the normal licensing application fees associated with this type of application.
- It is agreed that the full licence volume should be retained in the initial stages and that the 30% reduction will not be applied until the scheme has been operating for a full 12 month period.
- Future split of the licence back into its separate components is permitted under the Water Act and can be actioned upon application by the licence holders at any time.
- Rationalisation of works to single offtake point on the river is supported. A works operating licence will remain in place for the retained works and can again be held jointly if desired or singly by Manningham as the manager of the works. Your further advice in respect to works licence ownership would be appreciated in this regard.
- The exiting works that are no longer required will need to be decommissioned and potentially removed. Further advice from the works owners would be appreciated around what actions are planned in respect to decommissioning. Melbourne Water approval is required for decommissioning and removal of any works on the river bank.

Subject to the advice requested above we would be happy to proceed with these proposals at any designated time frame to suit the project. I would suggest the best way to action these matters is for a joint application to be sent to Melbourne Water along with relevant supporting information / plans for the pumping works / decommissioning. I am happy to sit down with you to help formulate this if needed.

I hope this provides clarity for you. Should you have any queries on this matter please contact me on 9724 3118.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steve Hosking', written in a cursive style.

STEVE HOSKING
DIVERSIONS MANAGER

Attachment G

Maddocks

Lawyers
140 William Street
Melbourne Victoria 3000 Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Date / /

Licence

Section 17B(1) Crown Land (Reserves) Act 1978 (Vic)

Licence Area: Part of Yarra Valley Parklands

Secretary of The Department of Environment, Land, Planning and Water
and

Manningham City Council
ABN 61 498 471 081
and

Parks Victoria



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Licence

Dated / /

Parties

Name	Secretary of The Department of Environment, Land, Planning and Water
Address	8 Nicholson Street, East Melbourne
Short name	Licensor

Name	The person described in item 1 of Schedule 1 as the licensee
Short name	Licensee

Name	The person described in item 2 of Schedule 1 as the guarantor
Short name	Guarantor

Name	Parks Victoria
Address	Level 10, 535 Bourke Street, Melbourne, Vic, 3000
Short name	Manager

Background

- A. The Licence Area is located on land which is reserved under the *Crown Land (Reserves) Act 1978 (Vic) (CLRA)* by an order in council on the date and for the purpose specified in item 3 of Schedule 1.
- B. The Licensor has power to grant this Licence under the CLRA.
- C. Parks Victoria manages the Licence Area pursuant to a direction from the then Minister for Environment and Climate Change dated 6 August 2013 and an agreement between the then Secretary to the Department of Environment and Primary Industries and Parks Victoria dated 6 August 2013.
- D. The Licensor has agreed to grant to the Licensee a licence to use the Licence Area pursuant to section 17B(1) of the CLRA on the terms and conditions of this Licence.

- (b) *Occupational Health and Safety Regulations 2007 (Vic)*;
- (c) *Dangerous Goods Act 1985 (Vic)*;
- (d) *Dangerous Goods (Storage and Handling) Interim Regulations 2011 (Vic)*; and
- (e) *Work Health and Safety Act 2011 (Cth)*.

Outgoings means:

all existing and future rates (including any special rates or levies), taxes, duties, charges, levies, assessments, impositions and outgoings (including land tax if applicable) whatsoever now or at any time imposed, charged or assessed on or against the Licence Area or the Licensee's Improvements or the Licensor or the Licensee or payable by the owner or occupier of the Licence Area.

unless this Licence provides for the Licensee to insure the Licence Area and the Licensee's Improvements, insurance premiums, and other charges in connection with insurance policies taken out by the Licensor against the risks and for the amounts which the Licensor reasonably thinks are appropriate in connection with the Licence Area, the Licensee's Improvements and this Licence including:

- (i) damage to and destruction of the Licence Area, the Licensor's Property and the Licensee's Improvements for their full replacement value;
 - (ii) removal of debris;
 - (iii) breakage of glass; and
 - (iv) loss of licence fee insurance;
- (f) the costs and expenses incurred by the Licensor for:
- (i) supplying, operating, maintaining, repairing and upgrading Services to or for the Licence Area and the Licensee's Improvements;
 - (ii) repairing the Licence Area and the Licensee's Improvements;
 - (iii) maintaining the Licence Area and the Licensee's Improvements at the request or as a result of the default of the Licensee; and
 - (iv) any other service, facility, or infrastructure the Licensor reasonably considers necessary or desirable for the benefit of occupiers of the Licence Area and the Licensee's Improvements either exclusively or in common with others.

Park means the park named in item 6 of Schedule 1.

Parks Victoria means the public authority established under Part 2 of the *Parks Victoria Act 1998 (Vic)* and includes, where the context so admits, its authorised officers.

Performance Criteria means the performance criteria set out in Schedule 4.

Permitted Use means the use described in item 7 of Schedule 1.

Personal Information means personal information as defined in the *Information Privacy Act 2000 (Vic)*.



Principal means the Licensor, the Manager and the Minister and includes their respective officers, employees and agents.

Review Date means a date specified in item 10 of Schedule 1.

Review Period means the period following each Review Date until the next Review Date or until the end of this Licence.

Services includes electricity, gas, water, sewerage, drainage, telecommunication, air conditioning, security services, fire detection and prevention equipment and Essential Safety Measures, and the repair and maintenance of everything (such as plant and equipment) needed to supply them.

Taxable Supply means a taxable supply within the meaning of the GST Act.

Tax Invoice in relation to a Taxable Supply means an invoice for the Taxable Supply required by the GST Act to support a claim by the recipient for an Input Tax Credit for the GST on the Taxable Supply.

Term means the term of this Licence as set out in clause 5.

Valuer means a certified practising valuer who:

- (a) is a full member of not less than five years' standing of the Victorian Division of the API; and
- (b) is qualified as a valuer of premises similar to the Licence Area.

Works means any works to or at the Licence Area (including construction, fitout, demolition, alterations, additions, landscaping or earthworks and the installation of equipment) whether carried out before the Commencement Date or during the Term, including those works set out in item 13 of Schedule 1.

2. Interpretation

2.1 In this Licence, unless the contrary intention appears:

- 2.1.1 a reference to another instrument includes any variation or replacement of any of them;
- 2.1.2 a reference to a statute, ordinance, code or other law includes regulations and other instruments under that statute, ordinance, code or law and consolidations, amendments re-enactments or replacements of any of them occurring at any time before or after the date of this Licence;
- 2.1.3 a word or expression in the singular includes the plural and vice versa;
- 2.1.4 the word 'person' includes an individual and a corporation;
- 2.1.5 a reference to a person includes a reference to that person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- 2.1.6 an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;



- 2.1.7 an agreement, representation, warranty or liability on the part of two or more persons binds them jointly and severally;
- 2.1.8 a reference to any thing (including an amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- 2.1.9 a reference to a clause or item is to a clause or item in this Licence.
- 2.2 If this Licence prohibits the Licensee from doing a thing, the Licensee must:
 - 2.2.1 ensure that the Licensee's Members and Agents do not do that thing; and
 - 2.2.2 not allow or cause any person to do that thing.
- 2.3 If this Licence requires the Licensee to do a thing, the Licensee must ensure that the Licensee's Members and Agents do that thing.
- 2.4 Headings are inserted for convenience and do not affect the interpretation of this Licence.
- 2.5 If there is an inconsistency between a special condition in item 15 of Schedule 1 and another provision of this Licence, the special condition prevails.

Part 2 - Acknowledgment

3. Acknowledgment

- 3.1 The parties acknowledge that the Licensor may, from time to time, appoint a party to act as manager of the Park and the Licence Area. The party so appointed as at the date of this Licence is Parks Victoria.
- 3.2 The Licensee covenants and agrees that:
 - 3.2.1 any right, power or authority vested in the Licensor under this Licence shall be treated by the Licensee as a right, power and authority of the Manager; and
 - 3.2.2 any lawful direction of the Manager must be complied with or otherwise treated as a direction of the Licensor.

Part 3 - Licence of Licence Area

4. Licence

The Licensor grants to the Licensee a licence to use the Licence Area subject to:

- 4.1 the terms contained in this Licence;
- 4.2 all encumbrances affecting the Licence Area;
- 4.3 any reservations in this Licence;



- 4.4 the right of the Licensor to:
- 4.4.1 install, maintain, use, repair, alter and replace the water pipes, wires, tubes, conduits, sewers and cables leading through or around the Licence Area and the Licensee's Improvements;
 - 4.4.2 use, pass and run water, air, electricity, sewerage, drainage, gas and other substances through the Licence Area and the Licensee's Improvements;
 - 4.4.3 determine all areas of access to and egress from the Licence Area; and
 - 4.4.4 close access to the Licence Area and the Park in an emergency as may be necessary for the Licensor or the Manager to carry out its statutory functions. The Licensee shall not be entitled to any claim for compensation or damages for loss suffered as a result of any such closure;
- 4.5 the rights of the public in relation to the Park and areas adjacent to the Licence Area, including any water included in the areas adjacent to the Licence Area;
- 4.6 the condition precedent that the Licensee complies with the obligations under clauses 27.1 to 27.3 inclusive; and
- 4.7 the provisions of the CLRA.

5. Term

The Term of this Licence begins at zero hours on the Commencement Date and ends at 12 midnight on the Expiry Date.

6. Licence of parts of Park

The Licensor grants the Licensee the right to use in common with the Licensor and other persons from time to time permitted by the Licensor, those parts of the Park reasonably required by the Licensee:

- 6.1 for access to the Licence Area; and
- 6.2 to comply with its obligations under this Licence.

Part 4 - Payment of Licence Fee and Outgoings

7. Licence Fee

The Licensee must pay the Licence Fee without any deductions:

- 7.1 to the Licensor at the Licensor's address specified in this Licence, or as the Licensor may direct from time to time; and
- 7.2 by 12 equal monthly instalments in advance on or before the first day of each month. The first instalment must be paid on the Commencement Date. If the Commencement Date is not the first day of a month, the Licensee must pay proportional instalments in the first and last months of the Term.

8. Outgoings and Services

8.1 The Licensee must pay:

8.1.1 all Outgoings, however imposed, charged or assessed, separately relating to the Licence Area or the Licensee's Improvements or both; and

8.1.2 the charges for any Services supplied directly to the Licence Area and the Licensee's Improvements;

before or when they are due.

8.2 If any Outgoing relates to or benefits other areas or lands of which the Licence Area and the Licensee's Improvements form part, the Licensee must pay or reimburse the Licensor on demand the Licensee's Proportion of such Outgoing.

8.3 If required by the Licensor, the Licensee must install and pay for a separate meter for recording or measuring any of the Services to the Licence Area or the Licensee's Improvements.

Part 5 - Review of Licence Fee

9. CPI Review

On each Review Date the Licence Fee for the next Review Period shall be calculated in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where: **A** is the Licence Fee for the next Review Period;

B is the annual Licence Fee paid by the Licensee just prior to the relevant Review Date;

C is the CPI published for the quarter immediately preceding the relevant Review Date; and

D is the CPI published for the quarter immediately preceding the last Review Date or, where there has not been a Review Date, the quarter immediately preceding the start of the Term.

Part 6 - Security Deposit or Bank Guarantee

10. Security Deposit

10.1 The Licensee must pay a security deposit (**deposit**) to the Licensor of the amount stated in item 11 of Schedule 1 and must maintain the deposit at that amount increased by the same percentage increase as any increase in the Licence Fee within 14 days of written request.



- 10.2 The Licensor may use the deposit (including any accrued interest) to make good the cost of remedying breaches of the Licensee's obligations under this Licence or to recover any loss that the Licensor suffers from the Licensee's default.
- 10.3 If the deposit, or any part of it, is used by the Licensor under this clause then the Licensee must, within 14 days of written request, replace the deposit, or that portion of it used.
- 10.4 After this Licence has ended and the Licensee has vacated the Licence Area and complied with the Licensee's obligations under this Licence, the Licensor must refund the unused part of the deposit within 14 days of the Licensee's demand.

11. Bank Guarantee

- 11.1 If the Licensor requires, the Licensee must give the Licensor an unconditional and irrevocable bank guarantee (**bank guarantee**) in place of the deposit for the amount stated in item 11 of Schedule 1. The bank guarantee must be issued by an authorised deposit taking institution as defined by the *Banking Act 1959 (Cth)* with no expiry date or an expiry date not less than 6 months after the end of the Term and must be on such terms as the Licensor may require.
- 11.2 If the Licence Fee is increased following a Review Date, the Licensee must provide a replacement bank guarantee and the amount guaranteed under the bank guarantee shall be increased by the same percentage increase.
- 11.3 The Licensor may call upon the bank guarantee to make good the cost of remedying breaches of the Licensee's obligations under this Licence or to recover any loss that the Licensor suffers from the Licensee's default.
- 11.4 If the bank guarantee, or any part of it, is called upon by the Licensor under this clause then the Licensee must, within 14 days of written request, replace that bank guarantee, or that portion of it called upon, with another bank guarantee complying with the requirements of clause 11.1.

Part 7 - Licence Personal

12. Licence Personal

The Licensee confirms and acknowledges that:

- 12.1 the Licensee is granted a mere licence to enter and use the Licence Area pursuant to the CLRA and that no interest in the Licence Area is granted to the Licensee; and
- 12.2 the Licensee cannot:
 - 12.2.1 assign or deal with this Licence or the rights granted under this Licence in any way;
 - 12.2.2 part with or share possession, use or occupation of the Licence Area; or
 - 12.2.3 allow any person to take the place of any of the Licensee's Operators.



13. Change in shareholding/trust

If the Licensee is a corporation:

13.1 any change in the shareholding (other than shares listed on the Australian Stock Exchange) altering the:

13.1.1 effective control of the composition of the board of directors;

13.1.2 ability to cast more than one half of the maximum votes at a general meeting of; or

13.1.3 control of more than half of the issued capital in,

the Licensee or the ultimate holding company of the Licensee; or

13.2 any change altering the effective control of or the ultimate beneficial entitlement under any trust of which the Licensee is a trustee (other than a trust listed on the Australian Stock Exchange) including without limitation a change in the:

13.2.1 right to remove or appoint a new or additional trustee;

13.2.2 manner in which the trustee deals with the trust assets; or

13.2.3 right to alter the beneficiaries of the trust,

will be deemed to be an assignment of this Licence in breach of clause 12.2.1 unless the written consent of the Licensor has been obtained before the changes referred to in this clause 13.

Part 8 - Change in Licensee's Operators

14. Licensee's Operators named in Schedule 1

14.1 The Licensee acknowledges that the Licensor entered into this Licence on the basis that the Licensee's Operators for the duration of this Licence (and any renewal thereof) will be the persons named in item 12 of Schedule 1.

14.2 As soon as the Licensee becomes aware that any one of the Licensee's Operators as named in item 12 of Schedule 1 no longer operates or intends to continue operating the Licensee's Business, the Licensee must immediately inform the Licensor in writing.

14.3 If the Licensor is reasonably of the opinion that the Licensee's Business will be adversely affected by the departure of any of the Licensee's Operators as approved by the Licensor, the Licensor shall be entitled to determine this Licence by one month's written notice to the Licensee unless the Licensee procures a replacement Licensee's Operator to the satisfaction of the Licensor during that time.



Part 9 - Licensee's Obligations concerning Use of Licence Area

15. Use of Licence Area

The Licensee must:

- 15.1 not use the Licence Area or the Licensee's Improvements other than for the Permitted Use without the Licensor's prior written consent;
- 15.2 not use the Licence Area or the Licensee's Improvements as a residence or allow anyone to sleep in the Licence Area without the Licensor's prior written consent;
- 15.3 not use the Licence Area or the Licensee's Improvements as a nightclub, discotheque or banquet or reception hall without the Licensor's prior written consent;
- 15.4 not install or operate vending or amusement machines in the Licence Area or the Licensee's Improvements without the Licensor's prior written consent;
- 15.5 not prepare or cook food in the Licence Area or the Licensee's Improvements other than in areas which have been provided or approved by the Licensor for that purpose without the Licensor's prior written consent;
- 15.6 unless the Licence Area has a liquor licence, not bring on to the Licence Area or the Licensee's Improvements any alcoholic or intoxicating beverage or liquor without the Licensor's prior written consent;
- 15.7 not allow gambling on the Licence Area or the Licensee's Improvements without the Licensor's prior written consent;
- 15.8 at its own expense comply on time with all Laws and legal requirements concerning the Licence Area and the Licensee's Improvements, and the use and occupation of the Licence Area and the Licensee's Improvements, including but not limited to Environmental and Heritage Law;
- 15.9 notify the Licensor as soon as the Licensee becomes aware of any defective Services or damage to the Licence Area and the Licensee's Improvements;
- 15.10 give immediate notice to the Licensor if the Licensee suffers, or anticipates that the Licensee may suffer, any damage or loss as a result of:
 - 15.10.1 an act or omission of the Licensor; or
 - 15.10.2 an anticipated act or omission of the Licensor;
- 15.11 at all times take all steps which are necessary to ensure that the floors of the Licence Area and the Licensee's Improvements or any walls, pillars or other parts of the construction of the Licence Area or the Licensee's Improvements shall not be broken, strained or damaged by overloading of floors or from any other cause; and
- 15.12 not do or permit to be done anything which shall or may be a nuisance or annoyance to the Licensor or other persons allowed by the Licensor to use any other part of the Park or areas adjacent to the Licence Area.

16. Licensee's acknowledgment

The Licensee acknowledges that it has no right or entitlement, other than its right to occupy the Licence Area on the terms set out in this Licence, to use any other part of the Park for any special purpose or to use the Park in any way except as a member of the public.

17. Works

- 17.1 The Licensee must not carry out any Works without the Licensor's prior written consent and if such consent is provided the Licensee must carry out all Works in the manner and to the standard prescribed by Schedule 3, including the Works set out in the plans and specifications submitted to the Licensor or which are annexed to this Licence.
- 17.2 The Licensee must also ensure that the Works are completed promptly, or if a time period is specified in item 13 of Schedule 1 within the time period so specified.
- 17.3 During the course of this Licence the Licensee owns all of the Licensee's Improvements. The Licensee must not remove the Licensee's Improvements before the expiration or earlier termination of this Licence unless directed to do so by the Licensor under clause 28.2.
- 17.4 Upon the Expiry Date or earlier termination of this Licence those Licensee's Improvements which have not vested in the Licensor by operation of any law (whether statute, regulation, common law, equity or otherwise) and are not required to be removed under clause 28.2 shall revert to and become the absolute property of the Licensor without any payment of compensation and must not be removed by the Licensee.

Part 10 - Licensee's Obligations concerning the Business

18. Operation of Business

The Licensee must:

- 18.1 keep the Licence Area fully stocked with the goods necessary for the Licensee's Business and operate the Licence Area during the Term with due diligence and efficiency and in a proper and businesslike manner;
- 18.2 conduct the Licensee's Business in the Licence Area and keep the same open for business at all times during the opening hours of the Park or such other lawful times as may be prescribed by the Licensor from time to time;
- 18.3 use to the best advantage all space available in the Licence Area for the Licensee's Business;
- 18.4 not without the consent in writing of the Licensor enter or permit any person to enter or arrange delivery of goods to the Licence Area at any time when the Park or the Licence Area is closed;
- 18.5 not conduct any auction, fire, bankruptcy, end of licence, closing down or similar sales in the Licence Area;



- 18.6 keep in force all licences and permits required for the carrying on of the Licensee's Business; and
- 18.7 not permit any vehicle while being used for delivery or pickup of the Licensee's goods to be driven, parked or stopped at any place or time within any part of the Park except at such places and at such times as the Licensor may specify from time to time.

19. Liquor and other Licences

- 19.1 The Licensee must obtain the prior written consent of the Licensor before applying for any licence, permit or consent (including liquor licences or BYO permits) for the Licence Area or the Licensee's Business.
- 19.2 If the Licensor consents to the Licensee's application for any licence, permit or consent under the *Liquor Control Reform Act 1998* (Vic), the Licensee must comply with all requirements of the Licensor including signing any future agreement containing additional covenants on the part of the Licensee to be performed and observed.

20. Cafe, Food Kiosk, Restaurant

If the Permitted Use is a cafe, food kiosk, restaurant or other food establishment, the Licensee must comply with all the Licensee's obligations in Schedule 5.

21. Business Name

The Licensee must not register or make an application to register a business name which includes any part of the name of the Licence Area or the Park without the Licensor's prior written consent. If the Licensor attaches conditions to the provision of its consent, the Licensee must comply with these conditions.

Part 11 - Licensee's Obligations concerning Maintenance

22. Maintenance of Licence Area, the Licensee's Improvements and Licensor's Property

The Licensee must:

- 22.1 not permit any water closets, lavatories, grease traps and other sanitary appliances in the Licence Area or the Licensee's Improvements to be used for any purpose other than that for which they were constructed;
- 22.2 not without the consent in writing of the Licensor store or use any toxic or inflammable substances in or upon the Licence Area or the Licensee's Improvements unless usage is reasonably in accordance with the Permitted Use;
- 22.3 maintain and repair all fire detection and prevention equipment (if any), including specifically smoke detectors and/or alarms in the Licence Area and the Licensee's Improvements;

- 22.4 keep the Licence Area, the Common Areas, the Services, the Licensee's Improvements and the Licensee's Fittings in good and tenable repair, and replace or effect all repairs to the Licence Area, the Common Areas, the Services, the Licensee's Improvements and the Licensee's Fittings on the Licence Area (fair wear and tear excepted);
- 22.5 promptly repair any damage to the Licence Area, the Common Areas, the Licensee's Improvements or any other part of the Park caused or contributed to by the Licensee or any of the Licensee's Members and Agents;
- 22.6 promptly replace any broken glass in the Licence Area and the Licensee's Improvements with glass of the same thickness and quality;
- 22.7 carry out repairs within 14 days of being served with a written notice of any defect or lack of repair which the Licensee is obliged to make good under this Licence. If the Licensee does not comply with the notice, the Licensor may carry out the repairs and the Licensee must repay the cost to the Licensor on demand;
- 22.8 ensure that any repairs or maintenance carried out to the Licence Area, the Common Areas, or the Licensee's Improvements are carried out in a proper and workmanlike manner by qualified tradespersons;
- 22.9 properly maintain, cultivate and fertilise any garden, lawn or playing field which forms part of the Licence Area to a standard reasonably required by the Licensor;
- 22.10 promptly replace any lawn, trees or shrubs on the Licence Area which perish or are destroyed, damaged or removed; and
- 22.11 in addition to its obligations under clause 22.4 (it being acknowledged by the Licensee that the fair wear and tear exception referred to in clause 22.4 does not apply to the following matters set out in this clause 22.11):
- 22.11.1 promptly repair defective windows, lights, doors, locks and fastenings in the Licence Area and the Licensee's Improvements and replacement of missing light globes and fluorescent tubes, keys and keycards;
- 22.11.2 paint, polish, stain or otherwise treat painted, polished, stained or otherwise treated surfaces on the Licence Area and the Licensee's Improvements to the standard and at the times reasonably required by the Licensor;
- 22.11.3 replace floor coverings, window coverings or blinds in the Licence Area and the Licensee's Improvements which are in the reasonable opinion of the Licensor worn or damaged and in need of replacement; and
- 22.11.4 maintain in working order all plumbing, drainage, gas, electric, solar and sewage installations located on the Licence Area or the Licensee's Improvements.

23. Essential Safety Measures and cooling towers

- 23.1 The Licensee must provide to the Licensor:
- 23.1.1 all documentation required in order to establish and maintain records of maintenance checks, services and repair work for any Essential Safety Measures at the Licence Area and the Licensee's Improvements; and
- 23.1.2 records of repair, maintenance and testing work and risk management plans with respect to any cooling tower system (as required under the *Building Act 1993* (Vic)) at the Licence Area and the Licensee's Improvements.

The Licensee must ensure that any such documentation and any other documentation required pursuant to any legislation or subordinate legislation including the *Building Act 1993* (Vic) and *Building Regulations 2006* (Vic) is kept at the Licence Area.

23.2 The Licensee must:

- 23.2.1 display or allow to continue to be displayed at the Licence Area and the Licensee's Improvements all necessary notices or documents required to be displayed or fixed on the Licence Area under or pursuant to any legislation or subordinate legislation including the *Building Act 1993* (Vic) and *Building Regulations 2006* (Vic), particularly in relation to Essential Safety Measures; and
- 23.2.2 pay any statutory fines or court penalties in relation to any Essential Safety Measures at the Licence Area or the Licensee's Improvements, which it is the responsibility of the Licensee to pay. The Licensor shall not in any way be deemed to be responsible for such fines or penalties.

24. Cleaning of Licence Area

The Licensee must:

- 24.1 take all proper precautions to keep the Licence Area and the Licensee's Improvements thoroughly clean and free of refuse, rodents and vermin and must, if required by the Licensor but at the Licensee's cost, employ pest exterminators for that purpose;
- 24.2 store refuse before removal so that it cannot be seen from outside the Licence Area;
- 24.3 comply with the Licensor's reasonable directions concerning cleaning and disposal of refuse including cleaning areas near the Licence Area and the Licensee's Improvements where the cleaning is made necessary as a result of the Licensee's use of the Licence Area and the Licensee's Improvements; and
- 24.4 not dispose of refuse in any bins provided in areas near the Licence Area for public use.

25. Annual report

The Licensee must deliver to the Licensor on or before 31 December in each year of the Term a written report in the form and setting out the information reasonably required by the Licensor. Unless otherwise specified in writing by the Licensor, the information that must be set out in the report includes:

- 25.1 a description of the Licensee's use of all facilities in the Park;
 - 25.2 the condition of all buildings and other improvements on the Licence Area; and
 - 25.3 the condition of any playing surfaces on the Licence Area (if applicable),
- for the 12 months ending 30 September of that year.

Part 12 - Licensee's Obligations concerning Signage

26. Signage

The Licensee must not fix or place signs, notices or advertisements in any place in or near the Licence Area or the Licensee's Improvements without first obtaining the written approval of the Licensor, such approval not to be unreasonably withheld. The proposed sign, notice or advertisement must comply with the Manager's policy in relation to signage, applicable to the Park. If the Licensor grants such consent, the Licensee must comply with all the Licensor's requirements and specifications.

Part 13 - Licensee's Obligations concerning Insurance

27. Insurance

27.1 The Licensee must at its cost effect and maintain throughout the Term with an insurer approved by the Licensor, which approval shall not be unreasonably withheld provided the insurer is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia:

27.1.1 a public, and if relevant, products liability insurance policy for not less than \$10 million (or any greater amount required by the Licensor) in respect of any single claim arising out of the activities of the Licensee, covering all third party claims arising out of:

(a) loss, including financial loss, destruction or damage to real or personal property and ensuing loss of use of that property; and

(b) death, injury to, or disease of persons;

(Policy)

27.1.2 an employers' liability and workers' compensation policy which covers any damage, loss or liability suffered or incurred by any person engaged by the Licensee arising:

(a) by virtue of any statute relating to workers' or accident compensation or employers' liability; or

(b) at common law.

27.2 The Licensee must effect and maintain the Policy noting the interests of the Principal.

27.3 The Licensee must provide the Licensor with:

27.3.1 a certificate of currency for the Policy which clearly confirms the requirements of clause 27.2:

(a) prior to the Commencement Date;

(b) within 14 days of each anniversary of the renewal of the Policy throughout the Term; and



- (c) at any other time upon request by the Licensor;
- 27.3.2 a copy of the Policy upon request by the Licensor; and
- 27.3.3 evidence of confirmation of registration with the Victorian WorkCover Authority prior to the Commencement Date and at any other time upon request by the Licensor.
- 27.4 The Licensee must promptly notify the Licensor if:
 - 27.4.1 an event occurs at the Licence Area or on the Licensee's Improvements which may give rise to a claim under or prejudice the Policy; or
 - 27.4.2 the Policy is cancelled.
- 27.5 The Licensee must not do anything or allow anything to be done which may:
 - 27.5.1 prejudice any insurance held in connection with the Licence Area or the Licensee's Improvements; or
 - 27.5.2 increase the premium payable for any insurance held in connection with the Licence Area or the Licensee's Improvements.
- 27.6 The Licensee must effect and maintain all other insurances in a manner and to such extent which is reasonable and customary for an organisation engaging in activities of the kind referred to and permitted by this Licence.
- 27.7 If there is any damage or destruction to any building or improvement on the Licence Area or the Licensee's Improvements the Licensee must pay on demand to the Licensor the costs reasonably incurred by the Licensor in rectifying any such damage or destruction to the extent such damage or destruction was caused or contributed to by the act, omission or default of the Licensee or the Licensee's Members and Agents.

Part 14 - Licensee's Obligations at End Of Agreement

28. Delivery of Licence Area

- 28.1 Subject to clause 28.2, upon the expiration or earlier termination of this Licence the Licensee must vacate the Licence Area and deliver possession of the Licence Area to the Licensor in the same condition as the Licence Area was in at the Commencement Date or such earlier date as the Licensee first commenced occupation of the Licence Area or in the case where Works have been carried out, the date of completion of the Works (fair wear and tear excepted).
- 28.2 Despite anything contained in this Licence, upon the expiration or earlier termination of this Licence the Licensor may require the Licensee to remove the Licensee's Improvements in whole or in part and if so required, the Licensee must to the satisfaction of the Licensor and in accordance with relevant statutory regulations:
 - 28.2.1 remove those Licensee's Improvements as required by the Licensor;
 - 28.2.2 make good any damage caused by the removal in a proper and workmanlike manner;
 - 28.2.3 cap any services; and



- 28.2.4 level and clear the site using clean fill where necessary.
- 28.3 If the Licensee fails to remove the Licensee's Improvements in accordance with clause 28.2, those Licensee's Improvements not so removed shall be considered abandoned and shall become the absolute property of the Licensor but the Licensor may remove those Licensee's Improvements.
- 28.4 If the Licensor shall incur costs in order to carry out removal or reinstatement due to the failure of the Licensee to comply with the obligations under this clause 28 such costs are recoverable by the Licensor from the Licensee as a liquidated debt payable on demand.
- 28.5 The Licensee shall have no entitlement to compensation or damages for the Licensee's Improvements.

29. Removal of Licensee's Fittings

- 29.1 Upon the expiration or earlier termination of this Licence, the Licensee may remove all the Licensee's Fittings which the Licensee is entitled to remove but must remove the Licensee's Fittings from the Licence Area if so required by the Licensor.
- 29.2 In removing any of the Licensee's Fittings, the Licensee must make good any damage caused to the Licence Area.
- 29.3 Any Licensee's Fittings left on the Licence Area shall become the absolute property of the Licensor and may be dealt with or disposed of by the Licensor in any manner the Licensor deems appropriate with no entitlement to compensation for the Licensee and any damage that the Licensee does in removing the Licensee's Fittings which the Licensee does not make good may be made good by the Licensor in any manner the Licensor deems appropriate. If the Licensor shall incur costs in order to remove any of the Licensee's Fittings or to make good any damage, such costs shall be recoverable by the Licensor from the Licensee as a liquidated debt payable on demand.
- 29.4 The Licensee must continue to pay the Licence Fee until such time that the Licensee has complied with its obligations under clauses 28 and 29.

Part 15 - Other Covenants of Licensee

30. Other Covenants

The Licensee must:

- 30.1 observe the maximum floor loading weights for the Licence Area and the Licensee's Improvements;
- 30.2 securely lock all exterior doors and windows in the Licence Area and the Licensee's Improvements when the Licence Area and the Licensee's Improvements are not occupied;
- 30.3 not remove any of the Licensor's Property from the Licence Area;
- 30.4 not sell or dispose of any earth, clay, gravel or sand from the Licence Area and the Licensee's Improvements or the Park or make any excavation except as may be necessary for the Works without the written consent of the Licensor;



- 30.5 if required by the Licensor, erect safety and security fencing around any Works which are carried out by the Licensee;
- 30.6 not erect any fence (other than safety or security fences required by the Licensor as a result of the Works) on or around the Licence Area and the Licensee's Improvements; and
- 30.7 not park or allow vehicles to be parked on the Licence Area or the Licensee's Improvements or the Park other than those areas designated from time to time by the Licensor.

Part 16 - Licensor's Rights

31. Right to enter

After giving reasonable notice, the Licensor or any person authorised by the Licensor may enter the Licence Area or the Licensee's Improvements at reasonable times to:

- 31.1 inspect, maintain, repair or alter the Licence Area, or the Services or carry out any inspection or audit as required under any Law or authority;
- 31.2 show the Licence Area to prospective purchasers or licensees; and
- 31.3 carry out any repairs, maintenance or building works required by the Licensor or any relevant authority to be carried out.

If there is an emergency, the Licensor and any person authorised by the Licensor may enter the Licence Area at any time without notice.

32. Right to grant easements

The Licensor shall be entitled to grant easements or other rights over the Licence Area or the Licensee's Improvements to any person on any terms and for any purpose provided such grant does not materially adversely affect the Licensee's use of the Licence Area or the Licensee's Improvements.

33. Major Events

The Licensee:

- 33.1 acknowledges that the Park may from time to time be used for a Major Event;
- 33.2 agrees that the Licensor may, in connection with a Major Event, at the Licensor's sole discretion:
 - 33.2.1 restrict or prevent access to the Park or the Licence Area or the Licensee's Improvements for such time as the Licensor considers necessary; and
 - 33.2.2 conduct, or authorise any other person to conduct works in or about the Licence Area or the Licensee's Improvements, which may be of a temporary or permanent nature; and



- 33.3 acknowledges and agrees that the Licensee shall not be entitled to any compensation (including an entitlement or reduction in Licence Fee) if the Licensor exercises its rights under clause 33.2.

Part 17 - Management of Licence Area

34. Rules and Regulations

- 34.1 The Licensor may prescribe rules relating to the operation, use and occupation of the Licence Area and vary them at any time. This Licence supersedes the rules if there is any inconsistency between them.
- 34.2 The Licensee must comply with a rule from the time that notice of that rule is given to the Licensee. The Licensee acknowledges that before it executed this Licence, it was given notice of the rules, if any, then applicable.
- 34.3 The Licensee must at all times comply with any legislation or statutory rules governing the Park or its use.

35. Licensor's Directions

The Licensee must comply with all reasonable requests or directions given by any Authorised Officer of the Licensor which that Authorised Officer considers necessary or desirable for the safety, care or cleanliness of the Licence Area or the Licensee's Improvements or areas near the Licence Area or the Licensees Improvements.

36. Access to the Licence Area

If to gain access to the Licence Area or the Licensee's Improvements the Licensee or the Licensee's Members and Agents must cross other land under the possession or control of the Licensor, then:

- 36.1 the Licensee must comply with the directions of the Licensor in relation to using that land; and
- 36.2 the Licensee must ensure there is no interference by the Licensee or the Licensee's Members and Agents with any other person using that land.

Part 18 - Default by Licensee

37. Default Event

- 37.1 A Default Event occurs if:
 - 37.1.1 the Licensee does not pay any money as required under this Licence whether or not demand has been made;
 - 37.1.2 the Licensee does not comply with any other obligation under this Licence;



- 37.1.3 a judgment or order for \$10,000.00 or more is enforced or becomes enforceable or can be rendered enforceable by the giving of notice, lapse of time or fulfilment of any condition, against the Licensee's interest in this Licence or the Licensee's Fittings or the Licensee's Improvements;
- 37.1.4 the Licensee or any Guarantor is a corporation and:
- (a) a resolution is passed, or taken to have been passed under the provisions of part 5.3A of the *Corporations Act 2001* (Cth), that the Licensee or Guarantor be wound up;
 - (b) proceedings are commenced for either the voluntary or compulsory winding up of the Licensee or Guarantor;
 - (c) a liquidator or provisional liquidator is appointed to the Licensee or Guarantor whether or not under an order;
 - (d) a controller within the meaning of section 9 of the *Corporations Act 2001* (Cth) is appointed over any property of the Licensee or Guarantor;
 - (e) an administrator is appointed in respect of the Licensee or Guarantor under part 5.3A of the *Corporations Act 2001* (Cth), or the directors of the Licensee or Guarantor pass a resolution or implement procedures to pass a resolution to appoint an administrator; or
 - (f) is deregistered with the Australian Securities and Investments Commission.
- 37.1.5 the Licensee or any Guarantor is an individual and:
- (a) proceedings are commenced either for the voluntary or compulsory bankruptcy of the Licensee or Guarantor; or
 - (b) the Licensee or Guarantor commits an act of bankruptcy as specified in section 40 of the *Bankruptcy Act 1966* (Cth);
- 37.1.6 the Licensee enters into a formal scheme of arrangement or composition with, or assignment for the benefit of any of the Licensee's creditors; or
- 37.1.7 the Licensee, without the Licensor's written consent:
- (a) discontinues the Licensee's Business; or
 - (b) leaves the Licence Area or the Licensee's Improvements unoccupied for seven consecutive days.
- 37.2 The Licensee must ensure that no Default Event occurs.

38. Licensor's right to end Licence

- 38.1 If a Default Event occurs, the Licensor may end this Licence by giving the Licensee a written notice stating the nature of the Default Event and requiring the Licensee to remedy the Default Event within 10 days from the date of service of the notice. If the Default Event is not remedied within the said period of 10 days, this Licence will come to an end without any further notice to the Licensee.
- 38.2 If this Licence is ended by the Licensor, the Licensor retains the right to sue the Licensee for all unpaid moneys or for damages for breaches of the Licensee's obligations under this

Licence. For the purpose of assessing damages to the Licensor, the benefit of the Licensee's performance of this Licence to the Licensor must be calculated on the basis that this Licence continues in force until the Expiry Date.

Part 19 - Interest on Overdue Money

39. Interest

- 39.1 If the Licensee is late in paying the Licensor any money payable by it under this Licence, the Licensee must pay interest on that money from the due date for payment until the money is paid in full.
- 39.2 The interest shall be calculated on daily balances and the rate of interest to be charged on each daily balance shall be 2% higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*.
- 39.3 The Licensor's right to interest does not affect the Licensee's obligation to pay any money due to the Licensor on the date it becomes due for payment.

Part 20 - If Licence Area or Licensee's Improvements Damaged or Resumed

40. Damage to Licence Area or Licensee's Improvements

- 40.1 If the whole or any part of the Licence Area or the Licensee's Improvements is destroyed or damaged by fire or act of God so that the Licence Area or the Licensee's Improvements cannot be accessed or used for their Permitted Use, then the following provisions shall apply:
- 40.1.1 a fair portion of the Licence Fee and Outgoings is to be suspended until the Licence Area or the Licensee's Improvements (as the case may be) are again wholly fit and accessible for the Permitted Use and the suspended portion of the Licence Fee and Outgoings must be proportionate to the nature and extent of the damage or inaccessibility;
- 40.1.2 if the Licence Area or the Licensee's Improvements are damaged to the extent that in the Licensor's reasonable opinion it is impracticable or undesirable to repair and reinstate the Licence Area or the Licensee's Improvements, the Licensor may determine this Licence by giving not less than 30 days written notice to the Licensee;
- 40.1.3 if the Licensor does not serve notice under clause 40.1.2 it must reinstate the Licence Area and the Licensee's Improvements as soon as reasonably practicable;
- 40.1.4 if the reinstatement does not start within 6 months or is not likely to be completed within 12 months of the date of destruction or damage, the Licensor or the Licensee may end this Licence by giving the other written notice;
- 40.1.5 the Licensee will not be entitled to suspension of Licence Fee and Outgoings under clause 40.1.1 nor to end this Licence under clause 40.1.4 if payment of an insurance claim is properly refused in respect of the damage or destruction as a



result of any act or omission by the Licensee or the Licensee's Members or Agents;
and

- 40.1.6 if there is a dispute under this clause, either party may request the President of the API or his or her nominee to appoint a Valuer to determine the dispute as an expert with each party to bear the Valuer's costs equally and the Valuer's decision shall be final and binding on the parties.
- 40.2 The Licensor shall not be liable to pay the Licensee any compensation if the Licence Area or the Licensee's Improvements or any part of the Licence Area or the Licensee's Improvements are destroyed or damaged, or if this Licence is ended pursuant to this clause.

41. Resumption of Licence Area

- 41.1 If the Licence Area or any part of the Licence Area is resumed by any competent authority and the Licence Area becomes unfit for the Licensee's use, then the Licensor or the Licensee may end this Licence by written notice to the other.
- 41.2 The Licensor shall not be liable to pay the Licensee any compensation if the Licence Area or any part of the Licence Area is resumed by any competent authority.

Part 21 - End of Agreement

42. Licensee may continue to use Licence Area

If the Licensee continues to use the Licence Area without objection by the Licensor after the end of the Term:

- 42.1 the Licensee, without any need for written notice of any kind, may continue to use the Licence Area as a licensee on the conditions in this Licence, but on a month to month basis only;
- 42.2 either party may end the monthly licence arrangement by giving one month's written notice to the other expiring at any time;
- 42.3 the monthly licence fee starts at one twelfth of the annual Licence Fee which the Licensee was paying immediately before the Term ended increased by 5% unless a different licence fee has been agreed upon; and
- 42.4 the Licensor may increase the monthly licence fee at any time by giving the Licensee one month's written notice.

Part 22 - Release and Indemnity

43. Release

- 43.1 The Licensee agrees that it:
 - 43.1.1 has not relied upon any representation by or on behalf of the Licensor concerning the Licence Area or its use;



- 43.1.2 is aware of all Laws and legal requirements in relation to the Licence Area and the Permitted Use;
- 43.1.3 occupies and uses the Licence Area and the Licensee's Improvements at its own risk; and
- 43.1.4 has inspected the Licence Area and is of the opinion that:
 - (a) the Licence Area is safe and suitable for the activities of the Licensee, including the Permitted Use; and
 - (b) the structure of and fixtures in the Licence Area, plant and equipment in the Licence Area and the appliances, fittings or fixtures provided by the Licensor in relation to the Services are in good repair.
- 43.2 The Licensee releases the Licensor, the Manager and the Minister and their respective officers, employees and agents from:
 - 43.2.1 all claims and demands resulting from any accident, damage, death or injury occurring at the Licence Area, the Licensee's Improvements or any other area used by the Licensee or the Licensee's Members and Agents in connection with this Licence; and
 - 43.2.2 all loss, cost, damage, liability or other detriment (whether direct or consequential) suffered or incurred by the Licensee or the Licensee's Members and Agents,

as a direct or indirect result of the Licensee's or the Licensee's Members and Agents occupation and use of the Licence Area, the Licensee's Improvements or any other area used by the Licensee or the Licensee's Members and Agents in connection with this Licence, except to the extent caused or contributed to by the negligence of the Licensor, the Manager or the Minister or their respective officers, employees or agents.

44. Indemnity

The Licensee indemnifies and agrees to keep indemnified the Licensor, the Manager and the Minister and their respective officers, employees and agents against all actions, claims, demands, losses, damages, costs and expenses (whether direct or consequential) suffered or incurred by the Licensor, the Manager or the Minister or their respective officers, employees and agents or for which the Licensor or the Manager or their respective officers, employees and agents is or may be or become liable concerning:

- 44.1 the default of the Licensee or the Licensee's Members and Agents under this Licence;
- 44.2 the Licensee's or the Licensee's Members and Agents use of the Licence Area, the Licensee's Improvements or any other area used by the Licensee or the Licensee's Members and Agents in connection with this Licence; or
- 44.3 loss, damage or injury to property or persons or death of any person caused or contributed to by the act, omission, default or negligence of the Licensee or the Licensee's Members and Agents,

except to the extent caused or contributed to by the negligence of the Licensor, the Manager or the Minister or their respective officers, employees or agents.

Part 23 - Performance Criteria

45. Performance Criteria and Business Plan

- 45.1 The Licensee acknowledges that the continuation of this Licence is subject to and conditional upon the Licensee complying with and meeting all of the Performance Criteria to the reasonable satisfaction of the Licensor and that the attainment of those objectives will be an ongoing obligation of the Licensee under this Licence.
- 45.2 Once determined, the Performance Criteria may be varied, but only with the agreement of both parties.
- 45.3 The Licensee must meet with the Licensor on a quarterly basis to review the performance of the Licensee and to agree on any action necessary to ensure that the Performance Criteria are met or to remedy any failure by the Licensee to meet any of them. The first such meeting must be held before the end of three months from the Commencement Date, and subsequent meetings at the end of each following three month period.
- 45.4 The Licensor may waive the Licensee's obligation in clause 45.3 in its sole unfettered discretion. Such waiver shall only extend to the next scheduled quarterly review unless otherwise specified by the Licensor.

46. Failure to meet Performance Criteria

If the Licensee fails on more than two occasions in the reasonable opinion of the Licensor to meet or attain any of the Performance Criteria (as amended from time to time), and that failure is, in the Licensor's reasonable opinion, not due to any circumstances which are directly caused or attributed to by any act or omission of the Licensor, then a Default Event under this Licence will be deemed to have occurred.

Part 24 - Guarantee and Indemnity

47. Guarantee and Indemnity

- 47.1 In consideration of the Licensor entering into this Licence with the Licensee at the Guarantor's request, the Guarantor:
- 47.1.1 guarantees that the Licensee will perform all its obligations under this Licence, any renewed licence, and during any period of overholding;
 - 47.1.2 must pay the Licensor on demand any money owing to the Licensor by the Licensee; and
 - 47.1.3 indemnifies the Licensor against all loss resulting from the Licensor having entered into this Licence, whether from the Licensee's breach of any provision of this Licence, or from this Licence being or becoming unenforceable against the Licensee.
- 47.2 The Guarantor's liability will not be affected by:
- 47.2.1 the Licensor granting the Licensee or any Guarantor any time or other indulgence;

- 47.2.2 the Licensor agreeing not to sue the Licensee or any Guarantor;
 - 47.2.3 any assignment (whether by the Licensor or the Licensee), sub-licence or variation of this Licence;
 - 47.2.4 any provision of this Licence being or being found to be unenforceable;
 - 47.2.5 the renewal of this Licence;
 - 47.2.6 this Licence not being signed by any one Guarantor; and
 - 47.2.7 a liquidator or a trustee in bankruptcy disclaiming this Licence.
- 47.3 The Guarantor agrees:
- 47.3.1 not to seek to recover any money from the Licensee by way of reimbursement for payments made by the Guarantor to the Licensor until the Licensor has been paid in full;
 - 47.3.2 not to prove in the bankruptcy or winding up of the Licensee for any amount which the Licensor has demanded from the Guarantor until the Licensor has been paid in full; and
 - 47.3.3 to pay the Licensor any money which the Licensor is required to refund to the Licensee's liquidator or trustee in bankruptcy as preferential payments received from the Licensee.

Part 25 - Costs

48. Legal and other costs

- 48.1 The Licensee must pay or reimburse the Licensor on request all reasonable costs incurred or payable by the Licensor in connection with:
- 48.1.1 the preparation, negotiation, approval and execution of this Licence (including legal costs incurred by the Licensor);
 - 48.1.2 any stamp duty payable in relation to this Licence or any assignment, sub-licence or renewal of this Licence;
 - 48.1.3 any consent, approval, variation, or surrender concerning this Licence including costs payable to a person appointed to evaluate or supervise any matter; and
 - 48.1.4 the contemplated or actual enforcement or preservation of any rights under this Licence;
- 48.2 Anything the Licensee is required to do under this Licence must be done at the Licensee's cost.

Part 26 - Notices

49. Notices

49.1 Any notice, approval or consent required to be served or given under this Licence:

49.1.1 may be given by a party or its Authorised Officer;

49.1.2 must be in writing; and

49.1.3 must be given:

(a) by post;

(b) by facsimile; or

(c) by delivery

to the party at the last known address of that party or to that party's address or facsimile as shown in item 14 of Schedule 1. In the case of the Licensee, the notice may also be given to the Licensee at the Licence Area.

49.2 A letter or facsimile is taken to be received:

49.2.1 in the case of a posted letter, on the third day after posting; and

49.2.2 in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

Part 27 – Minister's Consent

50. Minister's Consent

The Licensee confirms and acknowledges that:

50.1 the consent of the Minister to this Licence is required;

50.2 this Licence shall be conditional upon the consent of the Minister being obtained by the Licensor;

50.3 until the Minister's consent is obtained:

50.3.1 the Licensee is only entitled to access the Licence Area for the purpose of gathering information in relation to or setting up the Licence Area for the Licensee's Business and the Licensee is not entitled to occupy the Licence Area; and

50.3.2 the Licensor is under no obligation to grant this Licence to the Licensee; and

50.4 if the Minister's consent is not granted, the Licensor may at any time before the Minister's consent is granted, immediately terminate this Licence by notice to the Licensee. In that

event, all monies paid by the Licensee must be refunded, save for any Licence Fee paid by the Licensee for the period from the Commencement Date to the date of such termination.

Part 28 - Miscellaneous

51. Certificate

A certificate signed by the Licensor or its Authorised Officer about a matter concerning this Licence is sufficient evidence of the matter stated in the certificate unless the matter is proved to be false.

52. Licensors exercise of rights

- 52.1 The Licensor may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy.
- 52.2 A single or partial exercise of a right, power or remedy by the Licensor does not prevent a further exercise of that right or an exercise of any other right, power or remedy.
- 52.3 Failure by the Licensor to exercise or delay in exercising a right, power or remedy does not prevent the exercise of such right, power or remedy.

53. Waiver and variation

- 53.1 A provision of or a right created under this Licence may not be waived or varied except in writing signed by the party to be bound.
- 53.2 If the Licensor waives a provision of or a right created under or implied in this Licence, that waiver does not extend to:
- 53.2.1 a breach by the Licensee of the same or any other provision; or
 - 53.2.2 the future exercise by the Licensor of that right.
- 53.3 The acceptance of a payment under this Licence will not be taken to constitute a waiver of any provision of or a right created under or implied in this Licence, except the right to demand the payment of that amount of money.

54. Approvals and consent

Unless this Licence provides otherwise, any consent or approval to be given by the Licensor may be given by the Licensor conditionally or unconditionally or withheld at the Licensor's absolute discretion. If conditions are imposed by the Licensor, the Licensee must comply with each condition imposed by the Licensor as if it were a provision of this Licence.

55. Remedies cumulative

The rights, powers and remedies provided in this Licence are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Licence.

56. Indemnities

Each indemnity in this Licence is a continuing obligation, separate and independent from the other obligations of the Licensee and survives expiry or termination of this Licence.

57. Further assurances

If the Licensor requests, the Licensee must:

- 57.1 execute and cause its successors to execute documents and do everything else necessary or appropriate to bind the Licensee and its successors under this Licence; and
- 57.2 use its best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this Licence.

58. Payments

- 58.1 The Licensee must make payments under this Licence punctually without set-off or counterclaim and free and clear of any withholding or deduction.
- 58.2 Unless this Licence provides otherwise, the Licensor need not make demand for any amount payable by the Licensee under this Licence.

59. Antecedent breaches and obligations

The expiry or termination of this Licence does not affect:

- 59.1 the Licensor's rights in respect of a breach of this Licence by the Licensee before the expiry or termination; or
- 59.2 the Licensee's obligation to make any payment under this Licence before the expiry or termination.

60. Governing Law

This Licence is governed by the laws of the State of Victoria.

61. Entire Agreement

The Licensee acknowledges that:

- 61.1 no information, representation or warranty by or on behalf of the Licensor was supplied or made concerning this transaction, whether in relation to the Licensee's taxation liability or



any other matter, with the intention or knowledge that it would be relied upon by the Licensee;

- 61.2 no information, representation or warranty has been relied upon;
- 61.3 this Licence constitutes the entire agreement between the parties concerning the Licence Area and supersedes all previous negotiations and agreements concerning this transaction; and
- 61.4 no amendment, variation or other change to this Licence shall be permitted (whether by verbal or written representation) without the written consent of the duly authorised officer of the Licensor (as specified in the Licensor's delegation register from time to time).

62. Licensor's Property

The Licensor makes no representations or warranties:

- 62.1 as to the condition of the Licensor's Property, in particular, computer hardware and software; or
- 62.2 that the Licensor's Property, in particular, computer hardware and software, is suitable for the Licensee's Business or the Licensee's use of the Licence Area.

63. Privacy Legislation

- 63.1 The Licensee acknowledges that the Personal Information (if any) of the Licensee is:
 - 63.1.1 collected for the purposes of entering into and administering this Licence; and
 - 63.1.2 may be disclosed to the following:
 - (a) the Auditor-General if the Licensor is audited pursuant to any requirement of any Act of Parliament or regulation or authority;
 - (b) any local authority or other relevant authority in order to update their records as to occupation of the Licence Area;
 - (c) the Licensor's legal advisors, financial consultants or consultants in relation to reviewing the Licensee's performance under this Licence or providing advice in relation to this Licence;
 - (d) any third party as required by any Act of Parliament or regulation; and
 - (e) any other third party with the Licensee's consent.
- 63.2 The Licensor agrees that:
 - 63.2.1 the Personal Information will only be disclosed in the circumstances set out in clause 63.1.2;
 - 63.2.2 the Licensor will comply at all times with the *Information Privacy Act 2000* (Vic) in relation to Personal Information; and



- 63.2.3 the Licensor must take all reasonable measures to ensure that the Personal Information is protected against loss and unauthorised access, use, modification and disclosure.
- 63.3 The Licensee must:
 - 63.3.1 only use Personal Information (if any) obtained by or held by the Licensee in connection with this Licence for the Permitted Use;
 - 63.3.2 comply at all times with the *Information Privacy Act 2000 (Vic)* and all other legislation in force at any time throughout the Term, relating to the privacy of Personal Information; and
 - 63.3.3 take all reasonable measures to ensure that the Personal Information in the possession or control of the Licensee held in connection with the Permitted Use is protected against loss and unauthorised access, use, modification and disclosure.

64. Goods and Services Tax

- 64.1 The consideration payable by any party under this Licence is the GST exclusive amount of the Taxable Supply for which payment is to be made.
- 64.2 Subject to clause 64.4, if a party makes a Taxable Supply in connection with this Licence for a consideration, then the party liable to pay for the Taxable Supply must also pay, at the same time and in the same manner as the consideration is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.
- 64.3 Where this Licence requires a party (**first party**) to pay, reimburse or contribute to an amount paid or payable by the other party (**other party**) in respect of an acquisition from, or a transaction with a third party for which the other party is entitled to claim an Input Tax Credit, the amount for payment, reimbursement or contribution will be the GST exclusive value of the acquisition by the other party plus any GST payable in respect of the other party's recovery from the first party.
- 64.4 A party's right to payment under clause 64.2 is subject to a Tax Invoice being delivered to the party liable to pay for the Taxable Supply.

65. Native Title Act 1993 (Cth)

- 65.1 If the Licensee proposes to carry out an act which is a 'future act' within the meaning of the *Native Title Act 1993 (Cth)* (**NTA**) then the Licensee must immediately notify the Licensor and shall not carry out any such action until those persons as are required to be notified under the NTA of the intention to carry out the future act have been notified and any response considered.
- 65.2 If the Licensee fails to comply with clause 65.1, the Licensor shall not in any way be deemed to have authorised such failure to comply and the Licensee shall indemnify the Licensor against any claim made against or compensation sought from the Licensor as a result of the Licensee's failure to comply.
- 65.3 In the event that those persons as are required to be notified under the NTA of the intention to carry out the future act have been notified, or a native title claim is made in relation to the Park or the Licence Area or any part thereof the Licensor shall not be liable for the consequences of the notification or subsequent processes nor to pay the Licensee any

compensation if the Licensee's use of the Licence Area or any other right or interest of the Licensee under this Licence is affected or prejudiced as a result of that notification or claim.

66. *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*

- 66.1 The Licensee must comply with any declaration, and any conditions made in or pursuant to such declaration, under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* (**ATSIHPA**) in relation to the Park or the Licence Area or any part thereof.
- 66.2 In the event that a declaration is made under the ATSIHPA, the Licensor shall not be liable to pay the Licensee any compensation if the Licensee's use of the Licence Area or any other right or interest of the Licensee under this Licence is affected or prejudiced as a result of that declaration.
- 66.3 If the Licensee fails to comply with any requirement under the ATSIHPA in relation to the Licence Area or the Park, the Licensor shall not in any way be deemed to have authorised such failure to comply and the Licensee shall indemnify the Licensor against any action taken or claim made against the Licensor as a result of the Licensee's failure to comply.

67. *Aboriginal Heritage Act 2006 (Vic)*

- 67.1 If the Park or the Licence Area or any part thereof is an Aboriginal place within the meaning of the *Aboriginal Heritage Act 2006 (Vic)* (**AHA**) the Licensee must not enter that Aboriginal place until the Licensee has obtained the necessary permit pursuant to section 40 of the AHA and provided a copy of the permit to the Licensor.
- 67.2 If the Licensee proposes to carry out any act which requires a cultural heritage permit or a cultural heritage management plan (as those terms are defined in the AHA), the Licensee must, prior to carrying out such act, contact the Licensor and must obtain the necessary cultural heritage permit or approved cultural heritage management plan. The Licensee must not carry out any such act until the necessary cultural heritage permit or approved cultural heritage management plan has been obtained.
- 67.3 If the Licensee identifies or discovers an Aboriginal object, an Aboriginal place or Aboriginal human remains (as those terms are defined in the AHA), the Licensee must report the discovery to the Licensor and to such persons as are required under sections 17 and 24 of the AHA as soon as the identification or discovery is made.

68. *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

- 68.1 If the Licensee proposes to take an action, which is an 'action' within the meaning of Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBCA**), then the Licensee must immediately notify the Licensor in writing and must not carry out any such action until any necessary approvals are obtained by the Licensee under Part 9 of the EPBCA, at the Licensee's expense.
- 68.2 The Licensee must comply with any requirements under the EPBCA in respect of the Licensee's use of the Licence Area at the Licensee's expense.
- 68.3 If the Licensee fails to comply with clauses 68.1 and 68.2, the Licensor shall not in any way be deemed to have authorised or assisted such failure to comply regardless of any action taken by the Licensor and the Licensee shall indemnify the Licensor against any claim made against or compensation sought from the Licensor as a result of the Licensee's failure to comply.

- 68.4 In the event that the Licensee is unable to obtain approval for a proposed action within the meaning of the EPBCA or is in breach of the EPBCA, the Licensor shall not be liable to pay the Licensee any compensation if the Licensee's use of the Licence Area or any other right or interest of the Licensee under this Licence is affected or prejudiced as a consequence.

69. Environmental conditions

The Licensee covenants that, during the continuance of this Licence, the Licensee will:

- 69.1 not use or permit to be used or stored at the Licence Area or the Licensee's Improvements any radioactive, toxic or hazardous chemicals, wastes or substances, except in concentrations and quantities permitted by the relevant statutory authorities and in accordance with any licences, permits or authorisations required by law and in accordance with the conditions imposed by such authorities or under their permissions;
- 69.2 not permit any petroleum product, oil, grease, or any noxious, dangerous or poisonous chemical or substance to be discharged through the pipes of the water or sewerage service at the Licence Area or the Licensee's Improvements, or into any nearby stream or river or into or under the soil, and to discharge them only as permitted by the relevant statutory authorities, as required by law and in accordance with any conditions imposed by those authorities;
- 69.3 control and restrict the emission of smoke or odours at and from the Licence Area or the Licensee's Improvements in accordance with legislation, regulations and the requirements of statutory authorities;
- 69.4 not use plant or machinery in the Licence Area or the Licensee's Improvements so as to constitute a nuisance or disturbance to the Licensor or the Manager or to any other occupiers of adjacent land, due to noise, vibration, odours or otherwise;
- 69.5 comply with the demand notices and requirement of the regulatory authorities in respect of contamination of the Licence Area or the Licensee's Improvements caused by the Licensee or by the Licensee's Members and Agents, including notices to remediate the Licence Area or the Licensee's Improvements; and
- 69.6 notify the Licensor within 14 days after receiving any demand or notice from a regulatory authority in respect of contamination of the Licence Area or the Licensee's Improvements.

70. Compliance with Occupational Health and Safety requirements

- 70.1 The Licensee acknowledges that occupational health and safety of the Licence Area is the responsibility of the Licensee (other than to the extent the Licensor cannot at law contract out of its obligations with respect to occupational health and safety).
- 70.2 The Licensee must, in relation to the Licence Area and the Licensee's Improvements and any Works carried out in the Licence Area and the Licensee's Improvements:
- 70.2.1 comply with, all Occupational Health and Safety Laws and any applicable Australian Standards;
- 70.2.2 ensure that there is no risk to the environment or the health, safety and welfare of the Licensee and the Licensee's Members and Agents;
- 70.2.3 without limiting clauses 70.2.1 and 70.2.2, ensure that no person is exposed to a risk to his or her safety or health arising out of or in connection with the carrying out



- of the Licensee's use of the Licence Area or the Licensee's Improvements and any Works in, at, or about the Licence Area or the Licensee's Improvements;
- 70.2.4 ensure that a complete copy of the occupational health and safety plan referred to in clause 70.3 is available for inspection by every person to whom such plan is relevant; and
- 70.2.5 as soon as practicable notify the Licensor of any incident or dangerous occurrence at the Licence Area or the Licensee's Improvements which is notifiable to the Victorian WorkCover Authority pursuant to the provisions of any Occupational Health and Safety Laws, including without limitation, the *Occupational Health and Safety Act 2004 (Vic)* and the *Work Health and Safety Act 2011 (Cth)*.
- 70.3 Within one month after the Commencement Date, the Licensee must:
- 70.3.1 develop and implement an occupational health and safety plan and supply same to the Licensor upon request; and
- 70.3.2 in conjunction with the Licensor, develop and implement an emergency evacuation and management plan for the operation of the Licensee's Business.
- 70.4 The Licensee must ensure that at all times its occupational health and safety plan:
- 70.4.1 complies with Australian Standard AS/NZ 4804-2001 (or other similar substitute standard);
- 70.4.2 includes the Licensee's occupational health and safety policy;
- 70.4.3 identifies the obligations of the Licensee under the Occupational Health and Safety Laws;
- 70.4.4 describes the practices that will be employed to secure the health, safety and welfare of persons at work; and
- 70.4.5 identifies measures to eliminate risks to the health, safety and welfare of persons at work.
- 70.5 The Licensee acknowledges that referral of, and any subsequent approval by, the Licensor of the plans referred to in clause 70.3 does not amount to a warranty by the Licensor or the Manager of the suitability of the content of the plans and does not create any liability on behalf of the Licensor or the Manager or their respective officers, employees and agents for loss or damage incurred as a result of complying with those plans.
- 70.6 The Licensee acknowledges that it is bound to comply with the Licensor and the Manager's emergency plans for the Licence Area and the Park and that the Licensee's emergency evacuation and management plan and occupational health and safety plan cannot conflict with the Licensor's plan. The Licensee is required to comply with all directions of the Licensor in an emergency, even if such direction contradicts the Licensee's emergency evacuation and management plan.
- 70.7 To the extent permitted by the law, the Licensee indemnifies and agrees to keep indemnified the Licensor, the Manager and the Minister and their respective officers, employees and agents against all actions, claims, demands, losses, damages, costs and expenses which the Licensor, the Manager or the Minister or their respective officers, employees and agents may suffer or incur, arising out of or in connection with a breach by the Licensee or the Licensee's Members and Agents of any of the obligations under this clause 70.



Signing Page

Executed as an agreement.

Signed under delegation from the **Secretary to
The Department of Environment, Land,
Planning and Water** by the authorised officer of
Parks Victoria in the presence of:)
)
)
)
)

Signature of Witness

Signature of authorised officer

Name of Witness

Name of authorised officer

Date

Position of authorised officer

Signed for and on behalf of **Parks Victoria** by its
authorised officer in the presence of:)
)
)

Signature of Witness

Signature of authorised officer

Name of Witness

Name of authorised officer

Date

Position of authorised officer

Signed for and on behalf of **Manningham City
Council** by its authorised officer in the presence
of:)
)
)

Signature of Witness

Signature of authorised officer

Name of Witness

Name of authorised officer

Date

Position of authorised officer



Schedule 1

1	Licensee	Manningham City Council ABN 61 498 471 081
2	Guarantor	Not applicable
3	Date of order in council and purpose of reservation (Background A)	Temporarily reserved as a site for conservation, recreation, leisure and tourism purposes by an order in council dated 4 December 2001.
4	Commencement Date (Clause 1)	tba
5	Expiry Date (Clause 1)	Tba (3 years from the Commencement Date)
6	Park (Clause 1)	Yarra Valley Parklands
7	Permitted Use (Clause 1)	Installation and ongoing maintenance of a pressure main and stormwater drainage.
8	Licence Area (Clause 1)	That park of the Park shown crossed hatched and shaded grey on the attached plan at Annexure A.
9	Licence Fee (Clause 1)	\$1 per annum (if demanded)
10	Review Date (Clause 1)	Not applicable
11	Security deposit (Clause 10)	Not applicable
12	Licensee's Operators (Clause 1)	Not applicable
13	Works (Clause 1)	Initial Works as set out in the plans and specifications attached to this Licence. To be completed by: tba



14 Address and fax numbers of parties
(Clause 49)

Licensor's Authorised Officer

c/- Parks Victoria, Manager Leases and Licences

Licensor's address

Level 10, 535 Bourke Street, Melbourne Vic 3000

Licensor's telephone number

13 1963

Licensor's fax number

(03) 9678 9552

Licensee's Authorised Officer

c/- Manningham City Council, Director of
Engineering and Assets

Licensee's address

699 Doncaster Road, Doncaster Vic 3108

Licensee's telephone number

(03) 9840 9333

Licensee's fax number

(03) 9848 3110

Manager's Authorised Officer

c/- Parks Victoria, Manager Leases and Licences

Manager's address

Level 10, 535 Bourke Street, Melbourne Vic 3000

Manager's telephone number

13 1963

Manager's facsimile number

(03) 9678 9552

15 Special conditions
(Clause 2.5)

The following special conditions will also bind the parties:

See Schedule 2

Schedule 2

Special Conditions

1. The following clauses are deleted from this Licence:
 - 1.1 Clause 8 – Outgoings and Services;
 - 1.2 Clause 13 – Change in Shareholding/Trust;
 - 1.3 Clause 18 – Operation of Business;
 - 1.4 Clause 19 – Liquor and other Licences;
 - 1.5 Clause 20 – Café, Food Kiosk, Restaurant;
 - 1.6 Clause 21 – Business Name;
 - 1.7 Clauses 22.1, 22.3, 22.6, 22.9 and 22.11 – Maintenance of Licence Area, the Licensee's Improvements and Licensor's Property;
 - 1.8 Clause 23 – Essential Safety Measures and Cooling Towers;
 - 1.9 Clause 24.1 and 24.2 – Cleaning of Licence Area;
 - 1.10 Clause 25 – Annual Report;
 - 1.11 Clause 30.1, 30.2 and 30.3 – Other Covenants;
 - 1.12 Clauses 37.1.3 to 37.1.7 – Default Event;
 - 1.13 Clause 45 – Performance Criteria and Business Plan;
 - 1.14 Clause 46 – Failure to meet Performance Criteria
 - 1.15 Clauses 70.2.4, 70.3 and 70.5 – Compliance with Occupational Health and Safety Requirements.
2. Clause 27.1.1 is amended by deleting the words '\$10 million (or any greater amount required by the Licensor)' and replacing them with '\$20 million'.
3. The following conditions must be adhered to in relation to undertaking works within the Park;
 - 3.1 Prior to commencing the Works, the Licensee and the Licensee's Members and Agents must participate in an Occupational Health and Safety induction held by the Manager.
 - 3.2 The Works may only be carried out between 7.30am and 6pm Monday to Friday unless prior arrangement has been made with the Manager.
 - 3.3 No dogs or other animals belonging to or in the care of Licensee are permitted at the Licence Area.
 - 3.4 The discharging of firearms, hunting, disturbing, capturing or dislodging of native animals or birds within the park is prohibited.
 - 3.5 The Licensee must not light fires within the Park



- 3.6 The Licensee must not refuel or carry out general maintenance of vehicles within the Park.
- 3.7 The Licensee must ensure that vehicles keep to the defined tracks or roadways wherever practical when entering and exiting the work site. All vehicles must keep within the Park speed limits and give way to pedestrians and cyclists at all times.
- 3.8 The Works must be confined within the defined work site.
- 3.9 Any equipment and/or materials that remain on-site after hours of work are the sole responsibility of the Licensee.
- 3.10 The Licensee must ensure that all refuse including food scraps, litter and surplus materials arising from the Works is securely contained to avoid dispersal into other areas of the Park and shall be removed from the Park on a weekly basis.
- 3.11 The Licensee must ensure the Works minimise inconvenience to all users of the Park as far as practicable. The Manager may direct the Works to cease at any time to protect the public, park staff or park assets (natural or built).
- 3.12 The Licensee must ensure that on-site personnel have access to a telephone and are able to be contacted at all times.
- 3.13 The Licensee must prevent loss or damage to park infrastructure and assets within the work site. Should protected vegetation or any park infrastructure be lost or damaged, the Licensee is responsible for replacement, repair, or compensation, to the satisfaction of Parks Victoria. The Licensee shall report any damage to park assets or property to Parks Victoria without delay. Any repair/restoration works required shall be undertaken within a timeframe set by the Manager.
- 3.14 On days of total fire ban no works are to be undertaken unless prior written approval is received from the Manager.
- 3.15 If road closure is necessary to ensure public safety at the works site, the Licensee must erect adequate notification signage prior to carrying out the Works.

Schedule 3

Works

1. Licensor's Consent

The Licensee may not carry on or continue any Works or make any application to any relevant authority for consent to carry out the Works without the Licensor's prior written consent.

2. Licensor's Consultants

2.1 The Licensor shall be entitled to employ external consultants if the Licensor deems it necessary for the purpose of:

2.1.1 considering the proposed Works under this Schedule (even if the Licensor refuses to consent to the Works);

2.1.2 supervising the Works; and

2.1.3 if necessary, effecting, rectifying and completing the Works including all alterations or additions to any buildings on the Licence Area, the Services and the Licensor's Property.

2.2 The Licensee must cooperate with and allow the Licensor's consultants access to the Licence Area for the purposes set out in this clause.

3. Documents and other requirements of Licensor

Before granting the Licensee consent to carry out or continue with any Works, the Licensor shall be entitled to require the Licensee to:

3.1 deliver three copies of all drawings and specifications and a program of Works to the Licensor;

3.2 make all variations to the drawings, specifications and program of Works reasonably required by the Licensor and deliver further copies to the Licensor;

3.3 deliver a detailed quote for the cost of completing the Works (including the cost of all materials to be used) certified by a qualified consultant to be a bona fide estimate of the cost of completing the Works;

3.4 obtain all approvals and permits necessary for the Works;

3.5 deliver one copy of all approvals and permits required for the Works to the Licensor; and

3.6 give the Licensor the name of:

3.6.1 each contractor and tradesman the Licensee intends to employ to carry out the Works; and

3.6.2 the person who will supervise the Works,

and obtain the Licensor's approval to such contractor, tradesman or supervisor; and

- 3.7 reimburse the Licensor the cost of effecting and maintaining the appropriate insurances in respect of the Works unless the Licensor agrees for the Licensee to effect and maintain such insurance.

4. Licensee's Obligations

The Licensee acknowledges that it may not commence any Works until the Licensor has consented to the Works and if the Licensor has so consented the Licensee must:

- 4.1 carry out and complete all Works within the Licence Area promptly and in a proper and workmanlike manner:
- 4.1.1 in accordance with the drawings, specifications and program of Works approved by the Licensor;
 - 4.1.2 in compliance with any conditions imposed by the Licensor;
 - 4.1.3 using the contractors or tradesmen approved by the Licensor; and
 - 4.1.4 in compliance with all Laws and all requirements of authorities;
- 4.2 obey and cause its contractors and tradesmen to obey the Licensor's reasonable directions concerning the Works;
- 4.3 if the Works affect the air-conditioning, balance the air-conditioning to the correct air quantity and restore it to proper working order;
- 4.4 immediately give the Licensor a copy of any notice received from any party in relation to the Works;
- 4.5 not interfere and ensure that the Licensee's contractors and tradesmen do not interfere with other occupiers or users of the Park or areas adjacent to the Licence Area;
- 4.6 in the event the Park or the Licence Area or any part thereof is declared as a cultural heritage place for the purposes of the *Aboriginal Heritage Act 2006 (Vic) (AHA)*, or the Licensee requires a cultural heritage permit under Division 4 of Part 3 of the AHA to excavate such land, prior to commencing any excavation, obtain and provide the Licensor with a copy of the necessary cultural heritage permit;
- 4.7 if the Licensee undertakes Works which are not exempt from the requirement for the Licensee to obtain an approved cultural heritage management plan (as provided for in the *Aboriginal Heritage Regulations 2006 (Vic) (AHR)*), the Licensee must obtain that approved cultural heritage management plan in accordance with the AHA and AHR; and
- 4.8 if during any Works the Licensee discovers Aboriginal cultural heritage within the meaning of the AHA, the Licensee must report the discovery to the Licensor and any other person required by section 17 and 24 of the AHA immediately or otherwise comply with any approved cultural heritage management plan obtained for the Works.

5. Completion of Works

On completion of the Works, the Licensee must promptly:

- 5.1 remove from the Licence Area and the Park all unused building materials, equipment and debris as directed by the Licensor;
- 5.2 if required, obtain an occupancy permit or certificate of compliance from the relevant authority for the Works and deliver a copy to the Licensor; and



5.3 in the case of alterations or additions, deliver to the Licensor a complete set of drawings and specifications showing the alterations or additions as built.

6. Costs

The Licensee must promptly pay when requested all reasonable costs incurred by:

6.1 the Licensee associated with carrying out and completing the Works; and

6.2 the Licensor in employing external consultants pursuant to clause 2 of this Schedule.

7. Licensee's Property

Subject to any provisions to the contrary in clauses 17.3 and 17.4 all improvements including fixtures and fittings, constructed by the Licensee at the Licensee's cost by virtue of the Works shall during the course of this Licence remain the property of the Licensee.



Schedule 4

Performance Criteria

Not applicable



Schedule 5

Cafe, Food Kiosk or Restaurant Provisions

Not applicable



Annexure A

Plan



MINISTER'S CONSENT

Under section 17B(1) of the *Crown Land (Reserves) Act 1978 (Vic)*

I,

(full name)

as delegate of the Minister for Environment, Climate Change and Water hereby:

- consent to the grant of this Licence;
- approve the covenants, exceptions, reservations and conditions contained herein; and
- am satisfied that the purpose for which this Licence is being granted is not detrimental to the purpose for which the land is reserved.

(Title)