

Date 19 / 12 / 2023

Access Agreement for Environmental Works

Park(s): Sale Common Nature Conservation Reserve

Parks Victoria
and

Sale Friends of the Wetlands Inc
Reg. No. A0111578P

1. Definitions

In this Agreement, unless the contrary intention appears:

Access Area means the access area described in item 8 of Schedule 1 and includes Parks Victoria's Property.

Agreement means this Agreement.

Approved Auditor means a Person who is:

- (a) registered as a company auditor under the *Corporations Act 2001* (Cth), or a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants; and
- (b) not a principal, member, shareholder, officer or employee of the Contractor or of a Related Body Corporate of the Contractor.

Auditing Standards means the auditing standards that must be applied in relation to audits under the *Audit Act 1994* (Vic) which is currently the general auditing standards issued from time to time by CPA Australia and the Institute of Chartered Accountants in Australia and generally accepted audit practices to the extent they are not inconsistent with such standards.

Auditor-General means the office established under the *Audit Act 1994* (Vic) and includes any other entity that may, from time to time, perform the functions of that office.

Commencement Date means the date set out in item 3 of Schedule 1.

Confidential Information includes all unpatented inventions, ideas, know-how, concepts, trade secrets, processes, techniques, software, products and any and all other unregistered or unpatented intellectual property, financial and business information and all other commercially valuable information of the Disclosing Party which the Disclosing Party regards as confidential to it or which is evident by its nature to be confidential and all copies, notes and records and all related information generated by the Receiving Party based on or arising out of any such disclosure.

Contamination means the presence in, on or under land or groundwater of a Hazardous Material, being a presence that presents a risk of harm to human health or any other aspect of the environment.

Disclosing Party means the Party that is disclosing Confidential Information.

Environmental Works means the works described in item 6 of Schedule 1.

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

Information Privacy Principles means the Information Privacy Principles under the *Privacy and Data Protection Act 2014* (Vic).

Organisation means the organisation named in item 2 of Schedule 1 and, where it is consistent with the context includes its members, contractors, sub-contractors, consultants, advisers, officers, employees, agents, volunteers and invitees.

Organisation's Property means all equipment and other property brought into the Access Area by the Organisation from time to time belonging to the Organisation (excluding any items forming part of the Environmental Works).

Park means the park(s) named in item 5 of Schedule 1.

Parks Victoria means the statutory authority created by the *Parks Victoria Act 2018* being the party named in item 1 of Schedule 1 and includes its successors and assigns and, where it is consistent with the context, includes its authorised officers, employees and agents.

Parks Victoria's Property means all improvements, structures, equipment and other property from time to time on or comprising the Access Area owned or supplied by Parks Victoria.

Personal Information has the same meaning as under the *Privacy and Data Protection Act 2014* (Vic).

Prohibited Gift means a gift that is prohibited under the Gifts, benefits and hospitality – Responding to gift offers – (1) Model Policy as adopted and amended by the Principal from time to time.

Receiving Party means the Party that is receiving Confidential Information.

Records includes documents, information and data stored by any means and all copies and extracts of the same.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Scope means the scope attached to this Agreement at Annexure B.

Supplier Code of Conduct means the Code of Conduct issued by the Victorian Government for a supplier providing goods or services to the Victorian Government, as amended from time to time.

Term means the term specified in item 4 of Schedule 1.

2. Access

- 2.1 Parks Victoria grants access to the Access Area to the Organisation for the Term starting on the Commencement Date, subject to the terms contained in this Agreement.
- 2.2 The Organisation may only use the Access Area during the days and hours of use specified at item 7 of Schedule 1.

3. Consideration

Parks Victoria must pay the amount specified in item 9 of Schedule 1, upon demand, to the Organisation. No other consideration or funding shall be payable by Parks Victoria in relation to the Environmental Works or otherwise.

4. Agreement personal

The Organisation confirms and acknowledges that:

- 4.1 the Organisation is granted access to the Access Area to enter and use the Access Area to conduct the Environmental Works and that no interest in the Access Area or the Park is granted to the Organisation; and
- 4.2 the Organisation cannot assign or deal with this Agreement or the rights granted under this Agreement in any way, without first obtaining the written consent of Parks Victoria.

5. Use of Access Area

The Organisation must:

- 5.1 not use the Access Area other than for the conduct of the Environmental Works;
- 5.2 not permit any Parks Victoria Property to be used for any purpose other than that for which they were intended;
- 5.3 at its own expense comply on time with all laws and legal requirements concerning the Access Area and the use and occupation of the Access Area;
- 5.4 comply with all reasonable requests or directions given by Parks Victoria in relation to the conduct of the Environmental Works, the Access Area or Park;
- 5.5 not carry out any works to or at the Access Area (including alterations, additions, earthworks and the installation of equipment or signs) except for the Environmental Works, unless otherwise agreed to or authorised in writing by Parks Victoria prior to the commencement of works;
- 5.6 notify Parks Victoria as soon as the Organisation becomes aware of any damage to the Access Area;
- 5.7 not do anything which shall or may be a nuisance or annoyance to Parks Victoria or other persons using any other part of the Park or areas adjacent to the Access Area;
- 5.8 not obstruct, interrupt or permit the obstruction or interruption of the use, occupation or enjoyment of, by any person lawfully entitled to use any part of the Access Area or Park (unless authorised in writing by Parks Victoria);
- 5.9 not light or allow to be lit any fires in the Access Area or the Park;
- 5.10 not enter the Park at all on days that have a fire danger rating forecast of 'Code Red';
- 5.11 not remove native vegetation (unless otherwise stated in Schedule 1 or agreed in writing by Parks Victoria);
- 5.12 not drive a vehicle off public access roads (unless otherwise stated in Schedule 1 or agreed in writing by Parks Victoria); and
- 5.13 keep the Access Area and the Park clean, tidy and free from garbage and refuse attributable to the Organisation's use of the Access Area and the Park.

6. Environmental Works

6.1 The Organisation must:

- 6.1.1 carry out the Environmental Works strictly in accordance with the Scope (unless otherwise agreed in writing by Parks Victoria);
- 6.1.2 not sub-contract any of the Environmental Works other than to those sub-contractors stated in Schedule 1 or otherwise with the written consent of Parks Victoria, which cannot be unreasonably withheld; and
- 6.1.3 remove the Organisation's Property from the Access Area (and Park) at the end of each day of use of the Access Area (unless stated in Schedule 1 or otherwise agreed in writing by Parks Victoria).

6.2 The Organisation acknowledges and agrees that:

- 6.2.1 the Organisation remains fully responsible for, and will not be relieved from any liability arising from, the Environmental Works by the Organisation's use of third parties or volunteers to deliver the Environmental Works; and
- 6.2.2 the occupational health and safety of those persons conducting the Environmental Works is the responsibility of the Organisation (other than to the extent Parks Victoria cannot at law contract out of its obligations with respect to occupational health and safety).

6.3 If required by Parks Victoria, the Organisation must, prior to the commencement of any Environmental Works, ensure that all persons conducting the Environmental Works (or an agreed representative) attend a site induction conducted by Parks Victoria.

6.4 In carrying out the Environmental Works, the Organisation must:

- 6.4.1 comply with all laws and any applicable Australian Standards;
- 6.4.2 ensure that there is no risk to the environment or the health, safety and welfare of its employees, agents, contractors and invitees;
- 6.4.3 as soon as practicable notify Parks Victoria of any incident or dangerous occurrence at the Access Area or the Park which is notifiable to WorkSafe Victoria pursuant to the provisions of any occupational health and safety laws;
- 6.4.4 take every reasonable precaution to prevent Aboriginal cultural heritage items in the Access area or the Park being damaged; and
- 6.4.5 immediately notify Parks Victoria of the discovery of any Aboriginal cultural heritage item.

6.5 Without limiting clause 6.4, the Organisation must not spill or deposit, or carry out any activities in the Access Area which may cause any Contamination, or permit any Contamination to escape in any way into or on the Access Area, drainage or the environment.

7. Suspension of Environmental Works

Parks Victoria may direct the Organisation to immediately cease or suspend the Environmental Works in cases of emergency or at any time Parks Victoria considers it reasonably necessary in the interests of public safety or the protection of the Park. If directed by Parks Victoria, the Organisation

must immediately suspend the progress or the whole or part of the Environmental Works for such time as Parks Victoria directs.

8. Insurance

8.1 The Organisation must at its cost effect and maintain throughout the Term, with a reputable insurer:

8.1.1 a public, and if relevant, products liability insurance policy for not less than \$20 million in respect of any single claim arising out of the activities of the Organisation, covering all third party claims arising out of:

- (a) loss, including financial loss, destruction or damage to real or personal property and ensuing loss of use of that property; and
- (b) death, injury to, or disease of persons;

8.1.2 a workers' compensation policy which covers any damage, loss or liability suffered or incurred by any person engaged by the Organisation arising:

- (a) by virtue of any statute relating to workers' or accident compensation or employers' liability; and/or
- (b) at common law;

8.1.3 any other policy of insurance specified by Parks Victoria that a reasonably prudent person conducting the activity of the Organisation would maintain,

such policies referred to collectively as the '**Policy**'.

8.2 The Organisation must provide Parks Victoria with:

8.2.1 a certificate of currency for the Policy prior to the Commencement Date and within 14 days of the renewal of the Policy throughout the Term and at any other time upon request by Parks Victoria; and

8.2.2 a copy of the Policy upon request by Parks Victoria.

8.3 The Organisation must promptly notify Parks Victoria if an event occurs at the Access Area which may give rise to a claim under or prejudice the Policy or if the Policy is cancelled.

9. Organisation's obligations at end of agreement

9.1 Upon the expiration or earlier termination of this Agreement the Organisation must:

9.1.1 cease to carry out any Environmental Works to or at the Access Area; and

9.1.2 remove the Organisation's Property from the Access Area.

9.2 Any Organisation's Property left on the Access Area shall become the absolute property of Parks Victoria and may be dealt with or disposed of by Parks Victoria in any manner Parks Victoria deems appropriate, with no entitlement to compensation for the Organisation.

10. Parks Victoria's rights

- 10.1 Parks Victoria may enter the Access Area at any time to inspect, maintain or repair or alter the Access Area.
- 10.2 In an emergency, under threat of an emergency or in connection with a major event to be held at the Park, or if Parks Victoria considers it reasonably necessary in the interests of public safety or the protection of the Park, Parks Victoria may restrict or prevent access to the Park or the Access Area or any part thereof and conduct, or authorise any other person to conduct, works in or about the Access Area, and the Organisation shall not be entitled to any compensation if Parks Victoria exercises its rights under this clause.
- 10.3 Any consent or approval to be given by Parks Victoria may be given by Parks Victoria conditionally or unconditionally or withheld at Parks Victoria's absolute discretion. If conditions are imposed by Parks Victoria, the Organisation must comply with each condition imposed by Parks Victoria as if it were a provision of this Agreement.
- 10.4 If the Organisation fails to comply with clause 5.13, Parks Victoria may clean the Access Area and the Park and remove any garbage or refuse, at the Organisation's cost.

11. Termination

- 11.1 If the Organisation does not comply with any obligation under this Agreement, Parks Victoria may end this Agreement by giving written notice to the Organisation.
- 11.2 Parks Victoria can terminate this Agreement at any time at Parks Victoria's discretion by giving written notice to the Organisation.

12. Dispute resolution

- 12.1 A party must not commence legal proceedings in respect of a dispute arising under or in connection with this Agreement unless it has complied with this clause 12.
- 12.2 Each party agrees that the dispute must be referred for mediation, at the request of the other party, to:
- 12.2.1 a mediator agreed on by the parties; or
- 12.2.2 if the parties are unable to agree on a mediator within 7 days, a mediator nominated by the then current Chairperson of the Resolution Institute.
- 12.3 Each party must bear its own costs of complying with this clause and the parties must bear equally the costs of any mediator engaged.

13. Release and Indemnity

- 13.1 The Organisation agrees that it has not relied upon any representation by or on behalf of Parks Victoria concerning the Access Area and occupies and uses the Access Area at its own risk.
- 13.2 The Organisation releases Parks Victoria from:

13.2.1 all claims and demands resulting from any accident, damage, death or injury occurring at the Access Area, or any other area used by the Organisation in connection with this Agreement; and

13.2.2 all loss, liability or other detriment (direct or consequential) suffered or incurred by the Organisation,

as a direct or indirect result of the Organisation's occupation and use of the Access Area (including the conduct of the Environmental Works) or any other area in connection with this Agreement, except to the extent caused or contributed to by the negligence of Parks Victoria.

13.3 To the extent permitted by law, the Organisation must indemnify and hold harmless Parks Victoria against all claims, losses and expenses (direct or consequential) suffered or incurred by Parks Victoria or for which Parks Victoria is or may be or become liable concerning:

13.3.1 the default of the Organisation under this Agreement;

13.3.2 the Organisation's use of the Access Area or any other area in connection with this Agreement (including the conduct of the Environmental Works); or

13.3.3 loss, damage or injury to property or persons or death of any person caused or contributed to by the act, omission, default or negligence of the Organisation,

except to the extent caused or contributed to by the negligence of Parks Victoria.

14. Miscellaneous

14.1 Any notice or consent to be given under this Agreement, may be given by a party or its agent, must be in writing, and given by post or delivery to the last known address of that party or to that party's address as shown in Schedule 1. A posted letter is taken to be received on the third day after posting.

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

14.3 The Organisation acknowledges and agrees that Parks Victoria may in its absolute discretion publish this Agreement (in whole or in part) in any medium, including the internet.

14.4 If this Agreement prohibits the Organisation from doing a thing, the Organisation must:

14.4.1 ensure the Organisation's members, officers, employees, agents, contractors, subcontractors, guests and invitees of the Organisation not do that thing; and

14.4.2 not allow or cause any person to do that thing.

14.5 If this Permit requires the Organisation to do a thing, the Organisation must ensure that, if applicable, the Organisation's members, officers, employees, agents, contractors, subcontractors, guests and invitees of the Organisation do that thing.

14.6 If there is an inconsistency between a special condition in Schedule 1 and another provision of this Agreement, the special condition prevails.

15. Goods and Services Tax

- 15.1 In this clause words and expressions that are not defined in this Agreement but which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as in that Act.
- 15.2 Any consideration payable by any party under this Agreement is the GST exclusive amount of the taxable supply for which payment is to be made. A party liable to pay for a taxable supply in connection with this Agreement must also pay, at the same time and in the same manner as the consideration, the amount of any GST payable in respect of the taxable supply, subject to receipt of a tax invoice.
- 15.3 Where this Agreement requires a party (**first party**) to pay, reimburse or contribute to an amount paid or payable by the other party (**other party**) in respect of an acquisition from, or a transaction with a third party for which the other party is entitled to claim an input tax credit, the amount for payment, reimbursement or contribution will be the GST exclusive value of the acquisition by the other party plus any GST payable in respect of the other party's recovery from the first party.

16. Confidential Information and Conflicts of Interest

- 16.1 When receiving Confidential Information, the Receiving Party must:
- 16.1.1 keep all Confidential Information of the Disclosing Party confidential, unless strictly required otherwise by law;
 - 16.1.2 limit access to those of its personnel reasonably requiring the Confidential Information on a strictly need to know basis;
 - 16.1.3 not use any Confidential Information in any way other than for the Services or as otherwise contemplated by this Agreement without the prior written permission of the Disclosing Party; and
 - 16.1.4 ensure that all Persons to whom Confidential Information is disclosed y or on behalf of the Receiving Party are legally bound under the terms and conditions of their contract, employment agreements or otherwise, to keep the Confidential Information confidential and not to use the Confidential Information except in relation to the subject matter of this Agreement.
- 16.2 Confidential Information excludes, or as the case requires, ceases to include information, which:
- 16.2.1 is, or becomes available to the public at or after the date of its disclosure to the Receiving Party otherwise than through the default of the Receiving Party; or
 - 16.2.2 is, or becomes properly in the possession of the Receiving Party otherwise than by prior confidential disclosure from the Disclosing Party; or
 - 16.2.3 is demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information which is the subject of the disclosure.
- 16.3 Subject to the *Public Records Act 1973* (Vic), at the termination or expiration of this Agreement, and upon the written request of the Disclosing Party, the Receiving Party must return any documents which embody Confidential Information and must not keep any copies in any form.
- 16.4 Despite any provision of this Agreement to the contrary (including clause 16.1, the Organisation acknowledges and accepts that:

- 16.4.1 Parks Victoria retains the right to publish this Agreement in its entirety, subject to information deemed by Parks Victoria to be commercial-in-confidence, on its website or other online medium accessible by the general public; and
 - 16.4.2 any information passed between the parties, including Confidential Information, may be required to be released by Parks Victoria under the *Freedom of Information Act 1982* (Vic).
- 16.5 The Organisation warrants that, at the time of executing this Agreement, it:
- 16.5.1 does not hold any office or possess any property;
 - 16.5.2 is not engaged in any business, trade or calling; and
 - 16.5.3 does not have any obligations by virtue of any contract,
- whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, its duties and interests under this Agreement.

17. Prohibited Gifts

- 17.1 The Organisation warrants that neither it nor any of its Associates:
- 17.1.1 has bribed or offered a Prohibited Gift to a Board member or employee of Parks Victoria; or
 - 17.1.2 will bribe or offer a Prohibited Gift to a Board member or employee of Parks Victoria.
- 17.2 The Organisation must immediately make a full disclosure in writing to Parks Victoria of the existence, nature and extent of any:
- 17.2.1 actual or potential conflict of interest that the Organisation, or any of its Associates, may have between the Organisation's obligations under this Agreement and the interests of the Organisation, or any of its Associates; and
 - 17.2.2 Prohibited Gift offered or given to any Board member or employee of Parks Victoria.

18. Privacy

- 18.1 The Organisation must, in respect of Personal Information held in connection with this Agreement:
- 18.1.1 comply with the Information Privacy Principles, or any relevant legislative provisions that bind Parks Victoria, with respect to any act done, or practice engaged in, by the Organisation, or any of its Associates including, without limitation, using Personal Information only for the purposes of fulfilling the Organisation's obligations under this Agreement and not disclosing Personal Information without written authority from Parks Victoria, except for the purpose of fulfilling the Organisation's obligations under this Agreement;
 - 18.1.2 immediately notify Parks Victoria where it becomes aware of a breach of clause 18.1.1 by the Organisation, or any of its Associates; and
 - 18.1.3 indemnify and keep indemnified and hold harmless Parks Victoria and its employees against any liability incurred or loss or damage suffered by Parks Victoria or its employees

arising out of or in connection with a breach of clause 18.1.1 by the Organisations, or any of its Associates.

- 18.2 Without limiting the general nature of clause 19 if during the term of this Agreement, Parks Victoria gives notice to the Organisation that it proposes to audit, either directly or through its auditors, the Organisation's information handling practices, the Organisation must provide all reasonable assistance to the party conducting such an audit.
- 18.3 The operation of this clause 18 survives the expiration or earlier termination of this Agreement.

19. Records

- 19.1 The Organisation must:
- 19.1.1 keep financial Records relating to this Agreement so as to enable the audit of those Records in accordance with Auditing Standards;
 - 19.1.2 permit an accountant or auditor on behalf of Parks Victoria from time to time during ordinary business hours and upon reasonable notice, to inspect and verify the Records;
 - 19.1.3 without limiting the general nature of clause 19.1.2, provide the Auditor-General with access to its premises and systems, and the premises and systems of its Associates if relevant, as required to inspect and verify the Records; and
 - 19.1.4 give, and procure that its Associates give, any person referred to in clause 19.1.2 and clause 19.1.3 all reasonable assistance to inspect and verify the Records.
- 19.2 To the extent permitted by law and subject to clause 16, any information provided or to which an accountant or auditor has access under clause 19 shall be treated as Confidential Information and shall not be used other than for the purposes of this Agreement or disclosed other than as required to comply with the written request of the Auditor-General.

20. Breach of Ongoing Obligation

If the Organisation fails to comply with any of its warranties or obligations under any of clauses 16, 17 or 18, Parks Victoria may (at its absolute discretion and without limiting any of its other rights arising out of this Agreement) immediately terminate this Agreement.

Executed as an agreement.

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



Signature of Witness

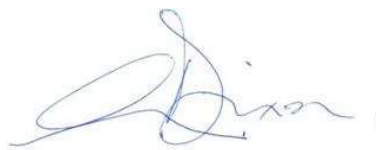
Tara Tait

Name of Witness

19/12/2023

Date

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)
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Signature of authorised officer

Helen Dixon

Name of authorised officer

District Manager – Central Gippsland District

Position of authorised officer

Signed for and on behalf of **Sale Friends of the
Wetlands Incorporated** by its authorised officer in the
presence of:

Signed for and on behalf of **Sale Friends of the
Wetlands Incorporated** by its authorised officer in the
presence of:



Signature of Witness

LESLIE KEITH MILLER

Name of Witness

18/12/2023

Date

)
)
)



Signature of authorised officer

PHILIP RIVERS DAVIS

Name of authorised officer

PRESIDENT

Position of authorised officer

Schedule 1

1	Parks Victoria:	c/- Helen Dixon, District Manager Central Gippsland Level 10, 535 Bourke Street, Melbourne, Vic, 3000
2	Organisation:	Sale Friends of the Wetlands Incorporated
3	Commencement Date:	1 February 2024
4	Term:	1 February 2024 – 30 January 2025
5	Park(s):	Sale Common Nature Conservation Reserve
6	Environmental Works:	The works described in the Scope attached to this Agreement at Annexure B
7	Days and Hours of Use:	During Park opening hours
8	Access Area:	The area shown hatched on the plan attached at Annexure A.
9	Consideration:	\$1 including GST (if demanded) per annum
10	Special conditions:	The following special conditions will also bind the parties:

1. Environmental Works Approvals

- (i) Parks Victoria consents to the scope and manner of delivery of the Environmental Works set out in the Scope.
- (ii) For the purposes of clause 6.1.2, Parks Victoria acknowledges and consents to the Environmental Works being carried out by the contractor/s and sub-contractors identified in the Scope.
- (iii) For the purposes of clause 6.13, Parks Victoria agrees that the equipment, plant and fencing in connection with the Environmental

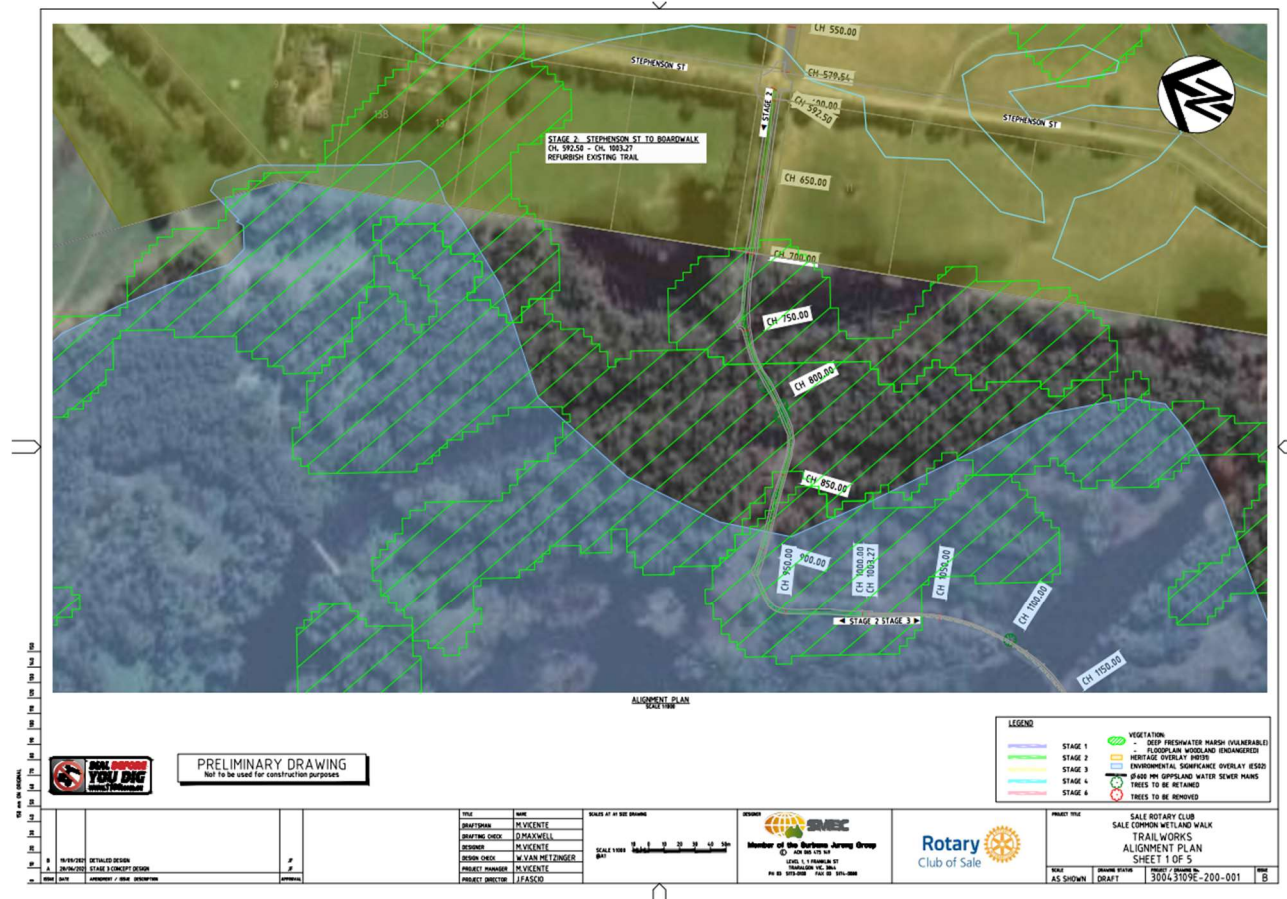
Works (including as set out in the Scope) will not be removed from the Access Area (and Park) at the end of each day.

- 20.1.2 Parks Victoria must be notified at least 7 days prior to works commencing.

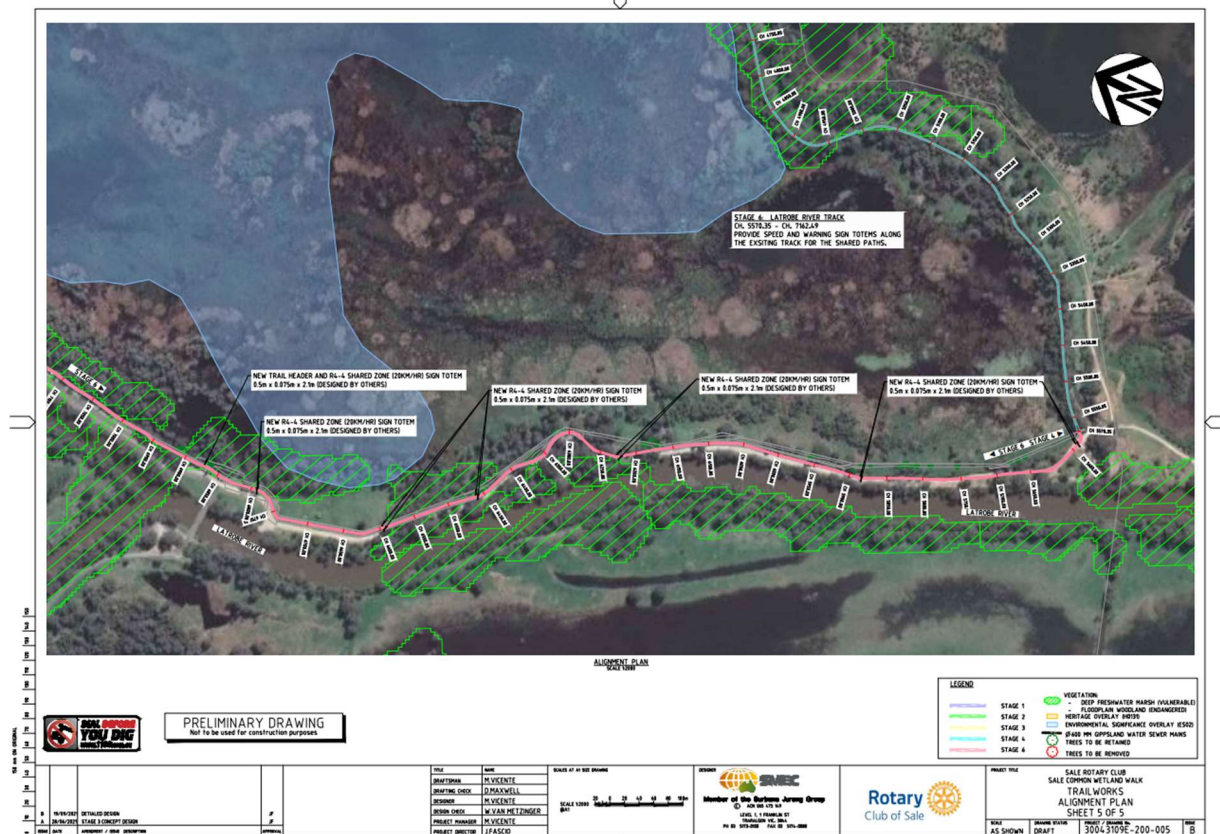
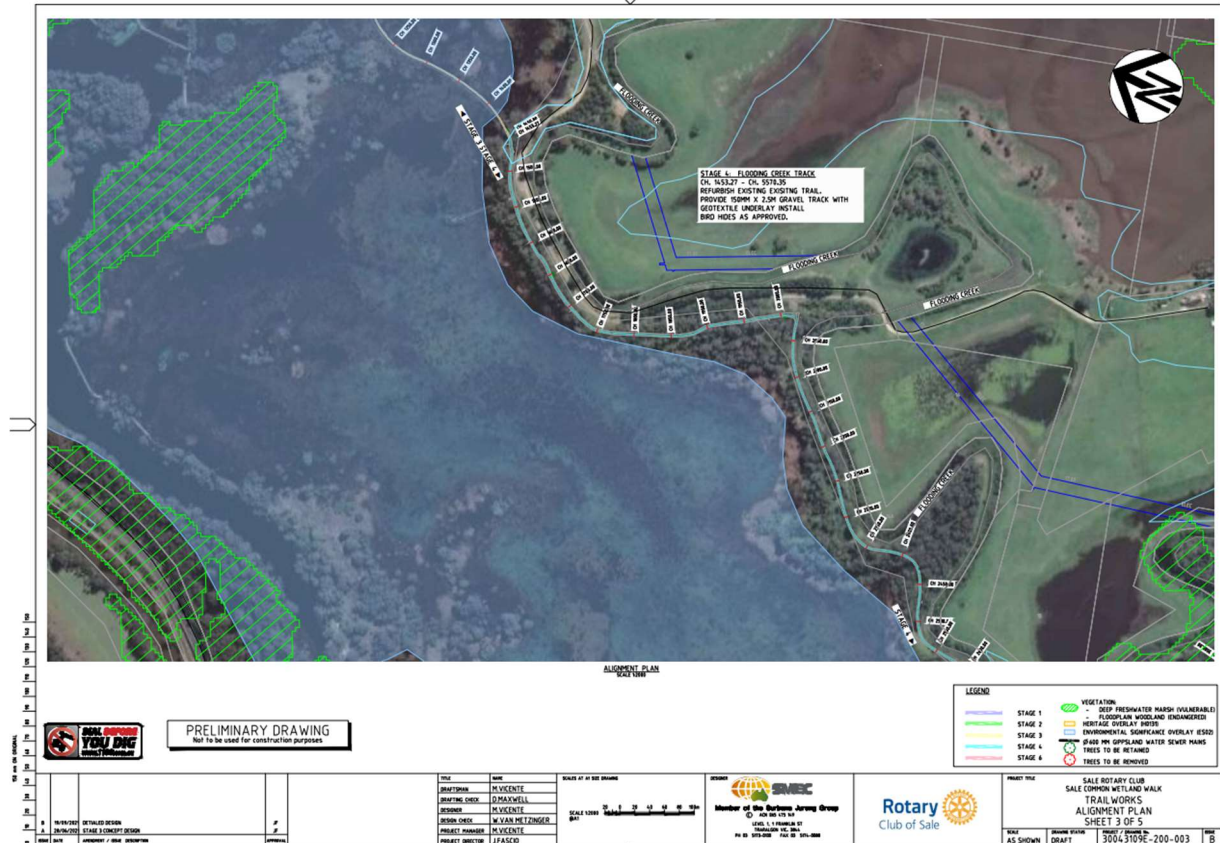
Annexure A

Plan

Stage 2



Stage 4



Annexure B

Scope

- Agreed works are a part of a larger project for the installation of a new boardwalk within Sale Common Nature Conservation Reserve led by the Sale Branch of the Rotary Club. Agreed designs and scope have been produced and prepared by SMEC. The specific portion of works that pertain to this Environmental Access Agreement are resurfacing of agreed tracks and will be conducted in line with an approved Cultural Heritage Management Plan. These agreed works are as follows and refer to agreed stages contained in the Flooding Creek Trail Project-Sale Common overall installation of a new boardwalk:
 - **Stage 2 works:** South of Stephenson's Street to Parks Victoria boardwalk – 410m (x 2.5m wide x 80mm depth). 80mm compacted crushed rock overlay only.
 - **Stage 4 works:** Flooding Creek Track (Parks Victoria boardwalk to Latrobe river) - 4120m (x 2.5m wide x 150mm depth). Stage 4 works involve stripping vegetation (ie. grass) placing non-woven geotextile, 150mm compacted crushed rock overlay

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