

**AGENDA OF SPECIAL MEETING OF YARRIAMBIACK SHIRE COUNCIL TO BE HELD
ON WEDNESDAY 12 DECEMBER 2018 AT THE MUNICIPAL OFFICE 34 LYLE STREET
WARRACKNABEAL AT 9:30AM**

1 WELCOME

2 ACKNOWLEDGEMENT

Acknowledging Traditional Owners

'I would like to acknowledge that this meeting is being held on the traditional lands of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk people, and I pay respects to their Elders, both past, present and emerging'

3 PRAYER

Almighty God, without whom no Council can stand nor anything prosper we ask that you be present and guide us in our deliberations today. We pray that we will be fair in our judgements and wise in our actions and that decisions will be made with goodwill and a clear conscience for the betterment and welfare of the people of Yarriambiack Shire.

Amen

4 PRESENT

Crs G Massey, C Heintze, J Wise, K Zanker, T Hamilton, S Roberts, Jessie Holmes (Chief Executive Officer), James Magee (Director Infrastructure & Planning) & Belinda Penny (Executive Assistant and Customer Service / Administration Officer)

5 APOLOGIES

Cr. H Ballentine

6 CONFIRMATION OF MINUTES

Ordinary Meeting of Council and Statutory Meeting held 28 November 2018.

7 DECLARATION OF CONFLICT OF INTEREST

8 BUSINESS ARISING

8.1 Action List from last meeting

8.2 Ongoing and Pending Action List

9 PETITIONS

9.1 Petition received to TP30-17 Planning Permit Application

Discussion

A Petition in relation to planning permit application TP30-17 was received by Council on the 8th February 2018. The petition contains eighty signatures and is for the purpose of strong objections to the planning permit for eight dwellings on a Lot on the grounds of; inadequate infrastructure, density and amenity concerns, traffic management and surrounding property values.

The planning permit application will be brought to Council for a decision at the January Ordinary Council meeting for a Notice of Decision and the concerns that relate to planning decision guidelines will be addressed in that report. Some concerns are outside the scope of planning decision guidelines.

The petition has no clear lead representative so in the absence of one being identified it is usually the first signatory who is taken as the lead. The lead petitioner will be contacted and they will have the ability to speak to the petition at the January Ordinary Council meeting.

Community considerations

A petition is permitted to be received by Council and deemed appropriate to table. In this case the petition is submitted in good faith and raises a number of concerns about planning permit application T30-17 at 19 Carroll Street, Minyip.

Acknowledgement of receipt of the petition and it being tabled at the December 2018 Ordinary Council meeting will be sent to the lead petitioner.

Environmental considerations

The matters raised in the petition in relation to Planning Permit Application TP30-17 are addressed by the decision guidelines of the Yarriambiack Planning Scheme.

Financial and risk considerations

The current Meeting Local Law 6 does not prescribe how a Petition should be received by Council however good practice would be to lay the information on the table at the most convenient meeting and deal with it at the next available meeting with a view to advising the lead petitioners that they have the opportunity to speak.

Recommendation

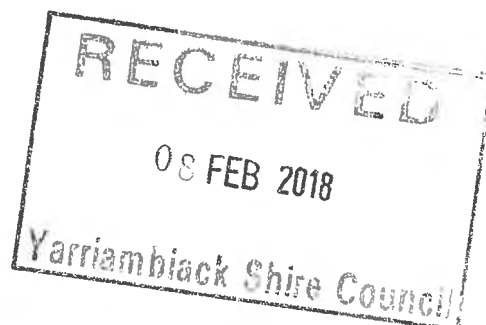
That the petition be tabled.

PETITION – APPLICATION FOR PLANNING PERMIT OBJECTION

We, the undersigned, local residents of the Township of Minyip, strongly object to planning application permit; Reference no: TP 30-17. Address: 19 Carroll Street Minyip Vic 3392. Crown Description; Allotment 6 Section 21 Township of Minyip on the grounds of:

1. Not enough adequate infrastructure.
2. Concerns over Town Cramming.
3. Concern over the loss of a quiet Rural Town.
4. Fear the town will lose the look of its original era.
5. Concern over safety and ease of parking and traffic flow.
6. If the development for eight (8) units went ahead, it would result in significant increases in the levels of litter, noise and nuisance to local residents, and increased parking difficulties and traffic problems in the local area.
7. The proposed development does not integrate with the neighbourhood character. Important characteristics include roof form, building height, building materials, landscape and fencing.
8. The proposal does not accord with a planning or legal requirement e.g. a single dwelling covenant.
9. Concern on the effect on property value for ALL existing houses.
10. The proposed development for eight (8) units, potentially allowing a further twenty-four (24) residents on one block would put pressure on an already limited access to medical/Doctor facilities, effecting all existing residents of Minyip.

We, the undersigned, local residents of the Township of Minyip. Demand the planning and zoning of the 8 unit dwelling on the above address to be objected to.



PETITION – APPLICATION FOR PLANNING PERMIT OBJECTION

Page four (Continued).

No	Name	Address
61.	Sarah Thompson	129 Main St Minyip.
62.	Chris Clark	138 Main St Minyip
63.	MICHELLE MAY	120 MAIN ST MINYIP
64.	BERNARDETTE	116 MAIN ST MINYIP
65.	SOUTHWELL	
66.	Cassandra Hackett	114 Main Street MINYIP
67.	Eric Beach	110 MAIN ST MINYIP
68.	SHARON HENWOOD	57 FOUNDRY ST MINYIP
69.	43 Neave	58 Foundry st Minyip
70.	Glenn CROSS	" " " "
71.	CAROL SAYERS	61 FOUNDRY ST MINYIP
72.	WA SAYERS	61 Foundry St Minyip
73.	L & G LIERSCH	65 Foundry ST Minyip
74.	Drew Cunniff	26 Market St minyip
75.	NEIL CROFT	24 MARKET SE MINYIP
76.	W Parrell	21 MARKET
77.	Hindia Stand	10 Market St. Minyip
78.	R. McCarty	7 MARKET ST Minyip
79.	R. SADLER	3 Petering St Minyip
80.	Peter Gilmore	3 PETERING ST MINYIP

PETITION – APPLICATION FOR PLANNING PERMIT OBJECTION

Page four (Continued).

No	Name	Address
41.	Mary Centwell	33 Wimmera St Minyip
42.	Jayden Johnson	50 foundry st minyip
43.	Jessica B.	" " "
44.	Homer Pieth	48 Foundry St Minyip
45.	Dana Smith	21 Wimmera Street
46.	Margaret Murphy	42 Church St Minyip
47.	Thomas Murphy	42 Church St Minyip
48.	Tammy Johnson	9 South St Minyip
49.	Kelly Belkno	7 South St Minyip
50.	Russ Connolly	5 South St Minyip
51.	MARTIN GARDNER	1 South St Minyip
52.	Denise Webster	1 South St Minyip
53.	Helen BARRY	23 Mill St Minyip
54.	Vanessa Murphy	26 Mill St Minyip
55.	Alex DAVV	28 Mill St Minyip
56.	Elizabeth Barry	1 Wimmera St Minyip
57.	Kris Chenoweth	26 Market St Minyip
58.	C.P. Brett	111 Main St Minyip
59.	em Duncan	115 MAIN ST
60.	Joanne Thompson	129 Main St ^{Minyip}

PETITION – APPLICATION FOR PLANNING PERMIT OBJECTION

Page three (Continued).

No	Name	Address
21.	Rae Hoiker	11 Mill Street Minyip
22.	Heath Tullhat	31 PETERINE MINYIP
23.	DAVIN TURNER	13 CARROLL ST MINYIP
24.	FLO MARSFIELD	57 CHURCH ST MINYIP
25.	RAY PARKER	59 CHURCH ST. MINYIP
26.	DOUG PARKER	61 CHURCH ST MINYIP
27.	Eric Buckley	69 Church St
28.	MARIO MUSCAT	70 CHURCH ST
29.	JUDITH MURPHY	50 MAIN ST MINYIP
30.	CLAY PREW	2 MARKET ST MINYIP
31.	FRED ALLEN	2 Market st minyip
32.	Alan Turner	3 church St minyip
33.	Gary Arch	11 Carroll St Minyip
34.	D. Webb	38 FOUNDRY ST
35.	C Halstead	30 South St Minyip
36.	Di Cooper	32 South St Minyip
37.	Pat	34 South Minyip
38.	Pat Scher	41 11
39.	D Walsh	2 McLeod St Minyip
40.	A Krelle	4 McLeod St Minyip

PETITION – APPLICATION FOR PLANNING PERMIT OBJECTION

Page two (Continued).

No	Name	Address
1.	Melissa Northey	13. Carroll St Minyip Vic.
2.	Peter Northey	13. Carroll St Minyip Vic.
3.	Janie Midgley	16 Carroll St Minyip
4.	Allen Morst	23 South St Minyip
5.	ERIC MIDGLEY	16 CARROLL ST MINYIP
6.	Cindy March	23 South St. Minyip
7.	Connor Marsh	23 South St. Minyip
8.	Debbie Inglis	36 Foundry St, Minyip
9.	Hedrickius	" "
10.	Glenda Charles	34 Foundry St Minyip
11.	Tom Dunsford	26 South St Minyip
12.	ANN QUARILL	" "
13.	M. KEBBER	24 Foundry St
14.	N Yates	27 South St
15.	P. WYANDYK	19 SOUTH ST
16.	F Zeman	11 Carroll St.
17.	A ZEMAN	11 CARROLL ST
18.	D. Carter	3 CARROLL ST
19.	Deanna	do
20.	D WILL	11 CARROLL ST

4 of 4.

10 REPORTS FOR DECISION

- 10.1 2018 - 2019 Reseal Program
- 10.2 2018 Asset Management Policy
- 10.3 MoU with SES for Dunmunkle Unit at 2 Woods St, Rupanyup

10.1 2018-2019 Reseal Program - Prepared by Mick Evans

Discussion

Adoption of the 2018-2019 Reseal Program:-

Community considerations

Various factors:-

- Road Hierarchy used to determine necessity to maintain road network;
- Community requests;
- Access to rural properties
- School Bus Routes
- Traffic Data
- Road Condition Inspections

Environmental considerations

Nil

Financial and risk considerations

- Limited funding available
- The capital works program and road maintenance is the largest cost in Council's annual budget
- The need to ensure funds are allocated to the highest priority project based on the Community considerations as stated.

Recommendation

Council adopt the proposed Reseal Program as presented.

10.2 2018 Asset Management Policy - Prepared by Mick Evans

Discussion

Council's Asset Management Policy has been reviewed with the assistance of CT Management and the updated policy was endorsed by the Services, Projects and Asset Management Working Group (SPAMWG). The policy enables Council to address some of the core requirements that were highlighted in the National Asset Management Assessment Framework (NAMAF).

The development of a new Asset Management Strategy and Action Plan is 80% complete and will be presented to Council once finished and endorsed by the Services, Projects and Asset Management Working Group.

The policy provides clear direction as custodians of community assets by outlining that:

- Council has up to date Asset Management Plans and Strategies in accordance with Council's adopted levels of service
- That there is a clear link between the Council Plan, Long Term financial Plan and the Asset Management Plans
- Ensures future sustainability of assets
- Define roles and responsibility of Council and its Staff in the management of assets in the form of a framework and;
- Ensures Council compliance with legislation and regulatory requirements

Community considerations

The policy documents that Council;

- Will have knowledge of what assets the community has and where they are
- Ensures the assets are appropriate for the needs of the community whilst being effectively and sustainably utilised and maintained at agreed levels of service and;
- Implements community consultation to ensure that current and future community needs are addressed

Environmental considerations

Nil

Financial and risk considerations

An Internal audit conducted by AFS & Associates highlighted that because the policy was still in draft and not been adopted, it had been classified as a risk. AFS Associates also stated that for the policy to be an effective component of the asset management framework the document needed to be finalised prior to the review of the Asset Management Strategy.

The finished policy provides clear direction and defines the key principles to underpin Council's asset management including all financial aspects.

Recommendation

That Council adopt the proposed Asset Management Policy as presented.



ASSET MANAGEMENT POLICY

Adopted by Council

December 2018

1. VISION	2
The Importance of Asset Management	2
2. PURPOSE.....	2
3. SCOPE	2
4. POLICY STATEMENT	3
5. KEY PRINCIPLES.....	3
6. ASSET MANAGEMENT ROLES AND RESPONSIBILITIES	4
a) COUNCIL	4
b) CHIEF EXECUTIVE OFFICER.....	4
c) SERVICES, PROJECTS, ASSETS MANAGEMENT WORKING GROUP (SPAMWG).....	5
d) COUNCIL STAFF	5
7. ASSET DEFINITIONS.....	5
8. POLICY REVIEW	6

1. VISION

To provide services and to maintain and protect community assets for future generations.

THE IMPORTANCE OF ASSET MANAGEMENT

The main benefits derived from asset management planning are:-

- Improved understanding of service level options and standards;
- Minimum life cycle (long term) costs are identified for an agreed level of service;
- Better understanding and forecasting of asset related management options and costs;
- Managed risk of asset failure;
- Improved decision making based on costs and benefits of alternatives;
- Clear justification of forward works programmes and funding requirements;
- Improved accountability over the use of public resources; and
- Improved customer satisfaction and Council image.

2. PURPOSE

To provide a clear direction for the Yarriambiack Shire, as the custodians of community assets, taking into consideration the following elements:-

- Understanding the services Council delivers and therefore the need for assets to support those services
- A complete knowledge of what assets the community has and where they are
- How to deal with the risk management of these assets
- Engendering community ownership of all assets as they live with and use them
- Set targets for the management of these assets
- Ensure future sustainability of these assets
- Define roles and responsibility of Council and its Staff in the management of these assets in the form of a framework
- Ensure Council compliance with legislation and regulatory requirements.

3. SCOPE

This policy applies to all Council Infrastructure assets including:

- Roads, bridges and rural drainage culverts
- Council owned or controlled buildings
- Stormwater systems including kerb and channel
- Parks and Recreation facilities
- Plant and equipment

- Pathways

4. POLICY STATEMENT

Council will provide and manage its assets to ensure they are appropriate for the needs of the community whilst being effectively and sustainably utilised and maintained at agreed levels of service. Council will continually improve the management of its assets through an Asset Management Strategy and supporting Asset Management Plans. This will be achieved by engaging up-to-date technologies, methodologies and through consultation with the community to ensure that current and future community needs are addressed.

Decisions regarding allocation of resources will have regard to sustainable maintenance of assets and the ongoing provision of services provided by the assets.

5. KEY PRINCIPLES

- Service delivery drives Asset Management practices and decisions
- Asset Planning and management has a direct link with Councils corporate and business plans, budgets and reporting process.
- The Long Term Financial Plan (10yrs) shall reference the Asset Renewal Gap.
- Application of 'Renewal before Upgrade or New' philosophy for assets as appropriate.
- In principle, asset depreciation is to be used to fund renewal and/or rehabilitation of assets.
- Asset Management decisions shall be based on service delivery needs and the benefits and risks of assets, with an evaluation of alternative options that take into account lifecycle costs.
- Use of a Capital works priority evaluation process for new projects. A business case will be prepared as part of the initial formulation of capital works proposals over a nominated threshold as outlined in the Capital Works Evaluation Framework.
- New or upgrade Projects funded by grants are to include full lifecycle (whole of life costs) as part of project evaluation.
- Asset Management plans are to be developed for all assets, and they will be informed by community needs, and integrated with local government financial reporting frameworks.
- Financial and Asset Management reporting is to be categorised in terms of operational, maintenance, renewal, upgrade and new expenditure classification to enable sound Asset Management decisions.
- Staff with asset and financial responsibilities will be appropriately briefed in relevant asset and financial management principles, practices and processes.

- After creation, the condition of assets will be managed by application of an appropriate lifecycle activity i.e. operations, maintenance, renewal/upgrade and disposal.
- Public assets and resources are managed in a way that supports and balances sustainable economic, social and environmental objectives and adheres to the principles of intergenerational equity.
- Council's Long Term Financial Plan (LTFP) and annual budgets will take into account Asset Management Plans
- As custodians/caretakers of community assets and as part of providing quality infrastructure and community facilities, Council will undertake to conform to industry standards and reporting frameworks as well as develop affordable and financially sustainable Asset Management Plans (in consultation with the community), to meet the service needs of the community
- Monitor and report on Council Asset Management expenditure in terms of operational, maintenance, renewal, expansion, upgrade and new costs
- Get community interest and involvement in the decision making process
- Ensure a clear understanding for all parties of the responsibilities and arrangements for usage and maintenance standards for all assets (Service Agreements)

6. ASSET MANAGEMENT ROLES AND RESPONSIBILITIES

a) COUNCIL

- Provide sustainable assets for the community by recognising and considering the full cost of Council acquiring, maintaining and operating assets throughout their lifecycle.
- Provide assets that deliver sustainable services to benefit the community to a level of service that justifies the costs of owning and operating these assets.
- Act as custodian for assets on behalf of the community.
- Make decisions regarding assets that are made in accordance with Council's Corporate and Community Strategic Directions, Asset Management Policy and Asset Management Strategy.
- Review and approve the Asset Management Policy.
- Review and approve the Asset Management Strategy.
- Review and approve Asset Management Plans.
-

b) CHIEF EXECUTIVE OFFICER

- Reflect the corporate and community strategic planning principles embraced by Council in the Asset Management Policy, Strategy and Plans.
- Seek to ensure Council allocates sufficient resources to the development, ongoing improvement and delivery of the Asset Management Strategy, Asset Management Plans and supporting systems.
- Integrate and comply with the Asset Management Policy and Strategy in other policies and business processes of Council.

- Ensuring that Asset Management skills and training needs are identified as part of the staff performance appraisal process
- To promote and inform asset management awareness to the Councillors

c) SERVICES, PROJECTS, ASSETS MANAGEMENT WORKING GROUP (SPAMWG)

- Consider legal obligations and risk management
- Advocate for appropriate funding and resources for the Asset Management process
- Monitor agreed service levels
- Provide “linkage” between SPAMWG and Community
- Provide “linkage” between SPAMWG and Corporate Plan
- Regular reporting to Council and the CEO on Asset Management
- Develop, review and audit Asset Management Policy, Strategy and Plans in accordance with Council’s adopted levels of service
- Review and approve maintenance, renewal and new capital works plans
- Develop and implement procedures that ensure the asset database is maintained and updated
- Promote Asset Management and its benefits and goals to the Council, staff, and community
- Identify Asset Management skills required across the organisation
- Monitor and report compliance with this policy.

d) COUNCIL STAFF

- Develop and maintain Council’s Asset Management Strategy.
- Develop and maintain Asset Management Plans for agreed asset/service groupings.
- Deliver asset maintenance, renewal, upgrade and disposal programs in accordance with Asset Management Plans and agreed levels of service.
- Periodically review the Asset Management Policy, Strategy and Asset Management Plans.
- Engage up-to-date technologies, methodologies and continuous improvement processes in the management of Council’s assets.

7. ASSET DEFINITIONS

Asset	An item that has potential value to an organisation, such as buildings, roads, paths, etc
Asset Management	The systematic and coordinated activities and practices of an organisation to optimally and sustainably deliver on its objectives through the cost-effective lifecycle management of assets.

Asset Management Plan Long-term plans that detail the funding requirements for each asset class, with regard to the adopted risk management profile and service levels.

8. POLICY REVIEW

The Assets Engineer and Corporate Services Manager, along with the Services, Projects, Assets, Management Working Group (SPAMWG) will review this policy every three years; if changes are required, the revised policy will be presented to Council for adoption.

Date of Review	August 2018
Policy Prepared by	Assets Engineer – Michael Evans
Council Adoption Date	12th December 2018
Next Review Date	August 2021
CEO Signature	

10.3 MoU with SES for Dunmunkle Unit at 2 Woods Street, Rupanyup – prepared by Jessie Holmes

Discussion

Council passed a motion at their 27 September 2017 Ordinary meeting to enter in to a lease with Vic SES in relation to the land at 2 Woods St, Rupanyup with specific terms in relation to term and charges and work on the terms of that lease were progressing when it was advised that work was being undertaken at a state level to develop a standard lease between Councils and VicSES.

Council staff and the Mayor met with John Casey the Director of Corporate Services of the SES on the 31st October 2018 about the MoU that has been created by the Victoria Solicitor General's Office for the support of VICSES Units and the subsequent standard template prepared for entering in to a lease.

The concept is to give security to the units by providing long term tenure over the sites so that infrastructure and assets can be invested.

The Council has also received legal advice exempting the lease from public advertising subject to using the recommended and provided lease template.

Council wrote to the Dunmunkle unit immediately following the meeting to seek their views on a preference for a long term lease or gifting the land to the SES and received no feedback as they passed the letter through to the region. Following further discussions it is recommended that Council enter in to a twenty year lease as attached.

Community considerations

The MoU is about providing security to the State Emergency Services for asset provision to provide the crucial volunteer service to our community.

Council has received legal advice in relation to the exemption from public advertising.

Environmental considerations

Nil

Financial and risk considerations

The MoU was created by the Victoria Solicitor Generals office with the MAV acting on behalf of Councils and is a standard template for all local government areas. Legal advice has also been prepared in relation to exempting the lease from requiring public advertising.

The property is currently on a peppercorn lease arrangement and this would continue.

Recommendation

That Council enter into an MoU with SES in relation to Dunmunkle Unit at 2 Woods Street, Rupanyup.



Victorian Government
Solicitor's Office

Memorandum of Understanding for the support of VICSES Units

between

**The State of Victoria, as represented by the Minister for
Emergency Services**

and

Municipal Association of Victoria

and

Victoria State Emergency Service Authority

Level 25, 121 Exhibition Street, Melbourne Vic 3000
Level 33, 80 Collins Street, Melbourne Vic 3000
DX 300077 Melbourne

Tel +61 3 8684 0444 Fax +61 3 8684 0449
Tel +61 3 9947 1444 Fax +61 3 9947 1499
www.vgso.vic.gov.au
Ref: 1628635

Table of Contents

1.	Definitions and Interpretation	2
1.1	Definitions	2
1.2	Interpretation	3
2.	Term	3
3.	Purpose of this MOU.....	3
4.	Roles and Responsibilities.....	3
4.1	State.....	3
4.2	MAV	4
4.3	VICSES	6
5.	Leases.....	6
5.1	Schedule 1 properties	6
5.2	Schedule 2 properties	6
6.	Co-operation and consultation	7
7.	Oversight	7
7.1	Representatives	7
7.2	Establishment of the Oversight Committee	7
7.3	Role of the Oversight Committee	8
7.4	Procedures for the Oversight Committee	8
8.	Confidentiality and Privacy	8
8.1	Confidentiality.....	8
8.2	Privacy	8
9.	Notices	9
9.1	Giving a communication	9
9.2	Time of delivery	9
9.3	After hours communications	9
10.	Review.....	10

11.	Dispute Resolution	10
11.1	Dispute Notice	10
11.2	Good Faith Discussions	10
11.3	Resolution by head of each party	10
11.4	Performance of Obligations	10
12.	Termination.....	10
13.	General.....	10
13.1	Variation	10
13.2	Counterparts.....	11
13.3	Costs.....	11
13.4	Time to Act	11
13.5	Compliance with Laws.....	11
Schedule 1	Properties.....	13
Schedule 2	Properties.....	18
Attachment 1	Form of Lease for Freehold Properties	19

Date **2017**

The State of Victoria, as represented by the Minister for Emergency Services

of Level 26, 121 Exhibition Street, Melbourne, Victoria 3000

(State)

and

Municipal Association of Victoria, a body corporate established under section 2 of the *Municipal Association Act 1907 (Vic)* (ABN 24 326 561 315)

of Level 12, 60 Collins Street, Melbourne, Victoria 3000

(MAV)

and

Victoria State Emergency Service Authority, a body corporate established under section 4 of the *Victoria State Emergency Service Act 2005 (Vic)* (ABN 61 279 597 238)

of 168 Sturt Street, Southbank, Victoria 3006

(VICSES)

Background

- A. VICSES is a volunteer-based organisation, providing emergency assistance to the Victorian community. It is established under section 4 of the *Victoria State Emergency Service Act 2005 (Vic)*.
- B. MAV is the peak body for local government in Victoria. It is established under section 2 of the *Municipal Association Act 1907 (Vic)*.
- C. VICSES operates units in many Victorian municipalities (**VICSES Units**), in order to provide emergency assistance to those municipalities.
- D. Pursuant to a letter from the Minister for Police and Emergency Services to the Chief Executive of MAV, dated 14 December 1989, the State and MAV agreed that the State would fund 50% of the operational costs of VICSES Units, and relevant Municipal Councils would fund 50% of the operational cost of the VICSES Units located in their municipality (**1989 Letter**). The arrangements in the 1989 Letter have subsequently been varied such that differing State funding levels apply to different sized VICSES Units.
- E. By convention, most Municipal Councils have also provided VICSES Units with accommodation.
- F. The parties have agreed that the 1989 Letter, as varied, should no longer apply and that a new funding model for VICSES Units located on land owned or managed by a

Municipal Council should commence on or after 1 July 2017, as detailed in this MOU.

- G. The parties have agreed to enter into this MOU to record their agreement.
- H. The parties acknowledge that this MOU does not apply to all VICSES Units and that a new funding model for VICSES Units not located on land owned or managed by a Municipal Council is likewise intended, but is beyond the scope of this MOU.

Agreed terms

1. Definitions and Interpretation

1.1 Definitions

In this MOU unless the context otherwise requires:

1989 Letter has the meaning given to it in paragraph D of the Background.

Business Day means any day that is not a Saturday, Sunday or a public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993 (Vic)*) in Melbourne.

Commencement Date means the date on which this MOU is signed by the last of the parties to sign it.

Committee of Management means a Crown land manager appointed by the Minister for Energy, Environment and Climate Change under s 14(1) or (2) of the *Crown Land (Reserves) Act 1978 (Vic)*.

Confidential Information means information (in whatever form) of a party including but not limited to technical, scientific and financial information which comes into the possession of the other party through intentional or unintentional disclosure, excluding information which:

- (a) is or comes into the public domain other than by disclosure in breach of the terms of this MOU;
- (b) is or becomes available to the recipient party from a third party lawfully in possession of it and with the lawful power to disclose it to the recipient party;
- (c) is rightfully known by the recipient party (as shown by its written record) prior to the date of disclosure to it under this MOU; or
- (d) is independently developed by an employee of the recipient party who has no knowledge of the disclosure made under this MOU.

DELWP means the Department of Environment, Land, Water and Planning of the State of Victoria, or any successor or replacement department from time to time.

Dispute Notice has the meaning given to it in clause 11.1.

MOU means this Memorandum of Understanding as amended from time to time.

Municipal Council has the meaning given to 'Council' in the *Local Government Act 1989 (Vic)*.

Municipal District has the meaning given to it in the *Local Government Act 1989* (Vic).

Notice means a written notice, consent, approval or other communication in the English language, given under this MOU.

Oversight Committee means the committee established under clause 7.2.

VICSES Units has the meaning given to it in paragraph C of the Background.

1.2 Interpretation

- (a) In this MOU, unless the context otherwise requires:
- (i) words in the singular include the plural and vice versa;
 - (ii) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
 - (iii) 'includes' means includes without limitation;
 - (iv) a reference to:
 - (A) a document includes all amendments or supplements to, or replacements or novations of, that document;
 - (B) a clause, paragraph, schedule, annexure or attachment is to a clause or paragraph of, or schedule, annexure or attachment to, this MOU;
 - (C) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
 - (v) if the date on or by which any act must be done under this MOU is not a Business Day, the act must be done on or by the next Business Day.
- (b) Headings do not affect the interpretation of this MOU.

2. Term

This MOU will commence on the Commencement Date and will end only if terminated by the parties in accordance with clause 12.

3. Purpose of this MOU

The purpose of this MOU is to establish new arrangements for the funding of, and provision of facilities to, VICSES Units.

4. Roles and Responsibilities

4.1 State

- (a) From 1 July 2017, Municipal Councils are no longer expected to contribute to the operational costs of VICSES Units.

- (b) Provided that a Municipal Council enters, or has entered, into a lease or leases with VICSES for the benefit of one or more VICSES Units in the Municipal District of the Municipal Council within 12 months after the Commencement Date and as contemplated in clause 4.2 and clause 5.1, then the State will be responsible for the funding of operational and maintenance costs of the relevant VICSES Unit for the term of the lease.
- (c) Clause 4.1(a) does not prevent any Municipal Council providing funding to a VICSES Unit, if a Municipal Council elects to do so.

4.2 MAV

- (a) **(Leases to be entered into):** Where, at the Commencement Date a VICSES Unit is located in the Municipal District of a Municipal Council and either:
 - (i) the VICSES Unit occupies freehold land owned by the Municipal Council, or premises on such land; or
 - (ii) the VICSES Unit occupies Crown land managed by the Municipal Council, or premises of the Municipal Council that are located on Crown land,

then, unless clause 4.2(c) applies, MAV will use its best endeavours to ensure that the Municipal Council enters into a lease with VICSES for the benefit of that VICSES Unit for that land or premises as soon as possible after the Commencement Date, and in any event no later than 12 months after the Commencement Date, in accordance with clause 5.

- (b) **(New VICSES Unit):** Where, after the Commencement Date, a VICSES Unit is established in the Municipal District of a Municipal Council, and requests to occupy either:
 - (i) freehold land owned by the Municipal Council, or premises on such land; or
 - (ii) Crown land managed by the Municipal Council or premises of the Municipal Council that are located on Crown land,

MAV will use its best endeavours to ensure that the Municipal Council, as soon as possible after a request to occupy land or premises is made to the Municipal Council, either:

- (iii) uses its best endeavours to make available suitable Municipal Council land or premises to the VICSES Unit and (if it does make available such land or premises) enters into a lease with VICSES for the benefit of that VICSES Unit for that land or premises, in accordance with clause 5; or
 - (iv) assists VICSES to identify suitable alternative land or premises, within the Municipal District, and if possible, in the immediate vicinity of VICSES's preferred site.
- (c) **(Land intended for alternative purpose at Commencement Date):** Where, at the Commencement Date:
 - (i) a VICSES Unit is located in the Municipal District of a Municipal Council;

- (ii) that VICSES Unit occupies either:
 - (A) freehold land owned by the Municipal Council, or premises on such land; or
 - (B) Crown land managed by the Municipal Council or premises of the Municipal Council that are located on Crown land;
- (iii) there is no leasing arrangement in place between VICSES and the Municipal Council in respect of that land or those premises; and
- (iv) the Municipal Council has an intention to sell, or to use or make available for another purpose, that land or those premises,

MAV will use its best endeavours to ensure that, prior to VICSES being required to vacate the Municipal Council's land or premises, the Municipal Council either:

- (v) uses its best endeavours to make available suitable Municipal Council land or premises to the VICSES Unit and (if it does make available such land or premises) enters into a lease with VICSES for the benefit of that VICSES Unit for that land or premises, in accordance with clause 5; or
 - (vi) assists VICSES to identify suitable alternative land or premises within the Municipal District, and if possible (and if sought by VICSES), in the immediate vicinity of the site that VICSES has been required to vacate.
- (d) **(Crown land fall back options):** Where, at the Commencement Date, a VICSES Unit:
- (i) is located in the Municipal District of a Municipal Council; and
 - (ii) occupies Crown land managed by the Municipal Council or premises of the Municipal Council that are located on Crown land,

MAV will act in accordance with clause 4.2(a). If leasing arrangements are not entered into as a result of MAV's best endeavours under clause 4.2(a), MAV will then use its best endeavours to facilitate agreement between the Municipal Council, VICSES and DELWP that enables VICSES to have sufficient access to and use of the land, which may include an agreement that the Municipal Council:

- (iii) relinquishes to DELWP its Committee of Management role over the land, or part of the land and does all things reasonably necessary to facilitate VICSES's appointment as Committee of Management of the land; or
- (iv) if an agreement as contemplated in clause 4.2(d)(iii) is not reached within a reasonable period, grants a licence or licences to VICSES that, so far as possible, reflect the tenure principles set out in clause 5.2(c).

4.3 VICSES

- (a) VICSES will continue to perform its functions and duties under the *Victoria State Emergency Service Act 2005 (Vic)*.
- (b) VICSES will enter into:
 - (i) lease agreements with Municipal Councils where required under clauses 4.2(a), 4.2(b)(iii) and 4.2(c)(v) in accordance with clause 5; and
 - (ii) if relevant, arrangements agreed pursuant to clause 4.2(d).
- (c) VICSES will cooperate with Municipal Councils in identifying suitable land or premises for a VICSES Unit under clause 4.2(c)(v).

5. Leases

5.1 Schedule 1 properties

- (a) This clause 5.1 applies to leases of land or premises listed in Schedule 1.
- (b) In respect of any freehold land owned by a Municipal Council, each lease entered into between the Municipal Council and VICSES must be:
 - (i) for a term of 40 years;
 - (ii) provide for the rent payable to the Municipal Council to be \$1 per annum (plus GST), for the term of the lease; and
 - (iii) in substantially the form set out in Attachment 1.
- (c) In respect of any Crown land managed by a Municipal Council, each lease entered into between the Municipal Council and VICSES must:
 - (i) be for the maximum term permitted under s 17D of the *Crown Land (Reserves) Act 1978 (Vic)*, which may include an extension to the term with the approval of the Minister for Energy, Environment and Climate Change;
 - (ii) provide for the rent payable to the Municipal Council to be \$1 per annum (plus GST), for the term of the lease; and
 - (iii) be in a form approved by the Minister for Energy, Environment and Climate Change.
- (d) Where the parties consider that an extension to the term of a lease referred to in clause 5.1(c) should be sought, the parties will cooperate (and, in the case of MAV, will seek the cooperation of the relevant Municipal Council) in seeking an extension from the Minister for Energy, Environment and Climate Change.

5.2 Schedule 2 properties

- (a) The parties acknowledge that finalising arrangements for the ongoing use of the land or premises listed in Schedule 2 may be more complex than for land or premises listed in Schedule 1.

- (b) The parties agree that they will use their best endeavours to ensure that the relevant VICSES Units can access and utilise the land or premises listed in Schedule 2, in accordance with the tenure principles set out in paragraph (c).
- (c) The tenure principles are:
 - (i) VICSES should be provided with security of tenure for a period of 40 years;
 - (ii) payments for the right to lease or otherwise use the relevant land or premises must be nominal; and
 - (iii) where appropriate, terms equivalent to those in the lease set out in Attachment 1 should apply.
- (d) Where the parties agree that it is impracticable to secure the necessary access to, and use by, a VICSES Unit of the land or premises listed in Schedule 2 in accordance with the tenure principles in paragraph (c), as provided for under paragraph (b), the parties will use their best endeavours to identify and secure alternate premises or land as if the relevant VICSES Unit were a new VICSES Unit under clause 4.2(b).

6. Co-operation and consultation

The parties will exercise their rights and perform their obligations under this MOU in a co-operative, consultative and transparent manner.

7. Oversight

7.1 Representatives

- (a) Each party will nominate a representative to act as the contact point for all communications under this MOU.
- (b) Each party's representative is authorised to act as the agent of that party in relation to the exercise by that party of its rights, discretions and obligations under this MOU.
- (c) The person named in clause 9.1(a)(i) is the State's representative who will be responsible for communications under this MOU on behalf of the State. The State may replace its representative by giving Notice to MAV and VICSES.
- (d) The person named in clause 9.1(a)(ii) is the representative who will be responsible for communications under this MOU on behalf of MAV. MAV may replace its representative by giving Notice to the State and VICSES.
- (e) The person named in clause 9.1(a)(iii) is the representative who will be responsible for communications under this MOU on behalf of VICSES. VICSES may replace its representative by giving Notice to the State and MAV.

7.2 Establishment of the Oversight Committee

The parties will establish an Oversight Committee, to be comprised of each of the representatives nominated under clause 7.1.

7.3 Role of the Oversight Committee

The role of the Oversight Committee will be to:

- (a) oversee and report to the parties, and where relevant to Municipal Councils party to leases under clause 5, on the implementation of the arrangements set out in this MOU; and
- (b) provide a forum for decision making, information sharing, and dispute resolution in accordance with clause 11.3(a).

7.4 Procedures for the Oversight Committee

- (a) The Oversight Committee will meet at such times as agreed by all members.
- (b) Participation in meetings may be either in person or by way of teleconference or video conference.
- (c) In addition to any regular meetings, any member of the Oversight Committee may convene a meeting at any time that he or she considers that a meeting is necessary.
- (d) The Oversight Committee may agree to establish further procedures for its conduct.

8. Confidentiality and Privacy

8.1 Confidentiality

- (a) Each party may use the Confidential Information of the other party only for the purposes of this MOU.
- (b) Each party must keep Confidential Information of the other party confidential except:
 - (i) for disclosures permitted under paragraph (c); and
 - (ii) to the extent that party is required by law to disclose any Confidential Information.
- (c) A party may disclose Confidential Information of the other party to its officers or employees who have a need to know for the purposes of this MOU (and only to the extent that each has a need to know).
- (d) Each party's obligations under this section will survive termination of this MOU and will continue in relation to Confidential Information until the Confidential Information disclosed to it lawfully becomes part of the public domain.

8.2 Privacy

Each party will cooperate to ensure it does not cause the other party to breach any privacy obligations that the other party has at law.

9. Notices

9.1 Giving a communication

(a) A Notice may (in addition to any other method permitted by law) be sent by pre-paid post, pre-paid courier or by electronic mail as follows:

(i) to the State:

State Representative

Name: Neil Robertson

Position: Deputy Secretary, Emergency Management

Telephone: (03) 8684 7801

Email: neil.robertson@justice.vic.gov.au

Address: Level 23, 121 Exhibition Street, Melbourne VIC 3000

(ii) to MAV:

MAV Representative

Name: Rob Spence

Position: Chief Executive Officer

Telephone: (03) 9667 5502

Email: rspence@mav.asn.au

Address: Level 12, 60 Collins Street, Melbourne VIC 3000

(iii) to VICSES:

VICSES Representative

Name: John Casey

Position: Director Corporate Services

Telephone: (03) 9256 9005

Email: john.casey@ses.vic.gov.au

Address: 168 Sturt Street, Southbank VIC 3006

(b) A party may, from time to time, nominate a replacement representative for the purposes of clause 9.1(a), by notice in writing to each of the other parties.

9.2 Time of delivery

A Notice or document will be taken to be delivered or served as follows:

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post, three Business Days after the date of posting; and
- (c) in the case of electronic mail, if the receiving party has agreed to receipt in that form and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), and acknowledgment of receipt is recorded on the sender's computer.

9.3 After hours communications

If any Notice is delivered or deemed to be delivered:

- (a) after 5.00 pm in the place of receipt; or

- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

10. Review

Any party may request that all parties review the arrangements established under this MOU at any time.

11. Dispute Resolution

11.1 Dispute Notice

- (a) A party claiming that a dispute has arisen under this MOU must give a Notice to the other party, specifying the nature of the dispute (**Dispute Notice**).
- (b) A Dispute Notice may be withdrawn at any time by the party who gave the Dispute Notice.

11.2 Good Faith Discussions

Within 10 Business Days from the date of issue of the Dispute Notice, the representatives of each party will use their best endeavours to resolve the dispute between themselves at an operational level.

11.3 Resolution by head of each party

- (a) If the representatives of the parties are unable to resolve the dispute within 20 Business Days from the date of issue of the Dispute Notice, the dispute will be referred for resolution to the Oversight Committee established under clause 7.2.
- (b) If, after a further 10 Business Days from the dispute being referred in accordance with clause 11.3(a), the parties are unable to resolve the dispute, the parties may refer the dispute to the Chair, MAV, the Chair VICSES and the Secretary to the Department of Justice and Regulation for resolution.

11.4 Performance of Obligations

Notwithstanding the existence of a dispute, the parties to the dispute will continue to perform their obligations under this MOU.

12. Termination

This MOU may be terminated only in writing executed by each party.

13. General

13.1 Variation

This MOU may be amended or replaced only in writing executed by each party.

13.2 Counterparts

This MOU may be executed in any number of counterparts. All executed counterparts are taken to constitute one document.

13.3 Costs

Each party must pay its costs in relation to the preparation, negotiation and execution of this MOU.

13.4 Time to Act


If the time for a party to do something is not specified in this MOU, the party will do what is required within a reasonable time.

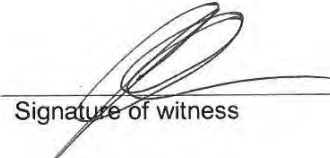

13.5 Compliance with Laws

Each party must comply with all laws affecting this MOU.

Signing page

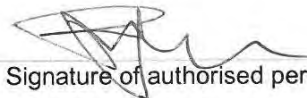
Signed for and on behalf of the **State of Victoria** by the **Honourable James Merlino MP**, Minister for Emergency Services in the presence of:


Signature of Minister for Emergency Services


Signature of witness

M. De Cicco
Name of witness (print)

Date: 20/12/17

Signed for and on behalf of the **Municipal Association of Victoria** in the presence of:



Signature of authorised person
R. Sorenson
Name of authorised person (print)

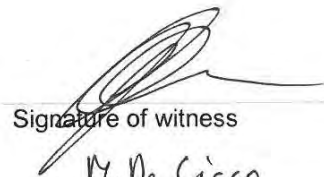


Signature of witness

M. De Cicco
Name of witness (print)

Date: 20/12/17

Signed for and on behalf of the **Victorian State Emergency Services Authority** in the presence of:


Signature of authorised person
P. Akers
Name of authorised person (print)


Signature of witness

M. De Cicco
Name of witness (print)

Date: 20/12/17

Date 12/12/2018

Lease

Land: 2 Wood Street Rupanyup VIC 3388

Yarrimabiack Shire Council

and

Victoria State Emergency Service Authority

ABN 61 279 597 238

Contents

- Schedule..... 1
- 1. **Definitions** 2
- 2. **Local Government Act 1989** 4
- 3. **Negotiation and disclosure requirements**..... 4
 - 3.1 Negotiation for Lease 4
 - 3.2 Disclosure statement..... 5
- 4. **Duration of the Lease**..... 5
 - 4.1 Term 5
 - 4.2 Holding over..... 5
- 5. **Payment of Rent**..... 5
- 6. **Outgoings**..... 6
 - 6.1 Rates and Taxes 6
 - 6.2 Proportion of Rates and Taxes 6
 - 6.3 Receipt for payment 6
- 7. **Other expenses** 6
 - 7.1 Services 6
 - 7.2 Other charges 6
 - 7.3 Costs and duty 7
- 8. **GST** 7
 - 8.1 Definitions 7
 - 8.2 GST exclusive 7
 - 8.3 Increase in consideration..... 8
 - 8.4 Payment of GST..... 8
 - 8.5 Tax invoice..... 8
 - 8.6 Reimbursements 8
 - 8.7 Adjustment events..... 8
- 9. **Payment requirements**..... 8
 - 9.1 No deduction or right of set-off..... 8
 - 9.2 Interest on late payments 8
 - 9.3 Payment after termination..... 9
 - 9.4 Method of payment..... 9
- 10. **Repairs, refurbishment and alterations**..... 9
 - 10.1 Repairs and maintenance..... 9
 - 10.2 Alterations to Land 9
 - 10.3 Occupational health and safety..... 10
 - 10.4 Not interfere with services 10
 - 10.5 Failure to repair and maintain 10
 - 10.6 Repairs to Council's Improvements and compliance with legislation..... 10
- 11. **Insurance**..... 10
 - 11.1 Public liability insurance..... 10
 - 11.2 Tenant's Improvements 11
 - 11.3 Workers compensation insurance 11
 - 11.4 Payment and production of policies 11
 - 11.5 Not invalidate policies..... 11

11.6	Requirements by Insurer	11
12.	Release, indemnity and compensation	11
12.1	Release.....	11
12.2	Indemnity	11
12.3	No compensation	12
12.4	No liability.....	12
13.	Use of Land	12
13.1	Permitted Use	12
13.2	No warranty.....	12
13.3	Illegal purpose.....	13
14.	Other obligations concerning the Land	13
14.1	Compliance with laws	13
14.2	Licences and permits.....	13
14.3	Nuisance	13
14.4	Signs.....	13
14.5	Endanger Land.....	13
14.6	Tenant's employees	14
14.7	Environmental management.....	14
15.	Tenant's environmental obligations.....	14
15.1	Comply with Environmental Protection Legislation	14
15.2	Not permit Contamination	14
15.3	Notify of and clean up Contamination	14
15.4	Indemnify Council.....	14
16.	Dealing with interest in the Land.....	15
16.1	No parting with possession	15
16.2	No assignment if Act to apply	15
16.3	Transfer of functions.....	15
16.4	Mortgage of Lease	15
17.	Tenant's obligations at the end of this Lease	15
17.1	Tenant's obligations.....	15
17.2	Removal of Improvements.....	16
17.3	Tenant's notice.....	16
17.4	Abandonment of Tenant's Improvements.....	16
17.5	<i>Australian Consumer Law and Fair Trading Act 2012</i>	16
18.	Council's rights and obligations	16
18.1	Quiet enjoyment	16
18.2	Outgoings and insurance.....	17
18.3	Dealing with the Land	17
18.4	Entry by Council	17
18.5	Emergency entry	17
18.6	Change in landlord	17
19.	Termination of Lease	17
19.1	Re-entry	17
19.2	Damages following determination	18
19.3	Essential terms.....	18
19.4	No deemed termination	18
20.	Destruction or damage of Land.....	18
20.1	Reduction in Rent and Outgoings	18
20.2	Reinstatement of Land	18
20.3	Tenant's right of termination	19

20.4	Dispute resolution.....	19
21.	<i>Personal Property Securities Act 2009</i>	19
21.1	Definitions	19
21.2	Tenant's obligations.....	20
21.3	Security Interests.....	20
21.4	Indemnity for breach of this clause.....	20
21.5	Further obligations.....	20
21.6	Clause prevails.....	20
22.	General	21
22.1	Notices	21
22.2	Time of service.....	21
22.3	Entire understanding	21
22.4	Waiver.....	21
22.5	Special Conditions.....	21
23.	Interpretation	22
23.1	Governing law and jurisdiction	22
23.2	Persons.....	22
23.3	Joint and several	22
23.4	Legislation.....	22
23.5	Clauses and headings	22
23.6	Severance.....	22
23.7	Number and gender	22
23.8	No Relationship.....	23
23.9	Exclusion of statutory provisions.....	23
Annexure A	Special Conditions	24
Annexure B	Plan of Land	25

Schedule

Item 1.	Council: (Clause 1)	Yarriambiack Shire Council of 34 Lyle Street, Warracknabeal 3393
Item 2.	Tenant: (Clause 1)	Victoria State Emergency Service Authority ABN 61 279 597 238 (a body corporate established under s 4 of the <i>Victoria State Emergency Service Act 2005</i>) of 168 Sturt Street, Southbank VIC 2006
Item 3.	Land: (Clause 1)	Whole of the land being Lot 1 of Title Plan 893169 being the land identified on the plan attached to this Lease in Annexure B and known as 2 Wood Street Rupanyup VIC 3388 and including the Council's Improvements on the Land (if any)
Item 4.	Commencement Date: (Clause 1)	01/01/2019
Item 5.	Expiry Date: (Clause 1)	01/01/2039
Item 6.	Term: (Clauses 1 & 4)	20 years
Item 7.	Further Term(s):	Nil
Item 8.	Rent: (Clauses 1 & 5)	\$1.00 per annum plus GST, payable on demand.
Item 9.	Permitted Use: (Clauses 1 & 13.1)	Administrative offices / Training Facility / Storage of emergency services vehicles and associated use of car parks / access routes/ storage areas / common areas.
Item 10.	Special Conditions: (Clauses 1 & 22.5)	The conditions (if any) specified in Annexure A

Lease

Council leases the Land to the Tenant subject to the terms contained in this Lease.

This Lease is executed as a deed on the _____ day of _____

**The Common Seal of Yarriambiack
Shire Council** was affixed on
with the authority of the Council:

Signature of Mayor/Councillor

Signature of Councillor

Signature of Chief Executive Officer

Signed for and on behalf of **Victoria State
Emergency Service Authority** by its
authorised representatives:

Signature of authorised representative

Signature of authorised representative

Name of authorised representative (print)

Name of authorised representative (print)

1. Definitions

In this Lease unless expressed or implied to the contrary:

Act means the *Retail Leases Act 2003* (Vic).

Building Act means the *Building Act 1993* (Vic).

Building Regulations means the *Building Regulations 2006* (Vic).

Commencement Date means, subject to clause 2, the date specified in Item 4.

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

- (a) unsafe, unfit, poisonous, harmful or potentially harmful to the health, welfare, safety or property of human beings; or
- (b) unsafe, unfit, poisonous, harmful or potentially harmful to animals, birds or wildlife; or
- (c) unsafe, unfit, poisonous, harmful or potentially harmful to plants or other vegetation or
- (d) detrimental to any beneficial use made of the Land; or
- (e) unfit for any use permitted under any applicable planning scheme as amended from time to time,

or which is assessable as being a condition that contravenes any Environmental Protection Legislation.

Council means the council specified in Item 1 and includes Council's successors and assigns and where it is consistent with the context includes Council's employees and agents.

Council's Improvements means all buildings, structures, paving, earthworks, fences, fittings, fixtures and chattels contained on the Land at the Commencement Date or installed by Council during the Term.

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.

Essential Safety Measure has the meaning given to that term in the Building Regulations.

Expiry Date means the date specified in Item 5.

Hazardous Materials includes all hazardous substances and any pollutant or contaminant defined as such in (or for the purposes of) any Environmental Protection Legislation.

Insolvency Event means:

- (a) in the case of a natural person, if that person:
 - (i) becomes bankrupt;
 - (ii) assigns the person's estate; or
 - (iii) enters into a deed of arrangement or composition for the benefit of creditors.

- (b) in the case of a corporation, if that corporation:
 - (i) goes into liquidation (including provisional liquidation) other than a voluntary liquidation for the purposes of reconstruction or reorganisation;
 - (ii) is wound up or dissolved or has an application made for its winding up or dissolution;
 - (iii) enters into a scheme or arrangement with or makes an assignment for the benefit of its creditors or any class or classes of them;
 - (iv) is placed under official management;
 - (v) has an agent in possession or a receiver and/or manager or an administrator appointed to the whole or any substantial part of its assets; or
 - (vi) has an inspector or investigator appointed under the *Corporations Act 2001* (Cth).

Item means an item in the Lease Particulars.

Land means the land specified in Item 3.

Lease means this lease and includes all annexures and schedules.

Lease Particulars means the schedule of Items specified on the page at the front of this Lease.

Lease Year means each year of this Lease beginning on the Commencement Date, in consecutive 12 month increments.

Lettable Area(s) means the lettable area of a parcel of land as determined by a surveyor engaged by Council.

Local Government Act means the *Local Government Act 1989* (Vic).

OHS Act means the *Occupational Health and Safety Act 2004* (Vic).

OHS Law means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Land.

OHS Regulations means the *Occupational Health and Safety Regulations 2007* (Vic).

Permitted Use means the use specified in Item 9.

Principal Contractor means the position of principal contractor referred to in Chapter 5 of the OHS Regulations.

Rates and Taxes means the rates, taxes, charges and levies specified in clause 6.1.

Rent means the amount specified in Item 8 as reviewed, adjusted or increased under this Lease.

Small Business Commissioner means the Small Business Commissioner referred to in the Act.

Special Conditions means the conditions (if any) referred to in Item 10.

Tenant means the Tenant specified in Item 2 and includes the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, volunteers, contractors, agents, invitees and persons the Tenant allows on the Land.

Tenant's Improvements means all property on the Land including all fixtures, buildings, fittings, furniture, furnishings (including window coverings, blinds and light fittings), plant, machinery, installations and equipment installed on the Land, owned or leased by the Tenant, but excluding Council's Improvements (if any).

Term means the term specified in Item 6 and includes any period of overholding.

VICSES means Victorian State Emergency Service Authority ABN 61 279 597 238 (a body corporate established under s 4 of the *Victoria State Emergency Service Act 2005*) of 168 Sturt Street, Southbank VIC 2006.

2. Local Government Act 1989

This Lease is entered into pursuant to section 190 of the Local Government Act.

3. Negotiation and disclosure requirements

3.1 Negotiation for Lease

If the Act applies to this Lease, the Tenant acknowledges receiving from Council:

3.1.1 a copy of the proposed Lease; and

- 3.1.2 a copy of the information brochure about retail leases published by the Small Business Commissioner,

as soon as the Tenant entered into negotiations with Council, or its agent in respect of this Lease.

3.2 Disclosure statement

If the Act applies to this Lease, the Tenant acknowledges having received from Council:

- 3.2.1 a disclosure statement (in the form prescribed by the Act); and

- 3.2.2 a copy of the proposed lease,

at least 7 days prior to the Tenant entering into this Lease.

4. Duration of the Lease

4.1 Term

This Lease is for the Term starting on the Commencement Date.

4.2 Holding over

If the Tenant continues to occupy the Land after the Expiry Date with Council's consent, except under a lease arising from the valid exercise of an option to renew, the following provisions will apply:

- 4.2.1 the Tenant will occupy the Land as an annual tenant at a total rental payable monthly in advance being an amount equal to one-twelfth of the aggregate of the Rent and any other money payable by the Tenant to Council under this Lease as at the Expiry Date, the first of the monthly payments to be made on the day following the Expiry Date;
- 4.2.2 as far as applicable, the annual tenancy will otherwise continue on the terms and conditions of this Lease; and
- 4.2.3 either party may terminate the annual tenancy by giving to the other 12 months' notice to the other party expiring on any date.

5. Payment of Rent

The Tenant must:

- (a) pay the Rent to Council in the manner described in Item 8 commencing on the Commencement Date; and
- (b) pay the Rent in the manner specified by Council from time to time.

6. Outgoings

6.1 Rates and Taxes

The Tenant must pay to Council, or the relevant authority:

- 6.1.1 local government rates and charges;
- 6.1.2 water rates and charges, including water usage charges;
- 6.1.3 sewerage and drainage rates and charges;
- 6.1.4 land tax (assessed on a single holding basis) except this cost is excluded where the Act applies to this Lease; and
- 6.1.5 all other rates, taxes, charges and levies assessed in connection with the Land.

6.2 Proportion of Rates and Taxes

If any Rates and Taxes are not separately assessed in connection with the Land, the Tenant must pay to Council within 14 days of demand the proportion of the Rates and Taxes that the Lettable Area of the Land bears to the total Lettable Area assessed or such other proportion of the Rates and Taxes as agreed by the parties.

6.3 Receipt for payment

The Tenant must provide to Council:

- 6.3.1 copies of all notices, assessments or invoices for any Rates and Taxes received by the Tenant directly from the relevant authority within 14 days of receipt; and
- 6.3.2 receipts for any Rates and Taxes paid by the Tenant within 14 days of request by Council.

7. Other expenses

7.1 Services

The Tenant must, within 14 days of a request by Council:

- 7.1.1 pay for all services in connection with the Land, including electricity, gas, water and telephone services; and
- 7.1.2 where the Land is not separately metered, pay for the cost of installing separate meters to assess the charges for the services,

unless otherwise agreed.

7.2 Other charges

The Tenant must pay or reimburse the Council, within 14 days of demand, for the following expenses incurred or payable by Council in respect of the Land (except to the extent that the Act applies and prohibits recovery):

- 7.2.1 charges for cleaning, waste removal and pest control;

- 7.2.2 costs of fire protection and security;
- 7.2.3 insurance premiums and other charges reasonably incurred in connection with insurance policies for damage and destruction to the Council's Improvements;
- 7.2.4 costs of repairing, maintaining and operating the Council's Improvements;
- 7.2.5 costs of improving, renewing or replacing Council Improvements (after being discussed and agreed with the Council); and
- 7.2.6 any other charges necessarily and reasonably incurred by the Council in the operation and management of the Land,

unless otherwise agreed.

7.3 Costs and duty

The Tenant must pay to Council within 14 days of demand:

- 7.3.1 the stamp duty payable on this Lease (including penalties and fees);
- 7.3.2 Council's reasonable costs in considering the granting of any consent or approval under this Lease (regardless of whether Council actually gives such consent or approval);
- 7.3.3 the cost of complying with the provisions of the Building Act and the Building Regulations in relation to any Essential Safety Measure;
- 7.3.4 the cost of obtaining Council's mortgagee's consent to this Lease (if required) except this amount is not recoverable where the Act applies to this Lease; and
- 7.3.5 Council's costs (including charges on a solicitor-own client basis) incurred directly as a result of a breach of this Lease by the Tenant,

unless otherwise agreed.

8. GST

8.1 Definitions

In this clause:

- 8.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- 8.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

8.2 GST exclusive

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

8.3 Increase in consideration

If GST is payable in respect of any supply made by a supplier under this Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

8.4 Payment of GST

Subject to clause 8.5 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 Lease.

8.5 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 8.4.

8.6 Reimbursements

If this Lease 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:

8.6.1 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

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

8.7 Adjustment events

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

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

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

9. Payment requirements

9.1 No deduction or right of set-off

The Tenant must pay all amounts due under this Lease to Council (including the Rent and Rates and Taxes).

9.2 Interest on late payments

The Tenant must pay to Council on demand interest at the rate per annum equal to the current rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) per annum on any money payable by the Tenant under this Lease and remaining unpaid after the due date. Interest will be computed from the date on which such payment became due.

9.3 Payment after termination

The Tenant must:

- 9.3.1 make all payments due under this Lease; and
- 9.3.2 provide all information to Council under this Lease to calculate any such payments, even if this Lease has ended.

9.4 Method of payment

The Tenant must make all payments under this Lease in such manner as Council reasonably requires, which may include by direct debit.

10. Repairs, refurbishment and alterations

10.1 Repairs and maintenance

The Tenant must:

- 10.1.1 keep the Land, the Council's Improvements and the Tenant's Improvements clean and free from rubbish, store all rubbish in proper containers and have it regularly removed;
- 10.1.2 keep the Land and the Council's Improvements in the same condition as they were in at the date the Tenant first entered occupation of the Land (fair wear and tear excepted);
- 10.1.3 maintain in working order all plumbing, drains, pipes and sewers exclusively servicing the Land;
- 10.1.4 pay the costs (if any) for the removal of waste and sewerage from the Land;
- 10.1.5 maintain any gardens on the Land in good condition and free of weeds;
- 10.1.6 make good any damage caused to any adjacent property by the Tenant; and
- 10.1.7 give Council prompt written notice of any material damage to the Land or anything likely to be a risk to the Land or any person on the Land.

10.2 Alterations to Land

The Tenant must ensure any alterations or works to the Land, any services to the Land or the Tenant's Improvements (**Works**) are carried out:

- 10.2.1 in accordance with plans and specifications approved by Council (acting reasonably);
- 10.2.2 by qualified tradespersons approved by Council (acting reasonably); and
- 10.2.3 in accordance with all rules and requirements of any authorities having jurisdiction over the Land.

The Tenant is not required to seek Council's consent prior to making any alterations of a non-structural nature to the Land or the Tenant's Improvements.

10.3 Occupational health and safety

For the purposes of the OHS Law, the Tenant agrees that:

- 10.3.1 the Tenant has sole management and control of the Land and has sole responsibility for ensuring that the Land and the means of entering and leaving them are safe and without risks to health;
- 10.3.2 Council appoints the Tenant as Principal Contractor in respect of all Works to which an OHS Law applies;
- 10.3.3 the Tenant must carry out such Works in accordance with the requirements of the OHS Law; and
- 10.3.4 Council authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 10.3.2.

10.4 Not interfere with services

The Tenant must not interfere, misuse or overload any services to the Land, including electricity, gas and water.

10.5 Failure to repair and maintain

If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 30 days of receiving written notice from Council, Council may enter the Land to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Tenant to Council on demand.

10.6 Repairs to Council's Improvements and compliance with legislation

The Tenant must reimburse the Council within 21 days of demand for the costs incurred by the Council in relation to:

- 10.6.1 any repairs or maintenance to the Council's Improvements (but excluding costs for structural works or repairs and maintenance of a capital nature which are the responsibility of Council); and
- 10.6.2 compliance with any legislation (including legislation relating to Essential Safety Measures),

except to the extent that such costs are not recoverable under the Act, where the Act applies to this Lease.

11. Insurance

11.1 Public liability insurance

The Tenant must maintain insurance noting Council's interest as landlord, but not as joint insured, with Victorian Managed Insurance Authority or another insurer approved by Council (acting reasonably) for public liability for the amount of \$20 million concerning 1 single event (or such greater sum as reasonably required by Council).

11.2 Tenant's Improvements

The Tenant must insure the Tenant's Improvements for loss and damage from risks including fire and water damage for their full replacement value.

11.3 Workers compensation insurance

The Tenant must hold current workers compensation insurance at all relevant times.

11.4 Payment and production of policies

The Tenant must pay all insurance premiums on or before the due date for payment and produce to Council copies of the certificate of currency on or before each anniversary of the Commencement Date.

11.5 Not invalidate policies

The Tenant must:

11.5.1 not do anything which may make any insurance effected by Council or the Tenant invalid, capable of being cancelled or rendered ineffective, or which may increase any insurance premium payable by Council; and

11.5.2 pay any increase in the insurance premium caused by the Tenant's act, default or use of the Land.

11.6 Requirements by Insurer

The Tenant must comply with all reasonable requirements of Council's insurer in connection with the Land.

12. Release, indemnity and compensation

12.1 Release

The Tenant uses and occupies the Land at its own risk and releases Council from all claims resulting from any damage, loss, death or injury occurring on the Land or as a result of the use and occupation of the Land, except to the extent that such claims arise out any negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

12.2 Indemnity

The Tenant must indemnify and hold harmless Council against all claims resulting from:

12.2.1 any default by the Tenant under this Lease;

12.2.2 any negligent use or misuse by the Tenant of the water, gas or electricity on the Land;

12.2.3 any overflow or leakage of water (including rain water) from the Land caused or contributed to by the Tenant's default, breach or negligence; and

12.2.4 loss, damage or injury to property or persons caused or contributed to by a negligent or unlawful act or omission of the Tenant or its servants or agents,

except to the extent that such claims arise out of any negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

12.3 No compensation

Council is not liable to the Tenant for any loss or damage incurred by the Tenant due to:

12.3.1 any damage to the Land;

12.3.2 the failure of Council's Improvements or any plant and equipment (including air conditioning and escalators) to operate properly;

12.3.3 the interruption or damage to any services (including electricity, gas or water) to the Land; or

12.3.4 the overflow or leakage of water on the Land,

except to the extent to which Council is liable where the Act applies and/or by virtue of the negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

12.4 No liability

The Tenant acknowledges and agrees that:

12.4.1 nothing in this Lease in any way limits, fetters or restricts the power or discretion of Council in the exercise of its statutory rights, duties or powers under the *Planning and Environment Act 1987* (Vic) or the Local Government Act or the exercise of any other statutory right, power or duty that Council may lawfully exercise; and

12.4.2 Council will not be liable to the Tenant under this Lease (including but not limited to a breach of the covenant of quiet enjoyment or a derogation of the grant of this Lease) for any acts or omissions of Council undertaken in any capacity including (but not limited to) in exercising any powers referred to in clause 12.4.1,

except nothing in this clause releases Council from any obligations it owes to the Tenant under this Lease in its capacity as the owner of the Land.

13. Use of Land

13.1 Permitted Use

The Tenant must use the Land for the Permitted Use and not use the Land for any other purpose unless the Tenant obtains the prior written consent of Council to a change of use (which must not be unreasonably withheld).

13.2 No warranty

The Tenant:

13.2.1 acknowledges that Council does not warrant or represent that the Land is suitable for the Permitted Use; and

13.2.2 must make its own enquiries as to the suitability of the Land for the Permitted Use.

13.3 Illegal purpose

The Tenant must not use the Land for any illegal purpose or carry on an noxious or offensive activity on the Land.

14. Other obligations concerning the Land

14.1 Compliance with laws

The Tenant must comply with all laws and any requirements of any authority in connection with the Land and the Tenant's use and occupation of the Land, except the Tenant will not be required to carry out any structural works unless the need for such works arises from:

14.1.1 the negligent act or omission of the Tenant;

14.1.2 the failure by the Tenant to comply with its obligations under this Lease; or

14.1.3 the Tenant's particular use of the Land.

14.2 Licences and permits

The Tenant must maintain all licences and permits required for the Tenant's use of the Land and obtain the prior written consent of Council before varying any licence or permit or applying for any new licence or permit.

14.3 Nuisance

The Tenant must not do anything in connection with the Land which may:

14.3.1 cause a nuisance or interfere with any other person; or

14.3.2 be dangerous or offensive in Council's reasonable opinion.

14.4 Signs

The Tenant must seek the prior written consent of Council before displaying or affixing any signs, advertisements or notices to any part of the Land where such signs, advertisements or notices are visible from outside the Land.

14.5 Endanger Land

The Tenant must not do or permit anything to be done in connection with the Land which in the opinion of Council may endanger the Land or be a risk to any person or property.

14.6 Tenant's employees

The Tenant must use all reasonable endeavours to ensure that the Tenant's employees (including its volunteers), agents, contractors and invitees observe and comply with the Tenant's obligations under this Lease, where appropriate.

14.7 Environmental management

At the request of Council, the Tenant must provide Council with any information held by the Tenant relating to the environmental management of the Land including electricity, gas and water use, recycling and disposal of paper and waste, and the materials used in any works carried out on the Land. Such requests by Council must not be made more than once in a Lease Year.

15. Tenant's environmental obligations

15.1 Comply with Environmental Protection Legislation

The Tenant must, in its use of the Land, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

15.2 Not permit Contamination

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

15.3 Notify of and clean up Contamination

If any Contamination is found in or near the Land, the Tenant must at its own cost:

- 15.3.1 immediately notify Council, the Environment Protection Authority and any other appropriate Authority;
- 15.3.2 clean up the Contamination unless the Contamination pre-dated the Tenant's occupancy of the Land and do everything necessary to minimise harm; and
- 15.3.3 promptly comply with any notice, order, direction or requirement of Council and of any authority in relation to any such Contamination, or allow Council reasonable access to the Land for the purposes of compliance where the Contamination pre-dated the Tenant's occupancy of the Land.

15.4 Indemnify Council

In addition to any other indemnity in this Lease, the Tenant indemnifies Council against all claims for damages, loss, injury or death directly arising out of any Contamination being spilled, deposited or otherwise escaping into or on the Land during the Term, or a breach of this clause by the Tenant (including but not limited to the cost of all fines, penalties and costs of complying with any order or notice associated with such claims) except to the extent that such claims arise out of any negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

16. Dealing with interest in the Land

16.1 No parting with possession

The Tenant must not give up possession of the Land including assigning this Lease, sub-lease the Land or granting to any person a licence or concession in respect of the Land, without Council's written consent.

16.2 No assignment if Act to apply

Despite anything to the contrary in this Lease, if the Act does not apply to this Lease and an assignment of this Lease, would result in the Act applying to this Lease, Council may withhold its consent to an assignment of this Lease.

16.3 Transfer of functions

Council acknowledges that:

16.3.1 VICSES may be reconstituted, renamed or replaced and that some or all of the powers, functions or responsibilities of VICSES may be transferred to or vested in another governmental agency; and

16.3.2 if VICSES is reconstituted, renamed or replaced or if some or all of VICSES's powers, functions or responsibilities are transferred to or vested in another governmental agency, references in this Lease to VICSES must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that it has assumed or has had transferred to it or vested in it those powers, functions or responsibilities.

16.4 Mortgage of Lease

The Tenant must not create any security over this Lease, the Council's Improvements or the Tenant's Improvements.

17. Tenant's obligations at the end of this Lease

17.1 Tenant's obligations

At the end of this Lease, the Tenant must:

17.1.1 vacate the Land and give it back to Council in a condition consistent with the Tenant having complied with its obligations under this Lease;

17.1.2 give to Council all keys and other security devices for the purposes of obtaining access to the Land; and

17.1.3 unless Council serves a notice under clause 17.3, remove the Tenant's Improvements and reinstate the Land to the condition the Land was in prior to the installation of the Tenant's Improvements including making good any damage caused by the removal of the Tenant's Improvements

17.2 Removal of Improvements

In removing the Tenant's Improvements from the Land, the Tenant must:

- 17.2.1 ensure that the surface of the Land is restored to Council's reasonable satisfaction;
- 17.2.2 follow all reasonable directions given by Council for the removal of the Tenant's Improvements, including (but not limited to) ensuring that all services to the Tenant's Improvements are disconnected; and
- 17.2.3 otherwise comply with the provisions of clause 10.2.

17.3 Tenant's notice

The Tenant may give written notice to Council that it elects not to remove all or part of the Tenant's Improvements from the Land. If the Tenant serves a notice under this clause 17.3 and Council consents:

- 17.3.1 ownership of that part of the Tenants Improvements which the Tenant elects not to remove will vest in Council;
- 17.3.2 the Tenant must give the Tenant's Improvements to Council in a condition consistent with the Tenant having complied with its obligations under this Lease; and
- 17.3.3 the Tenant must do all acts and sign all documents as may be required by Council to effect the transfer and vesting of the ownership in the Tenant's Improvements to Council.

17.4 Abandonment of Tenant's Improvements

If the Tenant does not serve a notice under clause 17.3 and the Tenant fails to comply with its obligations under clause 17.1, Council may remove the Tenant's Improvements from the Land and comply with the Tenant's obligations under clause 17.1 at the Tenant's expense and may:

- 17.4.1 store the Tenant's Improvements at the Tenant's risk and expense; or
- 17.4.2 treat the Tenant's Improvements as if the Tenant had abandoned its interest in it and it has become the property of Council's and deal with the Tenant's Improvements as it thinks fit without being liable to account to the Tenant.

17.5 *Australian Consumer Law and Fair Trading Act 2012*

The parties agree that this clause 17 is an agreement about the disposal of uncollected goods for the purposes of section 56(4) of the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

18. Council's rights and obligations

18.1 Quiet enjoyment

Council must not interfere with the Tenant's use and occupation of the Land except as provided by this Lease.

18.2 Outgoings and insurance

Council must pay all rates and taxes not payable by the Tenant.

18.3 Dealing with the Land

Council may:

- 18.3.1 subdivide the Land or grant easements or other rights over the Land except where it will unreasonably interfere with the Tenant's use and occupation of the Land; and
- 18.3.2 install, repair and replace pipes, cables and conduits on or under the Land except where it will unreasonably interfere with the Tenant's use and occupation of the Land.

18.4 Entry by Council

Council may enter the Land at any reasonable time after giving the Tenant reasonable notice, to:

- 18.4.1 inspect the condition of the Land;
- 18.4.2 undertake an environmental inspection or accreditation or monitor the environmental management of the Land, including energy and water use; and
- 18.4.3 carry out any inspection, repairs, maintenance, works or alterations on the Land which Council decides to or is required to carry out by any law or authority.

Council must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the Land in exercising Council's rights under this clause.

18.5 Emergency entry

Council may enter the Land at any time without giving notice to the Tenant in an emergency.

18.6 Change in landlord

If a person other than Council becomes entitled to receive the rents reserved by this Lease whether by operation of law or otherwise (**New Landlord**) then:

- 18.6.1 Council is released from all further obligations under this Lease arising after the New Landlord becomes landlord; and
- 18.6.2 the Tenant must at the cost of Council enter into a deed reasonably required by Council under which the Tenant covenants that the New Landlord shall have the benefit of all of the Tenant's obligations under this Lease.

19. Termination of Lease

19.1 Re-entry

Council may re-enter the Land and terminate this Lease if:

- 19.1.1 an Insolvency Event occurs in relation to the Tenant ~~or any Guarantor~~; or.

19.1.2 the Tenant breaches this Lease and does not remedy the breach (or pay reasonable compensation to Council where the breach is otherwise incapable of remedy) within 30 days of receipt of written notice from Council.

19.2 Damages following determination

If this Lease is terminated by Council, the Tenant agrees to compensate Council for any loss or damage Council suffers arising in connection with the Tenant's breach of this Lease

19.3 Essential terms

The essential terms of this Lease are clauses 5, 6.1, 7.1, 7.3, 8, 10.1, 10.2, 11, 13.1, 13.3, 14, 15, 16 and 17. The breach of an essential term is a repudiation of this Lease.

19.4 No deemed termination

If the Tenant vacates the Land, Council will not be deemed to have terminated this Lease merely by the acceptance of keys from the Tenant, entry into the Land for any purpose, or the showing of the Land to prospective tenants or purchasers. This Lease will be deemed to continue until such time as Council gives notice to the Tenant terminating this Lease, or otherwise agrees with the Tenant that this Lease is terminated.

20. Destruction or damage of Land

20.1 Reduction in Rent and Outgoings

If the Land, or any part of the Land is destroyed or damaged to the extent that the Tenant cannot use or have access to the Land (except if the Tenant causes or contributes to the destruction or damage, or the Council's insurer is not legally required to reinstate the Land because the Tenant caused or contributed to the destruction or damage) then the Council will reduce the Rent and the outgoings by a reasonable amount depending upon the nature and extent of destruction or damage until the Tenant can use or have access to the whole of the Land again.

20.2 Reinstatement of Land

If the Land or any part of the Land are destroyed or damaged, the Council may, within 6 months from the date of such damage or destruction, give notice to the Tenant:

20.2.1 terminating this Lease, where the Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or

20.2.2 that the Council will commence reinstatement of the Land to a condition where the Tenant can use or have access to the Land.

The Council does not have to reinstate the Land.

20.3 Tenant's right of termination

Where the Tenant has not caused or contributed to the damage or destruction of the Land and the payment of the insurance for the Land is not refused due to the act or default of the Tenant, provided the Tenant has not previously requested reinstatement of the Land by Council in writing, the Tenant may give written notice to the Council terminating this Lease where the Council does not:

20.3.1 give notice to the Tenant pursuant to clause 20.2; or

20.3.2 commence reinstatement within 18 months of the date of damage or destruction.

Upon termination of this Lease, each party is released from all further obligations under this Lease, except nothing in this clause releases either party from any breach of this Lease arising prior to the date of termination.

20.4 Dispute resolution

If a dispute arises under this clause about the amount of the Rent or outgoings payable by the Tenant, either party may ask the President of the Australian Property Institute (Victorian Division) to nominate a valuer to determine the dispute as an expert. The parties will be bound by the determination of the valuer and will share the fees of the valuer equally.

21. *Personal Property Securities Act 2009*

21.1 Definitions

In this clause 21:

21.1.1 **Council PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Council; and
- (b) is situated on the Land at any time during the term of this Lease;

21.1.2 **PPS Act** means the *Personal Property Securities Act 2009* (Cth);

21.1.3 **Tenant PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Tenant;
- (b) is situated on the Land at any time during the term of this Lease; and
- (c) the Council has the right to require the Tenant to transfer ownership of that item to the Council, or the Tenant has the obligation to transfer ownership of that item to the Council, whether before or after the end of the term of this Lease,

but does not include any Council PPS Items; and

21.1.4 words and expressions that are not defined in this Lease but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

21.2 Tenant's obligations

The Tenant:

- 21.2.1 acknowledges that the grant of this Lease also constitutes the grant of a Security Interest in the Council PPS Items in favour of the Council, which interest the Council is entitled to register under the PPS Act; and
- 21.2.2 must do all things required by the Council from time to time (including, without limitation, signing any documents required by the Council) to enable the Council to register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Tenant PPS Items and the Council PPS Items so that the Council's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Tenant PPS Items and the Council PPS Items.

21.3 Security Interests

The Tenant:

- 21.3.1 warrants that it has not created a Security Interest in respect of any Council PPS Items on or prior to execution of this Lease; and
- 21.3.2 must not create a Security Interest in respect of any Council PPS Items or Tenant PPS Items in favour of any person other than the Council without the Council's prior written consent, which consent may be granted or withheld in the Council's absolute discretion.

21.4 Indemnity for breach of this clause

The Tenant must indemnify and hold harmless the Council against all claims, damages or loss incurred by the Council as a direct consequence of any breach by the Tenant of this clause except to the extent that such claims, damages or loss arise out of any negligent or unlawful act or omission or default of Council or its officers, servants or agents.

21.5 Further obligations

The Tenant acknowledges and agrees that:

- 21.5.1 it has no right under the PPSA to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPSA); and
- 21.5.2 on the expiration or earlier termination of this Lease, the Tenant must sign (and procure any holder of a registered Security Interest to sign) any document that the Council considers necessary or desirable under or as a result of the PPS Act to discharge any registered Security Interests under the PPS Act in relation to the Tenant PPS Items and the Council PPS Items.

21.6 Clause prevails

In the event of any inconsistency between this clause and any other provision of this Lease, the provisions of this clause will prevail and that other provision will be read down and interpreted accordingly.

22. General

22.1 Notices

Any notice required to be served under this Lease must be in writing and must be served by post, facsimile transmission or hand delivered to:

22.1.1 the Tenant at its address set out in this Lease, or any other address notified in writing to Council by the Tenant; and

22.1.2 Council at its address set out in this Lease or any other address notified in writing to the Tenant by Council.

22.2 Time of service

A notice or other communication is deemed served:

22.2.1 if served personally or left at the person's address, upon service;

22.2.2 if posted, three business days after posted;

22.2.3 if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and

22.2.4 if received after 5.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

22.3 Entire understanding

This Lease and the disclosure statement (if any) contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

22.4 Waiver

If Council accepts the Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of Council's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of Council's rights under this Lease.

22.5 Special Conditions

This Lease is subject to the Special Conditions. The Special Conditions override any inconsistent provisions in this Lease.

23. Interpretation

23.1 Governing law and jurisdiction

This Lease is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

23.2 Persons

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

23.3 Joint and several

If a party consists of more than 1 person, this Lease binds them jointly and each of them severally.

23.4 Legislation

In this Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

23.5 Clauses and headings

In this Lease:

23.5.1 a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in or to this Lease; and

23.5.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Lease.

23.6 Severance

In this Lease:

23.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

23.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

23.7 Number and gender

In this Lease, a reference to:

23.7.1 the singular includes the plural and vice versa; and

23.7.2 a gender includes the other genders.

23.8 No Relationship

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

23.9 Exclusion of statutory provisions

The following statutory provision is excluded from this Lease:

Division 7 of the *Transfer of Land Act 1958* (Vic).

Annexure A Special Conditions

1. Restriction on use

The Tenant must not use the Land wholly or predominantly for the sale or hire of goods by retail or the retail provision of services within the meaning of the Act. This Special Condition is an essential term of this Lease.

2. Cost of services to the Land

Notwithstanding that pursuant to clause 7.1, the Tenant must pay for all services in connection with the Land.

Annexure B Plan of Land

11 GENERAL BUSINESS (including strategic direction and specific issues)

12 CLOSED SESSION

13 MINUTES FROM MEETINGS

14 ATTACHMENTS / REPORTS

Petition received to TP30-17 Planning Permit Application
Council Reseal Program 2018 - 2019
Asset Management Policy 2018
MoU with SES for Dunmunkle Unit at 2 Woods St, Rupanyup
Council and VICSES Lease

15 NEXT MEETING

The next meeting of Council will be held on Wednesday, 23 January 2019 at 9:30am at Warracknabeal.

16 CLOSE

Mayor