



Derwent Entertainment Centre and adjoining land at Wilkinson's Point

Agreement for sale of land

Glenorchy City Council
(Council)

and

The Crown in Right of Tasmania represented by **The Honourable
Guy Barnett MP** being and as the Minister for the time being
administering the *Land Acquisition Act 1993* (Tas)
(Crown)

THE CROWN SOLICITOR OF TASMANIA
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Contents

Details and recitals	1
Agreed terms and conditions	3
1 Definitions and interpretation	3
1.1 Definitions	3
1.2 Interpretation	5
1.3 Headings	7
1.4 No rule of construction applies to disadvantage party	7
2 Agreement for sale and purchase	7
2.1 Agreement for sale and purchase	7
2.2 Purchase price	7
3 Completion and related matters	7
3.1 Time, date and place for Completion	7
3.2 Completion obligations and procedures	7
3.3 Obligations following completion	8
3.4 Adjustment for Statutory Charges	9
4 Priority interests that may affect Sale Land	9
5 Description of Sale Land	9
5.1 Acceptance of identity	9
5.2 Exclusion of Crown's right to object	10
5.3 Merger	10
6 Condition of Sale Land	10
6.1 Current state	10
6.2 Exclusion of warranties and representations	10
6.3 Environmental matters	10
7 Chattels	11
7.1 Council's warranty	11
7.2 Exclusion of implied warranties	11
7.3 Condition of Chattels	11
7.4 Merger	11
8 Intellectual Property	11
8.1 Council's warranties	11
8.2 Merger	11
9 GCC Retained Land – subdivision and related matters	12
9.1 Subdivision	12
9.2 Trust arrangements in relation to GCC Land	13
9.3 Risks in relation to GCC Retained Land	13
10 Roadworks and related matters	13
10.1 Definitions	13
10.2 Status, use and responsibility for Carriageway Land	14
10.3 Highway Works	14

10.4	Cost of Highway Works	15
10.5	Quantity Surveyor	15
11	Capital Gains Tax Withholding	16
12	GST	16
13	Notices	17
13.1	Notice requirements	17
13.2	Method and address for delivery	17
13.3	Time of receipt	18
13.4	Service of Notices on lawyer	18
13.5	Other modes or places of service	18
14	Miscellaneous	18
14.1	Governing law	18
14.2	Dispute jurisdiction	18
14.3	Merger	18
14.4	Entire agreement clause	19
14.5	Liability	19
14.6	Benefit	19
14.7	Severance	19
14.8	Counterparts	19
14.9	Further assurance	19
14.10	Business Days	19
14.11	Legal costs	19
14.12	Amendment	19
14.13	Waiver	20
14.14	Successors and assigns	20
14.15	Rights cumulative	20
14.16	Disclosure	20
14.17	Minister or State of Tasmania expressed to be party	20
14.18	No interference with executive duties or powers	20
14.19	Surviving provisions and termination	21
	Signing	22
	Attachment 1 – List of Chattels	23
	Attachment 2 – Plan	29
	Attachment 3 – Highway Works Specification	30

Agreement for sale of land

Details and recitals

Date:

Parties:

Name	Glenorchy City Council
ABN	19 753 252493
Short form name	Council
Notice details	374 Main Road GLENORCHY Tas 7010 Facsimile: Not used Email: [REDACTED] Attention: Sam Fox

Name	The Crown in Right of Tasmania represented by and acting through The Honourable Guy Barnett MP being and as the Minister for the time being of the State of Tasmania administering the <i>Land Acquisition Act 1993</i> (Tas)
Short form name	Crown
Notice details	C/- Department of State Growth Salamanca Building 4 Salamanca Place HOBART Tasmania 7001 Facsimile: Not used Email: info@stategrowth.tas.gov.au Attention: Secretary, Department of State Growth

Recitals:

- A. The Council is the registered proprietor of the Sale Land, the GCC Retained Land and the owner of the Chattels.
- B. For the purposes of the *Business Names Registration Act 2011* (Cwlth), the Business Name is registered to the Council.
- C. The parties have agreed that, in accordance with and subject to this Agreement:
- (1) the Council will sell to the Crown, and the Crown acting pursuant to section 9 of the Act will purchase from the Council, the Sale Land and the Chattels; and
 - (2) at Completion:
 - (i) the Council will transfer the Business Name to the Crown; and
 - (ii) the Council will transfer title to the Sale Land and the GCC Retained Land to the Crown.
- D. Subject to Completion:
- (1) the Crown, acting as a bare trustee only, will hold the GCC Retained Land on trust for the Council;

- (2) the Crown will complete a subdivision to create separate titles in respect of the DEC Land, the Development Land and the GCC Retained Land; and
- (3) following completion of the subdivision, the Minister will transfer title to the GCC Retained Land (as surveyed) to the Council on the basis that the Council is entitled in equity to GCC Retained Land.

Agreed terms and conditions

The parties agree as follows:

1 Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Act means the *Land Acquisition Act 1993* (Tas).

Agreement or **this Agreement** means this document and includes all its annexures, appendices, attachments and schedules (if any).

Approval means any permit, licence, consent, grant, certificate, sealing or other approval, relating to the development or use of land, issued by, or required to be obtained from or to be filed with, a Government Body, and includes any planning permit, planning approval, building permit, plumbing permit, occupancy approval and environmental approval.

Asbestos includes 'asbestos', 'asbestos containing material (ACM)' and 'asbestos-contaminated dust or debris (ACD)', in each case, as defined in the *Work Health and Safety Regulations 2012* (Tas).

Bank means a bank that is an authorised deposit-taking institution for the purposes of the *Banking Act 1959* (Cwlth)).

Bank Cheque means an unendorsed bank cheque drawn by a Bank.

Business Day means a day that is not a Saturday, a Sunday, Easter Tuesday or a statutory holiday (as defined in the *Statutory Holidays Act 2000* (Tas)) generally observed in Hobart.

Business Name means the business name 'Derwent Entertainment Centre'.

Chattels means the chattels listed in Attachment 1.

Claim means any allegation, debt, cause of action, liability, claim (including a claim for any Loss), proceeding, suit or demand of any nature however arising and whether present or future, fixed or unascertained, actual or contingent, and whether at law, in equity, under statute or otherwise.

Completion means the completion of the sale and purchase of the Sale Land and the Chattels in accordance with this Agreement.

Crown means the Crown in Right of Tasmania.

Date of Completion means the date Completion actually occurs.

DEC means the building and facilities known as the Derwent Entertainment Centre located at Glenorchy in Tasmania but excluding any GCC Retained Land.

DEC Land means the land comprised in Folio of the Register Volume 110871 Folio 1, and on which the DEC is constructed but excluding any GCC Retained Land.

Development Land means the land comprised in Folios of the Register Volume 157350 Folios 1 and 2 but excluding any GCC Retained Land.

Details means the details and recitals set out above.

Encumbrance means any mortgage, charge, Security Interest, lien, pledge or any other assignment by way of security.

Existing Carriageway Land means the land shown as the Existing Carriageway Land on the Plan.

GCC Retained Existing Carriageway Land means the land shown as the GCC Retained Existing Highway Land on the Plan.

GCC Retained Foreshore Land means the land shown as the GCC Retained Foreshore Land on the Plan.

GCC Retained Future Carriageway Land means the land shown as the GCC Retained Future Highway Land on the Plan.

GCC Retained Land means:

- (a) the GCC Retained Existing Carriageway Land;
- (b) the GCC Retained Foreshore Land; and
- (c) the GCC Retained Future Carriageway Land.

Government Body includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government, and a statutory authority or instrumentality.

GST means any goods and services tax or similar tax imposed by the Commonwealth of Australia (but excluding any penalty, fine, interest or similar payment).

GST Laws means applicable Laws relating to GST.

Hazardous Substance includes:

- (a) Asbestos;
- (b) anything that contains Asbestos;
- (c) any solid, liquid, gas, odour, heat, sound, vibration, radiation, material, substance or contamination, of any kind on, in or under land or water, which:
 - (i) constitutes a pollutant or contaminant for the purposes of any Law;
 - (ii) makes or may make land or water unsafe, unfit or harmful for habitation, use or occupation by any person or animal;
 - (iii) creates or may be a risk to the health or safety of any person; or
 - (iv) is such that any land or water does not satisfy any relevant criteria or standards published or adopted by the Environment Protection Authority (Tas) from time to time.

Intellectual Property means:

- (a) the Council's rights in relation to the Business Name;
- (b) the Council's rights in relation to any domain name used in relation to the DEC; and
- (c) the Council's rights in relation to any logos used in relation to the DEC.

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) legislation and subordinate legislation; and
- (c) requirements, approvals (including conditions) and guidelines of any Government Authority that have the force of law.

Loss means any loss, cost, expense, damage, liability, damages or exposure of any type and however arising incurred by a party including legal costs and expenses on a full indemnity basis, direct, indirect or consequential loss, liability to third parties, loss of revenue and loss of profit.

Minister means the Minister for the time being administering the Act.

month means calendar month.

Plan means the plan included as Attachment 2.

PPSA Security Interest has the meaning given to the term 'security interest' in the *Personal Property Securities Act 2009* (Cwlth).

Purchase Price has the meaning in clause 2.2.

Right includes a right, a power, a remedy, an authority or a discretion.

Sale Land means the DEC Land and the Development Land. The expression includes all improvements on the Sale Land.

Security Interest means:

- (a) a PPSA Security Interest;
- (b) any mortgage, charge, bill of sale, pledge, deposit, lien, hypothecation, arrangement for the retention of title and any other interest or power given by way of security for any debt, monetary liability or other obligation,

and includes any agreement to grant or create any of the foregoing.

Services means:

- (a) services of any kind including roads, footpaths, bridges, drainage, sewerage, electricity, gas, water, telecommunications, and other utilities; and
- (b) infrastructure used to supply or deliver any service including pipes, drains, cables and wires.

Statutory Charges means all charges in relation to the Sale Land levied by any Government Body including rates, water rates, sewerage rates, land tax (on a single holding basis), development levies, filing costs and subdivision levies.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include all genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;

- (d) a reference to a thing (including property or an amount) is a reference to the whole and each part of that thing;
- (e) a reference to a group of persons includes a reference to any one or more of those persons;
- (f) a reference to an annexure, an appendix, an attachment, a schedule, a party, a clause or a part is a reference to an annexure, an appendix, an attachment, a schedule or a party to, or a clause or a part of, this Agreement;
- (g) a reference to any legislation or legislative provision includes subordinate legislation made under it and any amendment to, or replacement for, any of them;
- (h) writing includes marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;
- (i) a reference to a document includes:
 - (i) any thing on which there is writing;
 - (ii) any thing from which sounds, images or writings can be reproduced with or without the aid of any thing else;
 - (iii) an amendment or supplement to, or replacement or novation of, that document; or
 - (iv) a map, plan, drawing or photograph;
- (j) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (k) a reference to a 'person' includes a natural person, a partnership, a body corporate, a corporation sole, an association, a Government Body, or any other entity;
- (l) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;
- (m) a reference to a Minister includes, as applicable, that Minister's predecessors and successors in office;
- (n) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;
- (o) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office;
- (p) mentioning any thing after the words 'includes', 'included' or 'including' does not limit the meaning of any thing mentioned before those words;
- (q) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;

- (r) reference to a time or date in connection with the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere; and
- (s) references to '\$' and 'dollars' are to Australian dollars.

1.3 Headings

Headings are included for convenience only and do not affect the interpretation of this Agreement.

1.4 No rule of construction applies to disadvantage party

In relation to the interpretation of this Agreement, no rule of construction is to apply to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

2 Agreement for sale and purchase

2.1 Agreement for sale and purchase

Subject to this Agreement, the Council agrees to sell to the Crown, and the Crown agrees to buy from the Council free from Encumbrances:

- (a) an estate in fee simple in the Sale Land;
 - (b) any easements and covenants benefiting the Sale Land which are to be created in accordance with clause 9.1;
 - (c) the Chattels;
 - (d) Main DEC phone number (03 6251 3170);
 - (e) Radio licences;
 - (f) Website and email addresses (info@derwent.com.au, renee@derwent.com.au; ben@derwent.com.au);
 - (g) the Business Name; and
 - (h) the Intellectual Property,
- (the **Sale Assets**).

2.2 Purchase price

The purchase price payable by the Crown to the Council for the Sale Assets is eight million dollars (\$8,000,000.00) (excluding GST) (the **Purchase Price**).

3 Completion and related matters

3.1 Time, date and place for Completion

Completion of the sale and purchase of the Sale Assets is to occur on the date of this Agreement, or such other date (if any) agreed in writing between the parties.

3.2 Completion obligations and procedures

On Completion:

- (a) **(Council's obligations):** the Council must:
- (i) supply to the Crown a good marketable documentary title for the Sale Land free from Encumbrances (except those permitted by this Agreement) and any charges payable or to become payable to any Government Body in respect of works done by the Council as at the Date of Completion; and
 - (ii) give to the Crown:
 - (A) vacant possession of the Sale Land;
 - (B) the certificates of title for the Sale Land and the GCC Retained Land being:
 - folio of the Register Volume 110871 Folio 1; and
 - folios of the Register Volume 157350 Folio 1 and 2;
 - (C) possession of the Chattels; and
 - (D) without limiting clause 3.2(a)(i), a duly executed transfer in respect of the Sale Land and the GCC Retained Land that is registrable in accordance with the *Land Titles Act 1980* (Tas);
 - (iii) do all things reasonably necessary:
 - (A) to enable the Business Name to be registered to the Crown in accordance with *Business Names Registration Act 2011* (Cwlth); and
 - (B) to transfer to the Crown all of the Council's right, title and interest in the Intellectual Property;
- (b) **(Crown's obligations):** the Crown must:
- (i) pay to the Council (or as the Council may direct by notice in writing to the Crown) by Bank Cheque the total of the following amounts:
 - (A) the Purchase Price;
 - (B) GST on the Purchase Price and the adjustments; and
 - (C) the adjustments payable in accordance with clause 3.3;
 - (ii) take possession of the Sale Land;
 - (iii) take delivery of the Chattels; and
- (c) **(ownership):** ownership of the Sale Assets passes from the Council to the Crown.

3.3 Obligations following completion

As soon as practicable following Completion, the Crown must:

- (a) make an application for the Business Name to be registered to the Crown in accordance with *Business Names Registration Act 2011* (Cwlth); and
- (b) make any application required by Law to effect the transfer of any Intellectual Property from the Council to the Crown.

3.4 Adjustment for Statutory Charges

- (a) All Statutory Charges payable in respect of the Council's ownership of the Sale Land must be paid by the Council to the end of the current financial year in which Completion takes place.
- (b) The payments required by clause 3.4 may be made after Completion (even if a Statutory Charge constitutes a charge on the Sale Land) if the Council gives to the Crown's lawyers at Completion a written undertaking to pay the Statutory Charges payable by the Council.
- (c) At Completion, the Crown must pay to the Council:
 - (i) if the Sale Land is separately assessed, that proportion of the Statutory Charges that are assessed, charged or imposed on the Sale Land that relate to the period from and including Completion or the Crown taking possession (whichever first occurs) to the end of the current financial year in which Completion takes place; and
 - (ii) if the Sale Land is not separately assessed, a proportion of any Statutory Charges that are assessed, charged or imposed on the Sale Land for the period from and including Completion or the Crown taking possession (whichever first occurs) to the end of the current financial year in which Completion occurs. The proportion will be calculated by area.
- (d) The Crown is solely responsible for any supplemental Statutory Charges that are assessed, charged or imposed after Completion or the Crown taking possession (whichever first occurs) in relation to the Sale Land.

4 Priority interests that may affect Sale Land

The Sale Land is sold and the Crown must take title to the Sale Land:

- (a) **(easements and covenants)**: subject to and together with all easements and covenants affecting the Sale Land, (including statutory easements and rights under legislation relating to the supply of any Service);
- (b) **(Approvals)**: subject to Approvals affecting the Sale Land;
- (c) **(Services)**: subject to all Services located in, over or under the Sale Land, whether or not the existence of such Services are known to the Council or the Crown; and
- (d) **(Crown grant)**: subject to the exceptions, reservations, limitations and conditions (if any) contained or referred to in any Crown grant, or folio of the Register, that relates to the Sale Land.

5 Description of Sale Land

5.1 Acceptance of identity

Subject to clause 9, the Crown:

- (a) accepts the identity of the Sale Land as described in the folios of the Register for the Sale Land; and

- (b) the measurements and bearings appearing on the plan in respect of those folios of the Register as correctly defining the position and extent of the Sale Land.

5.2 Exclusion of Crown's right to object

- (a) The Crown must not make any objection, issue any requisition, claim compensation, rescind or terminate this Agreement, or make any other Claim against the Council in respect of:
 - (i) any error, misstatement, omission, discrepancy or wrong description in the title to the Sale Land as to area, dimensions or boundaries; or
 - (ii) any minor encroachments on or by the Land or in respect of any thing partly on the Sale Land and and/or any adjoining land.
- (b) The Crown is not entitled to require the Council to explain or reconcile any error, misstatement, omission, discrepancy or wrong description in the title to the Sale Land as to area, dimensions or boundaries.
- (c) To avoid doubt, nothing in this clause 5.2 affects or limits the operation of clause 9.

5.3 Merger

This clause 5 does not merge on Completion.

6 Condition of Sale Land

6.1 Current state

The Sale Land is sold in its current state of repair and condition and with any defects (including defects in design, construction or repair) as at the date of this Agreement.

6.2 Exclusion of warranties and representations

The Crown acknowledges and agrees that:

- (a) the Council has not, nor has any person on behalf of the Council, made any representation or warranty as to the condition of the Sale Land; and
- (b) if the Council, or any person on behalf of the Council, has made or makes any representation or warranty as to the condition of the Sale Land, the Crown has not relied and will not rely on that representation or warranty in connection with this Agreement.

6.3 Environmental matters

- (a) On Completion the Crown assumes responsibility for all Hazardous Substances on or affecting the Sale Land.
- (b) As between the Council and the Crown, the Crown will be solely responsible for:
 - (i) any environmental remediation of; or
 - (ii) any removal of contaminated soil or any Hazardous Substance from, the Sale Land (including the removal of any Asbestos forming part of the DEC).
- (c) If any order is made, or any notice is issued, by any Government Body on or after the date of this Agreement which requires the Council to carry out any

environmental remediation of the Land, the Crown must promptly carry out that remediation at its cost in accordance with:

- (i) the requirements of that order or notice; and
- (ii) all applicable Laws which apply to the carrying out of that environmental remediation, including any applicable Law under which that order or notice was issued.

7 Chattels

7.1 Council's warranty

The Council warrants to the Crown that as at Completion the Chattels were the absolute property of the Council free from any Security Interest.

7.2 Exclusion of implied warranties

To the fullest extent permitted by Law, all warranties that would otherwise be implied in this Agreement in relation to the sale of the Chattels are excluded and negated.

7.3 Condition of Chattels

The Chattels are sold in their state of repair and condition as at the date of this Agreement, and subject to any fair, wear and tear that may occur from that date until the Date of Completion.

7.4 Merger

This clause 7 does not merge on Completion.

8 Intellectual Property

8.1 Council's warranties

The Council warrants to the Crown that as at Completion:

- (a) all of the Intellectual Property was valid and subsisting;
- (b) the Intellectual Property was the absolute property of the Council free from any Security Interest; and
- (c) the Council was not aware of:
 - (i) any challenge or threatened challenge
 - (ii) any Claim or allegation by a third party that the Intellectual Property infringes the rights of any other person.

8.2 Merger

This clause 8 does not merge on Completion.

9 GCC Retained Land – subdivision and related matters

9.1 Subdivision

- (a) As soon as practicable following Completion, the Crown must lodge with the Recorder of Titles all documents and plans reasonably necessary to facilitate the registration of a plan of subdivision in respect of the Land pursuant to which, subject to this clause 9.1:
 - (i) a separate title is created in respect of the DEC Land;
 - (ii) a separate title is created in respect of the Development Land;
 - (iii) a separate title is created in respect of the GCC Retained Land;
 - (iv) the Sale Land is benefited by the easements and covenants set out or referred to on Plan.
- (b) The Crown does not give any warranty as to the accuracy, dimensions or areas shown on the Plan.
- (c) The Council acknowledges that:
 - (i) the Plan is a preliminary plan only; and
 - (ii) the final boundaries, dimension and areas of:
 - (A) the DEC Land;
 - (B) the Development Land;
 - (C) the GCC Retained Land; and
 - (D) easements shown on the Plan,are subject to final survey.
- (d) The Council is not entitled to Claim any compensation against the Crown or the Crown if the surveyed areas of the GCC Retained Land (as shown on the plan of subdivision registered for the purpose of issuing title) are different from those shown on the Plan.
- (e) The Council is not entitled to require the Crown to explain or reconcile differences or discrepancies in the description of the GCC Retained Land or in dimensions, areas or boundaries that affect the GCC Retained Land.
- (f) The Crown reserves the right to incorporate in the plan of subdivision lodged with the Recorder of Titles changes from the Plan which are required:
 - (i) by a Government Body;
 - (ii) to comply with the Law;
 - (iii) by the Crown's surveyor (acting reasonably)
 - (iv) for the purposes creating any easements reasonably required for the reasonable use and enjoyment of the Sale Land; or
 - (v) by good surveying practice.

9.2 Trust arrangements in relation to GCC Land

- (a) On and from Completion, the Crown holds the legal title to the GCC Retained Land as a bare trustee for the Council.
- (b) As a bare trustee the Crown has no duties in relation to the GCC Retained Land (including any duty to repair, maintain or protect the GCC Retained Land).
- (c) The trust is extinguished by the Crown transferring to the Council the GCC Retained Land as shown on the plan subdivision for the purposes of clause 9.1.
- (d) Subject to clause 9.1, the Crown must transfer the GCC Retained Land to the Council within 20 Business Days of the Recorder of Titles issuing a separate title in respect of the GCC Land.
- (e) For the avoidance of doubt, the Council is entitled to the continued use and occupation of the GCC Retained Land pending the transfer of legal title to GCC Retained Land.

9.3 Risks in relation to GCC Retained Land

- (a) All risks, liabilities and responsibilities in relation to the GCC Retained Land remain with the Council as if the parties had never entered this Agreement. Accordingly, and without limitation, risk in relation to the GCC Retained Land does not pass from the Council to the Crown on the date of this Agreement or on Completion.
- (b) The Council must indemnify the Crown in relation to all Claims made against the Minister or the Crown in relation to the GCC Retained Land.
- (c) The liability of the Council under the indemnity is to be reduced proportionately in respect of any Loss which directly results from any negligent, fraudulent or reckless, act or omission of the Minister or the Crown.

10 Roadworks and related matters

10.1 Definitions

In this clause 10, unless the context otherwise requires:

Actual Cost of the Highway Works means the Council's actual reasonable costs of labour (using its own employees) and materials to carry out the Highway Works but excluding:

- (a) depreciation, interest and other financing costs;
- (b) any allowance for profits, overhead costs and any other fixed costs that would otherwise be payable by the Council irrespective of whether the Highway Works were carried out;
- (c) insurance costs;
- (d) costs related to the supervision of the Highway Works; and
- (e) GST.

Carriageway Land means:

- (a) the Existing Carriageway Land; and

- (b) the GCC Retained Existing Carriageway Land.

Date for Completion of the Highway Works means the 30 June 2023.

Highway Land means the land shown in the Plan as the GCC Retained Existing Carriageway Land and the GCC Retained Future Carriageway Land.

Highway Opening Day means the day on which the Council opens the Highway Land as a highway under the LGH Act.

Highway Works means the works required in accordance with the LGH Act to make and open a highway, for the purposes of that Act, on the Highway Land and otherwise accordance with Highway Works Specification.

Highway Works Specification means the specification included in Attachment 3 for the carrying out of the Highway Works

LGH Act means the *Local Government (Highways) Act 1982* (Tas).

Quantity Surveyor means:

- (a) subject to paragraph (b) and (c); and
- (b) if the Quantity Surveyor refuses, or is unable, to carry out the functions of the Quantity Surveyor under this Agreement, the Crown and the Council must appoint another person to be the Quantity Surveyor; and
- (c) if paragraph (b) applies and the Crown and the Council are unable to agree to the person to be appointed as the Quantity Surveyor, either party may request the President of The Law Society to Tasmania to appoint another person to be Quantity Surveyor

Specified Period means the period commencing on the date of this Agreement and ending on day before the Highway Opening Day.

Maximum Amount means the amount of \$2.4 Million Dollars (\$2,400,000.00) plus GST.

10.2 Status, use and responsibility for Carriageway Land

During the Specified Period:

- (a) the Crown and the Crown's Agents may use the GCC Retained Existing Carriageway Land, as of right for the purposes of reasonable access to, and egress from, the Sale Land;
- (b) the Council must keep and maintain the Carriageway Land in a sufficient repair to enable the Crown and the Crown's Agents to use the Carriageway Land for the purposes of reasonable access to, and egress from, the Sale Land; and
- (c) the Council may use the GCC Retained Carriageway Land for the purposes of carrying out the Highway Works on that land, but in doing so the Council must ensure that the Crown and the Crown's Agents, at all times, during the Specified Period have reasonable access to, and egress from, the Sale Land.

10.3 Highway Works

- (a) The Council must carry out and complete the Highway Works on the Highway Land:
 - (i) in a proper and workmanlike manner;

- (ii) in conformity, and so as to ensure compliance, with all applicable Laws;
 - (iii) in accordance with the Highway Works Specification; and
 - (iv) in a way that causes no damage to the Sale Land (including for the avoidance of doubt, the DEC).
- (b) The Council must complete the Highway Works by no later than the Date for Completion of the Highway Works.
- (c) If the Council does not complete the Highway Works by the Date for Completion of the Highway Works, the following provisions apply:
 - (i) The Crown may give notice (**Notice to Complete**), in writing, to the Council that the Crown requires the Council to complete the Highway Works within the period (the **Grace Period**) specified in the Completion Notice (which must be not less than one month from the date of the notice).
 - (ii) If the Council does not complete the Highway Works within the Grace Period specified in Notice to Complete, the Crown may by notice (**Step-in Notice**), in writing, to the Council, step-in and complete the Highway Works in accordance with the requirements of this Agreement.
 - (iii) If the Crown gives a Step-in Notice:
 - (A) the Crown may enter upon the Highway Land and complete the Highway Works; and
 - (B) the Council must indemnify the Crown for any reasonable costs incurred or paid by the Crown in connection with the completion of the Highway Works as certified by the Quantity Surveyor.
- (d) Once the Highway Works are completed and pending the Council opening the Highway Land as a highway for the purposes of the LGH Act, the Crown and the Crown's Agents may use the Highway Land as of right for the purposes of reasonable access to, and egress from, the Sale Land.

10.4 Cost of Highway Works

- (a) Subject to this clause 10.4, the Council must carry out the Highway Works at its cost.
- (b) If the Actual Cost of the Highway Works exceeds the Maximum Amount, the Crown must pay to the Council the amount which is the difference between the Actual Cost of the Highway Works and the Maximum Amount as certified, in writing, by the Quantity Surveyor.
- (c) The Crown is not required to pay any amount pursuant to clause 10.4(b) unless and until the Council has completed the Highway Works and the Highway Land has been opened as highway for the purposes of the LGH Act that is maintainable by the Council.
- (d) Except to the extent provided for in clause 10.4(b), the Crown is not required to make any contribution to the cost of the Highway Works or to the maintenance or repair of the Highway Land as a highway (for the purposes of the LGH Act).

10.5 Quantity Surveyor

- (a) The Quantity Surveyor will be engaged by the Crown.

- (b) The Council must reimburse to the Crown 50% of the reasonable costs paid by the Crown on account of the Quantity Surveyor's costs and disbursements (excluding GST). The reimbursement is to be paid not later than 10 Business Days after the Crown gives to the Council:
 - (i) details of the costs paid by the Crown;
 - (ii) evidence that the Crown has paid the costs.

11 Capital Gains Tax Withholding

- (a) This clause 11 applies if this transaction is not an Excluded Transaction.
- (b) If, on or prior to Completion, the Council provides the Crown with:
 - (i) a Clearance Certificate; or
 - (ii) a Nil Variation Notice,the Crown agrees that it will not withhold the CGT Withholding Amount or remit the CGT Withholding Amount to the ATO required to be withheld or remitted by operation of the TAA.
- (c) If the Council does not provide to the Crown the required Clearance Certificate or Nil Variation Notice pursuant to clause 11(b) of this Agreement, the Crown must pay the CGT Withholding Amount to the ATO on or before Completion and the amount to be paid by the Crown to the Council at Completion is to be reduced accordingly.
- (d) In this clause:

ATO means the Australian Tax Office.

CGT Withholding Amount means the amount the Crown must withhold and remit to the Commissioner calculated in accordance with 14D of Schedule 1 of the TAA.

Clearance Certificate means a valid clearance certificate issued to the Council by the Commissioner pursuant to section 14-220 of the TAA.

Commissioner means the Commissioner of Taxation.

Excluded Transaction means those transactions excluded set out in 14-215 of the TAA.

Nil Variation Notice means a valid notice issued by the Commissioner pursuant to section 14-235 of the TAA which remains current at the date of completion of the Agreement which varies the CGT Withholding Amount to nil.

TAA means the *Taxation Administration Act 1953* (Cwlth).

12 GST

- (a) Unless otherwise stated in this Agreement, all amounts payable by one party to another party are exclusive of GST.

- (b) If GST is imposed or payable on any supply made by a party under this Agreement, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.
- (c) A party that makes a taxable supply under this Agreement must provide a valid tax invoice to the recipient of the supply.
- (d) A party's right to payment under clause 12(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- (e) If the consideration for a supply under this Agreement is a payment or reimbursement for, or contribution to, any expense or liability incurred by the supplier to a third party, the amount to be paid, reimbursed or contributed in respect of the expense or liability will be the amount of the expense or liability net of any input tax credit to which the supplier is entitled in respect of the expense or liability.
- (f) Where any amount payable under this Agreement is paid by being set-off against another amount, each amount must be calculated in accordance with this clause 12 as if it were an actual payment made pursuant to this Agreement.
- (g) Unless the context otherwise requires, expressions used in this clause 12 that are defined in the GST Laws have the meanings given to those expressions in the GST Laws.

13 Notices

13.1 Notice requirements

- (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under this Agreement must be:
 - (i) in legible writing in the English language;
 - (ii) subject to clauses 13.1(b), signed by or on behalf of the sender or by a lawyer or a conveyancer for the sender;
 - (iii) marked for the attention of the person or position (if any) specified in the Details applicable to the intended recipient of the Notice or, if the intended recipient has notified otherwise, marked for attention in the way last notified; and
 - (iv) left or sent in accordance with clause 13.2.
- (b) A Notice sent by email is taken to have been signed by the sender.
- (c) A Notice must not be given orally.

13.2 Method and address for delivery

- (a) Subject to clause 13.2(b), a Notice must be:
 - (i) left at the intended recipient's address set out in the Details;
 - (ii) sent by prepaid ordinary mail (or prepaid airmail, if from one country to another country) to the intended recipient's address set out in the Details;

- (iii) sent by email to the intended recipient's email address (if any) set out in the Details.
- (b) If the intended recipient of a Notice has notified the sender of another address, facsimile number or email address for the purposes of receiving Notices, then subsequent Notices to that intended recipient must be left at or sent to the address, facsimile number or email address (as applicable) last notified by that intended recipient.

13.3 Time of receipt

- (a) Subject to clause 13.3(b), a Notice is taken to have been received by the intended recipient:
 - (i) if left at the intended recipient's address, at the time of delivery;
 - (ii) if sent by prepaid ordinary mail, on the third Business Day after the day of posting, or if sent by prepaid airmail from one country to another country, on the tenth Business Day after the day of posting;
 - (iii) if sent by email, four hours after the time the email was sent (as recorded by the device from which the email was sent) provided that the sender has not received an automated message that the email has not been delivered.
- (b) If a Notice is received by a recipient on a day that is not a Business Day or after 4.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- (c) A Notice is effective from the time it is taken to have been received in accordance with clauses 13.3(a) and 13.3(b) (unless a later time is specified in the Notice, in which case the notice takes effect from that time).

13.4 Service of Notices on lawyer

A Notice that is given to the lawyer or conveyancer for a party is taken to have been given to that party. For the avoidance of doubt, clause 13.3 applies to the receipt of any Notice given to a lawyer or conveyancer in accordance with this clause.

13.5 Other modes or places of service

Nothing in this Agreement limits or excludes any other mode or place of service required by an applicable Law.

14 Miscellaneous

14.1 Governing law

This Agreement is governed by the Laws applying in Tasmania.

14.2 Dispute jurisdiction

The parties submit to the non-exclusive jurisdiction of courts with jurisdiction in Tasmania, and any courts that may hear appeals from those courts, in respect of any proceedings in connection with this Agreement.

14.3 Merger

Any provision of this Agreement which is not fully completed, observed or performed immediately before Completion, or is capable of taking effect after Completion, does not

merge on Completion or in any transfer of the Sale Land, and continues in full force and effect after Completion.

14.4 Entire agreement clause

This Agreement forms the entire agreement of the parties in respect of its subject matter. The only enforceable obligations of the parties in relation to the subject matter of this Agreement are those that arise out of the provisions contained in this Agreement. All prior agreements in relation to the subject matter of this Agreement are merged in and superseded by this Agreement unless expressly incorporated in this Agreement as an annexure, an appendix, an attachment or by reference.

14.5 Liability

An obligation of, or a representation, a warranty or an indemnity by, two or more parties (including where two or more persons are included in the same defined term) under or in respect of this Agreement, binds them jointly and each of them severally.

14.6 Benefit

An obligation, a representation, a warranty or an indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and each of them severally.

14.7 Severance

If a provision of this Agreement is or at any time becomes illegal, prohibited, void or unenforceable for any reason, that provision is severed from this Agreement and the remaining provisions of this Agreement:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Agreement.

14.8 Counterparts

- (a) This Agreement may be entered into in any number of counterparts.
- (b) A party may execute this Agreement by signing any counterpart.
- (c) All counterparts, taken together, constitute one instrument.

14.9 Further assurance

The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to this Agreement.

14.10 Business Days

If the day on or by which an act, matter or thing is to be done under this Agreement is not a Business Day, that act, matter or thing must be done by no later than the next Business Day.

14.11 Legal costs

Each party must bear their own costs in preparing and negotiating this Agreement.

14.12 Amendment

This Agreement may only be amended or supplemented in writing signed by the parties.

14.13 Waiver

- (a) A failure or delay in exercising a Right does not operate as a waiver of that Right.
- (b) A single or partial exercise of a Right does not preclude any other exercise of that Right or the exercise of any other Right.
- (c) A Right may only be waived in writing, signed by the party to be bound by the waiver. Unless expressly stated otherwise, a waiver of a Right is effective only in the specific instance and for the specific purpose for which it was given.

14.14 Successors and assigns

This Agreement is binding on and benefits each party and, unless repugnant to the sense or context, their respective administrators, personal representatives, successors and permitted assigns.

14.15 Rights cumulative

Each Right provided for in this Agreement:

- (a) operates independently of any other Right provided for in this Agreement; and
- (b) is cumulative with, and does not exclude or limit, any other Right, whether at Law or pursuant to any other agreement, deed or document.

14.16 Disclosure

- (a) Despite any confidentiality or intellectual property right subsisting in this Agreement, a party may publish all or any part of this Agreement without reference to another party.
- (b) Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

14.17 Minister or State of Tasmania expressed to be party

- (a) If a Minister of the Crown (acting in that capacity) is expressed to be a party to this Agreement, then unless an applicable Law provides otherwise:
 - (i) the Minister enters into this Agreement on behalf of the Crown;
 - (ii) the Rights, obligations and liabilities expressed to be those of the Minister are Rights, obligations and liabilities of the Crown; and
 - (iii) each reference in this Agreement to the Minister will be taken to include a reference to the Crown.
- (b) For the avoidance of doubt, if the State of Tasmania is expressed to be a party to this Agreement, the Rights, obligations and liabilities of the State of Tasmania are Rights, obligations and liabilities of the Crown.

14.18 No interference with executive duties or powers

Nothing in this Agreement is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this Agreement that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

14.19 Surviving provisions and termination

- (a) The termination of this Agreement does not affect or limit the operation or effect of clauses or parts of this Agreement:
 - (i) that are expressed to survive the termination of this Agreement;
 - (ii) that, at Law, survive the termination of this Agreement; or
 - (iii) that are necessary to survive the termination of this Agreement:
 - (A) to give full force and effect to the parties' respective Rights, obligations and liabilities on or after the termination of this Agreement;
 - (B) to enable a party to make, enforce or defend any claims related to this Agreement; or
 - (C) to give full force and effect to the operation of clause 14.19(b) or clause 14.19(c).
- (b) The termination of this Agreement does not affect any claims related to, or any Rights, releases, obligations or liabilities accrued or incurred under, this Agreement before the date on which this Agreement is terminated.
- (c) Nothing in this clause 14.19 affects or limits the operation of another provision of this Agreement which gives a party Rights, or imposes obligations on a party, on or after the termination of this Agreement.

Executed as a deed

Signing

Signing by the Council

The common seal of the **GLENORCHY CITY COUNCIL** AS Vendor was affixed hereto in accordance with section 19(5) of the Local Government Act 1993 (Tas) in the presence of:

		Common seal:	
		→	
Signature:		Signature:	
→		→	
*Print name and office/position held:		*Print name and office/position held:	

Signing by Crown

Executed on behalf of **The Crown in Right of Tasmania** by **The Honourable Guy Barnett MP** in the presence of the witness named below:

Signature of Minister			
→			
*Print name		Witness' signature:	
		→	
		*Witness print name and position:	
*Use BLOCK LETTERS		*Witness print address:	

Attachment 1 – List of Chattels

Items of memorabilia or historical significance		
Poster	Number	
Mrs Browns Boys	1	
Foo Fighters	1	
Em Rusciano	1	
The Next Step	1	
Delta Goodrem - 2005	1	
Human Nature - Jukebox Tour	1	
John Farnham - Live BY Demand	1	
Powder Finger	1	
The Wiggles - 2018	1	
Jim Jefferies Live - 2016	1	
Queen of the Stone Age - 2018	1	
Shout - The Legend of the Wild One	1	
Missy Higgins - On a Clear Night Tour	1	
James Brown	1	
Rick Astley Gold Record - 1989	1	
The Bolshoi Ballet 1992 Poster	1	
Cold Chisel Poster	1	
Shannon Noll Poster	1	
Foo Fighters	1	
Joe Cocker	1	
Lord of the Dance	1	
Grease	1	
Harlem Globetrotters	1	
Long Way to The Top	1	
A day on the Green	1	
Joe Cocker	1	Not Mounted
Jim Jefferies Live - 2016	1	Not Mounted
Cirque du Soleil Saltimbanco 2011	1	Not Mounted
Busting Out	2	Not Mounted
The Horseman from Snowy River	1	Not Mounted
Geale v Adama	1	Not Mounted
Rodriguez Sugar Man	1	Not Mounted
Shout - The Legend of the Wild One	1	Not Mounted
Queen of the Stone Age - 2018	1	Not Mounted
Seekers Silver Jubilee Tour 1993	1	
The Bolshoi Ballet 1992 Poster	1	
Bryan Adams So far so good 1994	1	
Bob Dylan	1	
Dire Straits 1991	1	
Culture Beat 1994	1	
Spectacular Indoor Rodeo	2	
Silvers Grand Magic Circus	2	

Poster	Number
BB King 1991	1
John Farnham - Chain Reaction Tour	1
Kate Ceberano and the Ministry of Fun	1
Jimmy Barnes Make it last all night	1
Elton John 1990	1
Johnny Diesel and the Injectors	1
The Angels 1990	1
UMPK 1990	1
Johnny Diesel - The Rock and Roll Tour	1
1927...ish Tour	1
How Spectacular can a spectacular get	1
Midnight Oil - November 1990	1
Rick Astley - Hold me in hour arms	1
Harlem Globetrotters - 65th anniversary	1
Whoopi Goldberg - 1990	1
James Reyne	1
The Eurythmics	1
Tom Jones Live in concert	1
Nineteen27 - The other side tour	1
Rock eisteddfod 1995	1
Moscow Circus	1
Wickety Wak	1
Chantoozies	1
Cheap Trick Back and Busted	1
Neil Young	1
Supercross Classic 1991	1
Rock eisteddfod 1991	1
Tas Boat Expo 1992	1
Motormania in Tasmania	1
Modelmakers and Collectors	1
Robinsons International Circus	1
Rock Eisteddfod 1992	1
Manpower Australia World Fantasy Tour	1
John Farnham - Talk of the town Tour 1994	1
Harlem Globetrotters	1
Meatloaf Welcome to the Neighbourhood	1
1994 Duathlon Championships	1
Silvers Grand Magic Circus	1
Women's world Basketball Championships 1994	1
Pepsi Supercross International	1
Joe Cocker 25th Anniversary Tour	1
Chris Isaac	1
The Cranberries 1996	1
Merle Haggard 1996	1
Rock Eisteddfod 1996	1
Presidents of the USA 1996	1
Targa Tasmania 1996	1

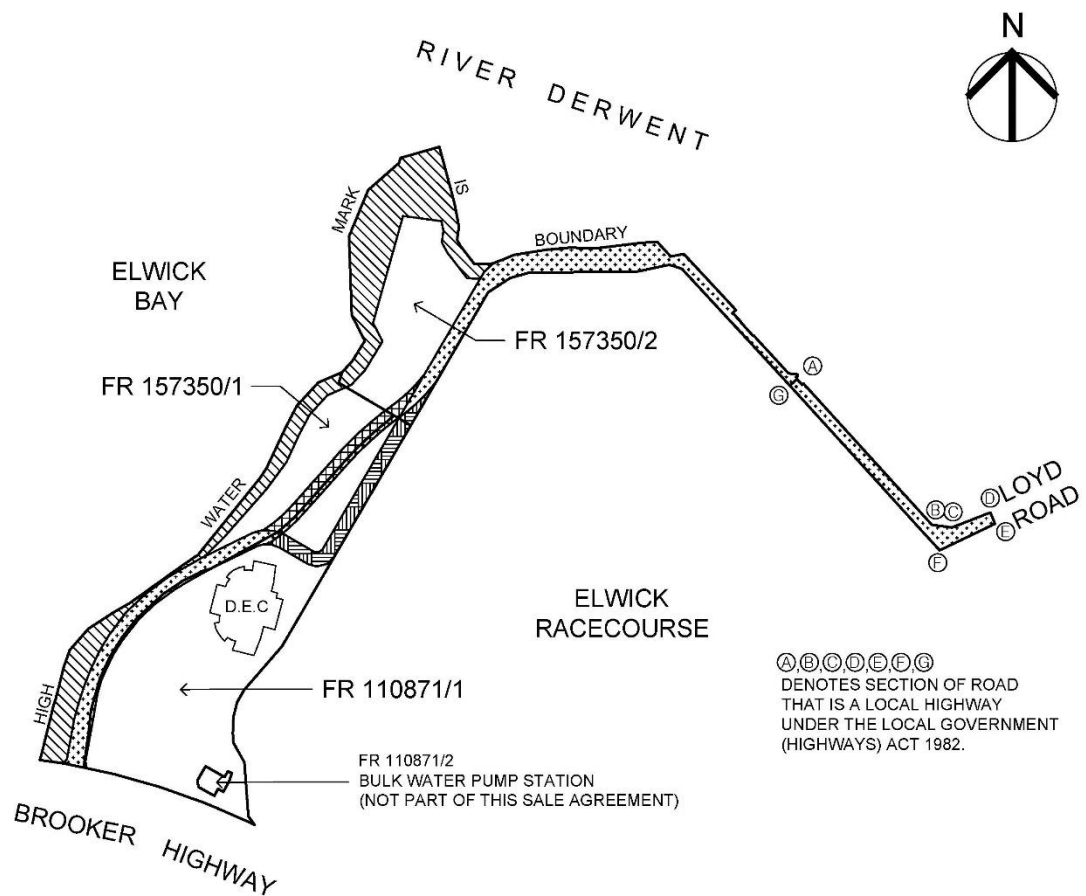
Poster	Number
Southern Safari Tasmania 1995	1
Walt Disney World On Ice	1
Riverdance	1
Boomers v Canada Basketball	1
Dancing Championships	1
The Hartz Supercross 1998	1
Grease - The Arena Spectacular	1
Opal v USA	1
Walt Disney's World On Ice 1996	1
Hi 5	1
Rock Eisteddfod 1999	1
Charlie Pride	1
Burn The Floor	1
The Wiggles - The Wiggly Big Show	1
Corrs Framed Photo	3
2005 Framed Rock Eisteddfod Award Photo	1
1998 Framed Rock Eisteddfod Award	1
2001 Framed Rock Eisteddfod Award	1
1999 Framed Rock Eisteddfod Award	1
Framed photo 1997 Tina Turner	1
Framed photos Tina Turner	1
Holden Showdown 50th Anniversary Poster	1
Yamaha Supermoto Championship	1
1994 Duathlon Championships	1
1999 Saxon Safari Tasmania	1
1996 Targa Tasmania	2
Harlem Globetrotters The Greatest	2
Supercross 2000 - 1999	1
Subaru Safari 2003	1
J Rock 2009	1
Walt Disney world on Ice 1996	1
Rock Eisteddfod 2005	1
Rock Eisteddfod 2002 x 2	2
Rock Eisteddfod 2012	1
Rock Eisteddfod 2007	1
Rock Eisteddfod 2009	1
J Rock 2007	2
Rock Eisteddfod 2004	1
Anthony Callea photo and cd 1m x 1m	1
Grease 1.5m x 70cm framed photo	1
Grease Poster	1
Bryan Adams	1
Cliff Richard	1
Spice Girls 1999	1
Framed Tasmanian Landscape Painting	1
Framed photo Tas Classic Ballet Company	1
Riverdance framed poster/newspaper clippings 1998	3

Poster	Number
Shannon Noll Poster	2
Targa Tasmania 1995	1
Rock Eisteddfod 1997	1
Cerebral Palsy Project M	1
Dire Straits 1991	1
Culture Beat	1
Rock Eisteddfod 2000	1
Cliff Richard 1990	1
Carol King	1
Wiggles - The Wiggly Big Show	1
John Farnham - Live By Demand	1
Leonard Cohen	2
Betta Milk	2
Em Rusciano - Not Diva	1
Mister Maker and the shapes 206	1
Missy Higgins - On a Clear Night Tour	1
CATS	1
The Wiggles Live in Concert 2009	1
Shannon Noll Lift 2006	4
HI 5	1
Bryan Ferry	4
Sesame Street Live	1
The Seekers 2004	3
RAW 2000	1
Shannon Noll Live in Concert	2
SHOUT	2
The Pirates of Penzance	1
Shannon Noll - No turning back 2008	3
Long Way to The Top	2
Hi 5 Live In Concert	1
The Ten Tenors	4
Marina Prior	2
Missy Higgins and Ben Lee 2005	1
Tina Arena - In Deep Live	1
The Seekers 2013	1
Rock Eisteddfod 2007	1
America 2004	1
Pete Murray 2005	2
Human Nature The Motown Show	2
John Farnham - Live By Demand	2
Kris Kristofferson	1
Anthony Callea Live In concert	3
Human Nature & Bardot	2
Targa Tasmania 1996	1
Silvers Grand Magic Circus	1
Rock Eisteddfod 2001	1
Rock Eisteddfod 1999	2

Poster	Number
The Great China Circus	1
Jim Jefferies Live - 2016	1
Grease	2
The Seekers	1
Silvers Grand Magic Circus	1
Don Allen Country with Class	1
Lord of The Dance - Dangerous Games	1
Col Joye and Judy Stone	1
John Farnham, Olive Newton-John, Anthony Warlow 1998	1
Australian Federation Tattoo 2005	1
High School Musical on stage	1
Royal Scots Dragoon Guards	1
John Farnham Talk of The Town 1994	1
Spanish Dancing Horses	1
Rogue Traders	1
John Fogarty	1
Michael Crawford 2006	1
Queen Hands up who want to Rock	1
Queen It's a Kinda Magic	1
Burn The Floor	1
J Rock 2012	1
The Wiggles Live Hot Potato	1
Sieherian Cossacks	1
African Footprints	1
Saxon Safari Tasmania 2001	1
Southern Tasmanian Dance Eist 2005	1
Make a Wish Foundation 2007	1
Make a Wish Foundation 1998	1
Dire Straits On every Street	1
John Farnham Jack of Hearts Tour	1
Rock Eisteddfod 2000	1
Rock Eisteddfod 2001	1
The Cranberries 1996	1
The Seekers Four decades of Gold	1
Missy Higgins and Ben Lee 2005	1
Sesame Street Live 2003	1
Silverchair 1997	1
Marina Prior	1
Bryan Ferry	1
Charlie Pride	1
Riverdance	1
The Countdown Spectacular 2	1
America In Concert 2004	1
Tina Arena - In Deep Live	1
The Wiggles Live In Concert 2004	1
Human Nature The Motown Show	1
Pirates Of Penzance	1

Poster	Number
INXS Switched On Tour 2006	1
Billy Connolly 2006	1
Kris Kristofferson	1
SHOUT	1
John Farnham - Man Of The Hour	1
Good morning Mrs Brown	1
Shannon Noll No Turning Back 2008	1
The Seekers 1998	1
Anthony Callea Live In concert	1
Zinc	1
Hi 5 Live In Concert	1
Natalie Gauci 2008	1
Nana Mouskouri 2005	1

Attachment 2 – Plan



LEGEND

- EXISTING TITLE BOUNDARY
- EXISTING CARRIAGEWAY LAND (TOTAL AREA: 4462m²)
- GCC RETAINED EXISTING CARRIAGEWAY LAND (TOTAL AREA: 2.750ha)
- GCC RETAINED FORESHORE LAND (TOTAL AREA: 3.018ha)
- GCC RETAINED FUTURE CARRIAGEWAY LAND (TOTAL AREA: 5462m²)

NOTES:

NO EASEMENTS HAVE BEEN SHOWN ON THIS PLAN FOR CLARITY. PLEASE REFER TO THE RELEVANT TITLES FOR MORE INFORMATION.
ALL AREAS ARE APPROXIMATE ONLY AND ARE SUBJECT TO FINAL SURVEY.

0 50 100 150 200 250m



SCALE
1:7500@A4

PDA Surveyors <small>Surveying, Engineering & Planning</small>		<small>127 Bathurst Street Hobart, Tasmania, 7000 www.pda.com.au PHONE: +61 03 6234 3217 FAX: +61 03 6234 3065 EMAIL: pda@pda.com.au</small>	
WILKINSON'S POINT PLAN FOR SALE AGREEMENT 601-601B BROOKER HIGHWAY, GLENORCHY for DEPARTMENT OF STATE GROWTH		SCALE 1:7500 (A4)	PAPER (A4)
DATE 27 OCTOBER 2020		JOB NUMBER 46092MD - 1B	DRAWING 46092MD - 1B

Attachment 3 – Highway Works Specification

The Highway Works Specification are those specifications relating to 'Urban Road' as set out in the document titled 'Tasmanian Standard Drawings' a copy of which is located at https://www.lgat.tas.gov.au/_data/assets/pdf_file/0046/679789/Tasmanian-Standard-Drawings-Release-Version-May-2020.pdf.