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# **ALPINE RESORTS LEASING POLICY IMPLEMENTATION DETAILS**

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# **ALPINE RESORTS LEASING POLICY IMPLEMENTATION DETAILS**

## **PREAMBLE**

### **1. PURPOSE**

The purpose of the Alpine Resorts Leasing Policy, which was released by the Government on 30 March 2002 and is provided in Appendix A, is to provide a consistent framework for the leasing of Crown land in Victoria's alpine resorts and to provide every lessee with the opportunity to enter a new lease that reflects contemporary practices and the new leasing policy initiatives. The Alpine Resorts Leasing Policy Implementation Details provides the detail to support the new approved leasing Policy.

### **2. APPLICATION**

The new leasing Policy applies to all new leases to prospective and existing lessees on Crown land within the six alpine resorts. The alpine resorts are: Falls Creek Alpine Resort, Lake Mountain Alpine Resort, Mount Baw Baw Alpine Resort, Mount Buller Alpine Resort, Mount Hotham Alpine Resort and Mount Stirling Alpine Resort.

Every current lessee in the alpine resorts will have the opportunity to surrender an existing lease and to enter a new lease specifically developed to embrace the provisions of the new leasing Policy.

### **3. INTRODUCTION**

The six alpine resorts are popular recreational attractions for Victoria. While the resorts occupy less than 1% of the State's public land, they attract up to 900,000 people each winter and approximately 450,000 visitors outside the winter season.

As a result, the resorts are key economic drivers within their regions and have a major impact on sub-alpine towns. The resorts add approximately \$128 million to the Victorian economy each year and provide more than 3,740 jobs. During the past 8 years there has been upwards of \$120 million worth of investment at the three larger resorts of Falls Creek, Mt Buller and Mt Hotham.

The quality of the experience of visitors to the resorts is heavily influenced by the recreational opportunities offered and the range of facilities, infrastructure and variety of accommodation available. Leasing policy is a key tool to attract investment and to maintain an attractive, viable resort into the future.

### **4. BACKGROUND**

All Victorian alpine resorts are Crown land permanently reserved under Section 4 (1) of the *Crown Land (Reserves) Act 1978*, with the exception of three small parcels of freehold land within the Mt Hotham Alpine Resort.

The land now occupied by the alpine resorts was historically managed by various government agencies depending upon the dominant use of the area. As the resorts developed and more substantial investment

was attracted, the management agencies issued leases to develop and occupy land within each alpine resort under a range of legislation with varying terms and conditions.

The Alpine Resorts Commission (ARC) was created by the *Alpine Resorts Act* 1983 and was responsible for the management of all the resorts. The *Alpine Resorts (Management) Act* 1997 abolished the ARC and established the Alpine Resorts Coordinating Council (Council) and six Alpine Resort Management Boards (Boards). Pursuant to the provisions of section 7(1) of the Act, the Boards are responsible to the Minister for Environment and Conservation and, having first obtained the approval of the Minister, may grant leases of land in the alpine resorts.

In December 2000 the Minister released an interim leasing policy for the resorts (based on the former ARC policy) that provided for terms of up to 50 years. Terms in excess of 50 years were granted in exceptional circumstances, based on a demonstrated and verifiable business case. The interim leasing policy also outlined lease approval procedures that identify the information required by the Minister from the Boards, and provided a set of standard leasing documents.

The new Alpine Resorts Leasing Policy released on 30 March 2002 has now superseded the interim policy, and the details related to the implementation of the new leasing Policy are provided in this paper.

#### **4.1. HIGH COUNTRY VILLAGES**

The alpine resorts have steadily developed since the 1940s to a mature stage in the 1990s. The type of development in terms of nature and function in the three larger resorts, Mt Buller, Falls Creek and Mt Hotham, means they are now mature resort villages based on tourism. Club lodges, modern apartments, a university campus, museums, swimming pools and public facilities such as gyms, tennis courts and churches have all been developed.

The three major resorts are entering their second phase of development and are becoming fully functional year-round townships. This has brought a different pressure for residential style accommodation available throughout the whole year and an expectation of permanency. Similarly, pressure exists for schools, ambulance and police presence year-round, rather than for only 16 weeks of the year. The resorts are the engines of their regional economies and are working closely with local government to promote and deliver a year-round destination.

After 50 years of development, alpine resorts now have much in common with other tourist destinations, increasingly having a real estate focus, high value residential development and permanent populations. Unlike other areas, however, alpine resorts are based totally on a leasehold system of tenure. Because of this, policy certainty and security of tenure are prime considerations for all site holders. The resorts owe their success to the contributions of and interdependencies between each site holder and, as a consequence, a leasing decision on one site will impact on all other sites both within that particular alpine resort and at all other alpine resorts.

Because alpine resorts are based on a leasehold tenure, leasing policy is a crucial tool to secure the on-going maintenance, repair and development, investment, economic contribution and vitality of alpine resorts. Policy settings need to reflect the changing role of alpine resorts and their unique position within the Crown estate.

## **5. CONSULTATION**

In August 2001 the Boards were asked by the Minister to undertake a consultation process with resort stakeholders to further the development of leasing policy for alpine resorts. Consistent with its industry-wide charter, Council was asked to coordinate and report on the Boards' consultation processes and provide policy advice.

To facilitate the development of the new leasing Policy two documents were prepared:

- an Issues Paper drafted by the Department of Natural Resources and Environment (NRE); and
- a Discussion Paper drafted by PriceWaterhouseCoopers for the Council.

Both papers were made available to each of the Boards for distribution to their respective stakeholders during September 2001.

Each Board subsequently convened meetings of interested stakeholders and presented background and detail to the process of the Policy's development, answered questions and invited written and verbal submissions. Over 70 written submissions were received.

The development of the new leasing Policy and the supporting Implementation Details has been informed by consideration of these stakeholder submissions, submissions from each Board, and the views expressed by the Council. In addition, representatives from NRE met and discussed the issues with representatives of Department of Premier and Cabinet, Department of Treasury and Finance and Department of State and Regional Development.

## **6. NEW POLICY FOR ALPINE LEASES**

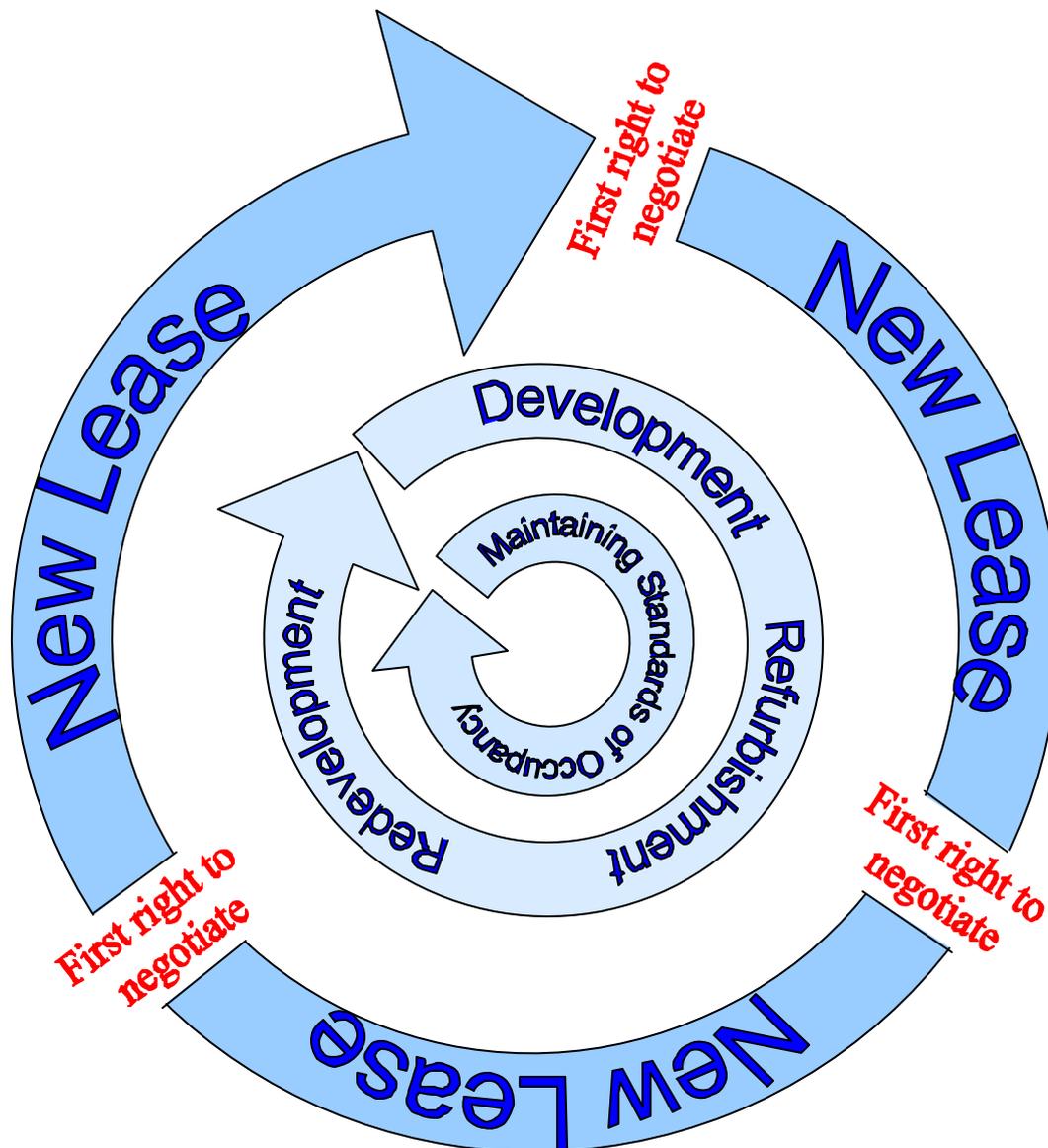
The Government announced the approval of the new Policy for the alpine resorts on 30 March 2002. The Policy sits within the framework of the five broad leasing principles applying to the management of Crown land in Victoria and addresses eight key points which are expanded upon in this paper and are listed below:

- New Leases to Existing Lessees (First Right to Negotiate)
- Improvements (Value of Improvements rest with the Lessee)
- Length of Lease Term (Commensurate with proposed use and investment)
- Standards of Occupancy (Improvements maintained to contemporary standards)
- Rental and Valuations
- Contemporary Lease Conditions and Consistent Documentation
- Registration of Leases
- Strata Leasing Regime

A draft of the Alpine Resorts Leasing Policy Implementation Details, which provides the detail to support the new approved Policy, was released for public comment on 15 July 2002 until 23 August 2002. A copy of the draft Implementation Details was distributed by the Boards to all lessees holding leases directly from the Board (including clubs/lodges and on-mountain business operators), Chambers of Commerce, and Ratepayer / snow sport associations. Written submissions were invited from all stakeholders, and information sessions regarding the Implementation Details were held at Mt Buller, Mt Hotham, Falls Creek and Mt Baw Baw. Twelve written submissions were received, and the comments raised have been considered in the preparation of the final version of the Implementation Details.

## 7. THE NEW LEASING CYCLE IN ALPINE RESORTS

The diagram below represents the cyclical nature of leases under the new leasing Policy. The first right to negotiate provisions introduce a higher level of certainty and security to lessees and financiers. As an additional benefit, the value of the improvements remains with the lessee throughout the cycle. This in turn provides incentive to lessees to undertake ongoing improvements to the premises and to maintain the Standards of Occupancy to a level that meets visitor expectations.



**The new leasing policy has significant benefits to the lessee. What are they?**

The policy provides lessees with new entitlements. These include two significant new benefits, being the first right to negotiate a new lease prior to the expiration of the existing lease, and right to the value in the improvements on the leased land for the term of the lease. Overall, the new policy aims to improve the level of certainty and security related to alpine investment.

## **8. LEASING PRINCIPLES – AN OVERVIEW**

At the State level, a broad framework of Leasing Principles has been developed for use by NRE and its delegated Land Managers in the management of Crown land in Victoria. There are five broad principles as follows:

- Principle 1 – Demonstrated Public and Economic Benefit
- Principle 2 - Approval in Principle Requirement
- Principle 3 - Transparent Lease Allocation and Process
- Principle 4 - Appropriate Lease Terms and Conditions
- Principle 5 - Consistent Lease Documentation

## **9. RETAIL LEASES**

The Retail Leases Bill 2002 is before Parliament at the time of writing this paper. In the event that the Bill is passed, a separate paper regarding its impact on retail activities under leasehold arrangements in the alpine resorts will be prepared.

# ALPINE RESORTS LEASING POLICY IMPLEMENTATION DETAILS

This Policy has been presented within the framework of the five leasing principles approved by the Government.

## 10. PRINCIPLE 1 - DEMONSTRATED PUBLIC AND ECONOMIC BENEFIT

*Crown land is public land managed and held in trust by Government for public use, enjoyment and benefit. Because Crown land is a community asset, a range of factors applies to leasing on Crown land that does not apply to leasing in the private property market. Primary amongst these is that lease proposals shall provide clear benefits to the community from a social and economic perspective while ensuring that the public land values are not diminished.*

*The alpine bioregion exhibits a range of unique values in terms of biodiversity, water quality and dramatic aesthetic qualities. Consistent with State and Federal Government policies, the public benefit, economic and recreational benefits of the resorts need to be maintained and developed while protecting the sensitive alpine environments in which the resorts operate.*

### POLICY STATEMENT

All new lease proposals in alpine resorts must clearly identify the public and economic benefits the lease shall provide to the Victorian community, and the possible impacts the proposal may have on the land's environmental and recreational values. Additionally, proposals must demonstrate that the proposed terms and conditions are equitable to all parties, provide a high level of public access and are consistent with Government policy.

An example of the important public benefit role the alpine resorts play is the varied alpine experiences that are provided for different visitors. The facilities at the various resorts provided under leasehold arrangements cater for a range of experiences, from resort-style accommodation and activities with skiing for all skill levels, to low-cost facilities highly accessible to families and school groups and providing an introduction to snow for many visitors.

The economic benefits provided are demonstrated through the generation of income and employment arising from tourism activity within the resorts and en route to and from the resorts during both the winter and non-winter seasons.

The alpine resorts also provide an important source of recreation to Victorians and to interstate and international visitors, supported through the provision of accommodation, infrastructure, retail and commercial premises.

It is important that the public, economic and recreational benefits provided by the alpine resorts for the Victorian community be protected and enhanced, while providing an economic climate for strong and vibrant private sector involvement in the continued development of the alpine resorts, balanced by a fair return on the capital investment injected by the private sector.

## 11. PRINCIPLE 2 - APPROVAL IN PRINCIPLE

*All lease proposals require the approval in principle of the Minister before a land manager agrees or commits to lease Crown land. The approval in principle process provides the Minister with an opportunity to properly scrutinise lease proposals, including variations to leases, at the beginning of the process. Ministerial approval in principle early in the process also provides lease proponents with greater certainty in the overall planning of the proposal, including obtaining early advice on any conditions the Minister may wish to apply to the lease.*

### **POLICY STATEMENT**

All new lease proposals will involve three main steps involving:

1. Preliminary discussions with a prospective lessee;
2. Approval in principle by the Minister or delegate; and
3. Final lease negotiations by the Board, Ministerial approval to lease and the grant of a lease by the Board.

Timeliness of application approvals is important to allow certainty for lessees, and NRE and the Boards will give priority to lease applications and commit to the shortest possible turnaround of approvals.

#### **Step 1 - Preliminary discussions with a prospective lessee**

The Board, as Crown land manager, may enter into preliminary discussions with the lease proponent in order to determine the scope of the lease proposal.

All lease proponents are required to provide the Board with a Business Plan as outlined in 13.2.3 to assist the Board in the preparation of the approval in principle submission (Step 2).

All preliminary discussions shall be on a “without prejudice” basis, and the Board shall not commit to, make any representation about, or make any offer of lease to a prospective or proposed lessee or to any third party at this stage.

#### **Step 2 - Approval in Principle**

Following preliminary discussions, the Board must seek the approval in principle of the Minister.

The approval in principle process in its application in alpine resorts requires that the Board prepare a submission for assessment by the Minister in support of each application for a new lease. The level of detail required in the submission will be commensurate with the lease proposal and will be required in a standard format. The information required will include the following:

- identification of the area of land that is the subject of the offer;
- the current use of the site;
- the use under the proposed lease;

- the term of the lease proposed (including any proposed further term(s), options, first right to negotiate) and an indication of how the term has been determined in accordance with the lease term criteria in 13.2.1;
- the annual rental and site valuation details;
- any other substantial terms and conditions;
- any proposed capital works program;
- the public notification process undertaken and the outcomes (if already completed);
- the public and economic benefits that the lease shall provide; and
- any special or unusual features of the proposal.

The Board must submit any proposal or submission for the Minister’s approval in principle to the Deputy Director, Crown Land Management, Department of Natural Resources and Environment, Level 17, 570 Bourke Street, Melbourne.

**Step 3 – Final lease negotiations by the Board, Ministerial approval to the lease and the grant of lease by the Board.**

Final lease negotiations and Board approvals must be in accordance with the Minister’s approval in principle.

Public notification of the proposed lease must be completed. (Refer to 12.3)

The Board shall submit a lease for the Minister’s approval to the Deputy Director, Crown Land Management, Department of Natural Resources and Environment, Level 17, 570 Bourke Street, Melbourne.

Upon receiving the Minister’s approval, the Board may proceed to grant the lease.

**What is the advantage of the approval in principle process?**

The process, which has been simplified significantly, will shorten the time taken to negotiate new leases. This is because it clearly sets out the Government’s intentions and therefore gives an increased level of confidence to all parties, at an early stage, as to which proposals are likely to be given favourable consideration by the Minister.

## 12. PRINCIPLE 3 - TRANSPARENT LEASE ALLOCATION AND PROCESS

*Leases on Crown land must achieve a public good through an open and transparent process for assessing the balance between benefits and costs. Key requirements are the need to demonstrate that the proposed arrangement has clear public and economic benefits, is on a commercial basis, meets probity tests, avoids conflicts of interest and includes an opportunity for public comment on the proposal.*

*Land in alpine resorts is to be allocated for lease through an open and transparent process requiring approval by the Minister. However, in special circumstances and subject to the Minister's approval, the Boards may deal by private treaty and leases may provide an existing lessee with a first right to negotiate the grant of a new lease.*

### POLICY STATEMENT

#### 12.1. NEW LEASE (INCLUDING “RENEWAL OF LEASE”) TO EXISTING LESSEES

All existing lessees will have the opportunity to enter a new lease which comprises the terms and conditions described in this Policy.

The Boards recognise that continued occupancy by a good lessee who is fully compliant with lease conditions is a desirable outcome for the resorts because this provides stability, continued investment and certainty to the future success of the alpine villages. In recognition of this, all new leases will have a “first right to negotiate” provision.

##### 12.1.1. Application for new lease at any time during the current lease term

An existing lessee may make application to the Board for a new lease at any time during a lease term where:

- the lessee proposes to redevelop the site;
- the lessee proposes to carry out significant refurbishment of the existing premises; or
- the lessee wishes to surrender its lease in preference for a revised lease.

A lessee wishing to surrender its existing lease and to obtain a revised lease with a longer term than that remaining in the existing lease will be required to provide additional benefit to the resort in order to ensure an equitable outcome. This may take the form of redevelopment or refurbishment or a special condition in the lease, and will be considered in accordance with the lease term criteria in 13.2.1. All applications will be considered with reference to the lessee's performance during the current lease term, and will be subject to a public notification process as described in 12.3.

**If my club/business surrenders its current lease in preference for the revised lease, what length of lease term will be given?**

If you seek to surrender your lease and take up the offer of the revised standard lease you could expect to receive a lease term corresponding to the balance of the term remaining on your current lease. If you propose to undertake redevelopment, substantial refurbishment

or can meet special requirements that provide benefit to the resort, a longer term may be available to you under the relevant provisions and the lease term criteria.

**Will my club/business have the opportunity to enter into a revised standard lease in preference to its existing lease if no refurbishment or redevelopment is proposed?**

Yes. You may apply for a revised standard lease to replace your existing lease without refurbishment or redevelopment plans. If you do have refurbishment or redevelopment plans or can show that you can provide additional benefit to the resort, a longer lease term will be considered.

**My club/business plans to undertake works to significantly improve the premises. Does this impact on my lease?**

If redevelopment or refurbishment is to occur, you may apply to the Board for a new lease in accordance with the lease term criteria. It will require that you surrender your current lease and enter into a revised lease.

**My club/business has plans to refurbish/redevelop the premises. Is it compulsory that I enter into a new lease?**

No. If you plan to refurbish/redevelop and have term remaining in your existing lease there is no obligation to enter into a revised standard lease. If you prefer to remain on your existing lease, then you may do so.

### **12.1.2. First right to negotiate a new lease**

The revised standard lease stipulates that lessees are entitled to the first right to negotiate a new lease. This right must be activated by the lessee between three and four years prior to expiration of the lease term, and will only be available where the lessee has met the terms of the lease for its duration including payment of all rental and other charges (such as headworks and service charges).

In addition, the Board shall have regard to the lessee's response to matters related to Standards of Occupancy identified in the Building Standards Report (refer to 13.1).

It is in the best interests of both the Boards and the lessee if there is flexibility for this right to be exercised prior to the end of the lease term to allow for sufficient time for the parties to negotiate a new lease. Therefore, when the lease term is between three and four years from completion, it shall be necessary for the lessee to make written application to the Board requesting the commencement of negotiations for a further lease. The Board will be required within six months to provide the lessee with a "Lessor's Proposal" for the purposes of negotiating a new lease. Following receipt of this, the lessee will be required within six months to provide the Board with a "Lessee's Proposal" including a Business Plan and redevelopment / refurbishment plans if relevant. The Lessor's Proposal and Lessee's Proposal will then form the basis of negotiations for a new lease.

In accordance with the process involved in application for a new lease, there must be an opportunity for public comment on the proposal as described in 12.3.

The first right to negotiate process gives an existing lessee the first opportunity to seek a new lease and requires that a new lease be finalised prior to the expiration of the lease term. In this way the lessee can seek clarity as to the ability to attain further occupancy of the site and the conditions that may be imposed on such further occupancy. It also encourages the lessee to maintain and use the site effectively throughout the whole of the lease term. The first right to negotiate does not, however, provide the lessee with an automatic right to the grant of a new lease upon the expiration or the early surrender of the original lease.

Lease terms shall be determined in accordance with the lease term criteria provided in 13.2.1.

**Can my club/business apply for a new lease at any time during the lease term?**

In order to exercise the first right to negotiate, application must be made to the Board between three and four years prior to the expiry of the lease. However, if your club is undertaking improvements to the premises or providing additional benefit to the resort, you may apply to the Board for a new lease at any stage during the existing lease term.

## **12.2. NEW LAND RELEASE**

With the prior approval of the Minister, new land may be released in the resorts to achieve development and investment goals at alpine resorts. In general, new land release shall require a public competition process.

### **12.2.1. Stand-alone / Greenfield sites**

In the case of new stand-alone / greenfield sites, land release shall be via a public competition allocation process. Unless special circumstances can be demonstrated to the satisfaction of the Minister, one of the following methods of lease allocation is to be used:

- Public tendering;
- Public auction; or
- Expressions of interest.

### **12.2.2. Additional land adjacent to existing leased area**

Applications for additional land adjacent to existing leased areas to facilitate redevelopment and investment shall be considered by the Minister in the case where the land has not been identified by the Board for public purposes and does not have the capacity to be released as a stand-alone site.

Upon approval of the proposal in principle for the increase in the leased area, it will be necessary that the proposal be advertised and comment invited by adjoining siteholders and the public through a public notification process as described in 12.3.

The increase to the leased area cannot be achieved through variation to the existing lease (refer to 13.6 below), but shall require the surrender of the existing lease and the granting of a new lease.

### **12.2.3. Subdivision of existing sites**

Applications for subdivision of existing sites will require the approval in principle of the Minister and will be subject to a public notification process as outlined in 12.3.

## **12.3. PUBLIC NOTIFICATION PROCESS**

In order to ensure that public needs are considered, it is necessary that, prior to the granting of the lease, the public be given the opportunity to comment on the proposal. This process involves:

- Notice of the lease proposal in a locally circulating newspaper and metropolitan daily newspaper selected or approved by the Board, specifying the particulars of the land, the purpose and term of the lease and the name of the proposed lessee.
- Consideration by the Board of the submissions received.
- Preparation of a briefing by the Board to the Minister recommending the approval to the grant of the lease and, where any public submissions have been received, details of those submissions and how the public interest has been addressed.

The Minister, on being satisfied that any public interest comments have been considered, may then approve the grant of the lease.

## **12.4. COSTS ASSOCIATED WITH A NEW LEASE**

Reasonable legal costs associated with the preparation and execution of a new lease are to be borne by the lessee. In addition, other professional services such as survey and valuation may be required for a new lease, and the costs associated with these professional services will be borne by the lessee.

### **Who will pay for the transfer from a current lease to a new lease?**

It will be necessary for you to bear reasonable legal and other associated professional costs for the transfer from the lease you are on now to the revised lease that introduces the provisions of the new Policy.

The Department of Natural Resources and Environment has prepared a revised lease in a standard format for use by all Boards. The use of this standard lease will reduce legal costs incurred by lessees.

### 13. PRINCIPLE 4 - APPROPRIATE LEASE TERM AND CONDITIONS

*The terms and conditions of a commercial lease on Crown land should generally reflect practices in the private sector market, including payment of market rent. However, public interest considerations may demand that matters other than those of a purely commercial nature need to be incorporated into the lease agreement, such as protection of identified public land values and the need for a public notification process.*

*Detailed business plans shall be required to support all applications for all alpine leases.*

## POLICY STATEMENTS

### 13.1. STANDARDS OF OCCUPANCY

The purpose of the Standards of Occupancy is to encourage lessees to maintain their premises to a level that meets contemporary standards. This includes:

- Regular maintenance and upgrade of the exterior and interior of buildings and leased land to meet the Board's and visitor expectations; and
- Opening periods and access to facilities by the general public where applicable.

In addition, all lessees will be required to meet a number of statutory provisions and planning requirements. These include:

- Compliance with building requirements;
- Compliance with site land stability requirements;
- Compliance with any car parking requirements and policies;
- Compliance with all approved environmental requirements and policies;
- Compliance with all statutory requirements including;
  - Building Act,
  - Health Act,
  - Fire safety,
  - Occupational health and safety.

The revised standard lease will contain provisions that allow the Boards to perform reviews with respect to the Standards of Occupancy every three years. In the case of the majority of leases, these reviews will coincide with each rent review throughout the lease term. The reviews shall be documented by the Boards in the form of a Building Standards Report, and may be used as a reference in determining the performance of a lessee when considering an application for a new lease made in accordance with the first right to negotiate provisions (refer to 12.1.2). Copies of the Building Standards Reports will also be provided to the lessee by the Board, and the lessee will be given the right to respond to the matters raised in the report.

**Can my club/business be forced to undertake upgrades to the premises if the Board believes that they are necessary?**

No. The Board, as lessor, will inspect the premises every three years and may make recommendations for improvements in the Building Standards Report. This report will be used as a record of the condition of the premises and will be consulted during negotiations for a new lease.

The failure to carry out the recommended improvements will not constitute a breach of the lease unless they relate to statutory provisions or planning requirements.

## 13.2. LEASE TERM

In accordance with the Government’s announcement of 30 March 2002, lease term shall be commensurate with proposed use and investment. The table of criteria for determination of lease term below relates the maximum lease term with the level of development identified by the Board as appropriate for the site, and links these with conditions that must be met by the lessee in order for a lease proposal to be considered.

### 13.2.1. Criteria for determination of lease term

The determination of lease term is subject to the proposed lessee being identified by the Board as a good lessee. This will be established through:

- assessment of the lessee’s ability to meet the requirements of the lease (such as payment of rent);
- consideration of the submitted Business Plan;
- examination of records related to an existing lessee’s past performance with regard to Standards of Occupancy; and
- other relevant considerations.

Having established that the proposed lessee is a good lessee, the following criteria shall assist the Board to make a determination with regard to lease term. This table of lease term criteria does not stand alone and must be applied in conjunction with all other requirements.

Level of development	Conditions for continuation of existing developments and current use	Conditions for new developments and/or use	Lease term
<b>Special cases considered on a case by case basis for exceptional levels of development and/or public benefit</b>	<ul style="list-style-type: none"> <li>• Value of current development on site plus capital outlay for refurbishment / redevelopment in excess of \$8 million</li> <li>• Development to optimum level</li> <li>• Detailed business case and financial evaluation required</li> <li>• Exceptional circumstances must exist</li> <li>• Public notification process</li> <li>• Consideration of past performance of lessee / Standards of Occupancy</li> </ul>	<ul style="list-style-type: none"> <li>• Capital outlay in excess of \$8 million</li> <li>• Development to optimum level</li> <li>• Detailed business case and financial evaluation required</li> <li>• Exceptional circumstances must exist</li> <li>• Land allocation subject to a public competition process</li> </ul>	More than 51 years**
<b>Optimum Level of Development: 100% of Strategically Identified Site Potential*</b>	<ul style="list-style-type: none"> <li>• Currently developed to an optimum level, and/or</li> <li>• Committed through formal agreement to refurbishment / redevelopment of the site to an optimum level within a</li> </ul>	<ul style="list-style-type: none"> <li>• Capital outlay in excess of \$8 million, and/or</li> <li>• Development to an optimum level</li> <li>• Land allocation subject to a public competition process</li> </ul>	Up to 51 years**

	<p>specified time frame and/or to additional benefit through special conditions / requirements of the Board</p> <ul style="list-style-type: none"> <li>• Detailed business plan</li> <li>• Comprises extensive multi-seasonal or permanent residential use</li> <li>• Public notification process</li> <li>• Consideration of past performance lessee / Standards of Occupancy</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed business plan required</li> <li>• Comprises extensive multi-seasonal or permanent residential use</li> </ul>	
<p><b>High Level of Development: Between 75% and 99% of Strategically Identified Site Potential*</b></p>	<ul style="list-style-type: none"> <li>• Currently developed to a high level, and/or</li> <li>• Committed through formal agreement to refurbishment / redevelopment of the site to a high level within a specified time frame and/or to special conditions / requirements of the Board</li> <li>• Detailed business plan required</li> <li>• Public notification process</li> <li>• Consideration of past performance of lessee / Standards of Occupancy</li> </ul>	<ul style="list-style-type: none"> <li>• Development to high level</li> <li>• Detailed business plan required</li> <li>• Land allocation subject to a public competition process</li> </ul>	Up to 45 years**
<p><b>Moderate Level of Development: Between 40% and 74% of Strategically Identified Site Potential*</b></p>	<ul style="list-style-type: none"> <li>• Site currently developed to a moderate level, and/or</li> <li>• Committed through formal agreement to refurbishment / redevelopment of the site to a significant level within a specified time frame and/or to special conditions / requirements of the Board</li> <li>• Detailed business plan required</li> <li>• Public notification process</li> <li>• Consideration of past performance of lessee / Standards of Occupancy</li> </ul>	<ul style="list-style-type: none"> <li>• Development of site to moderate level</li> <li>• Detailed business plan required</li> <li>• Land allocation subject to a public competition process</li> </ul>	Up to 35 years**
<p><b>Low Level of Development: Between 25% and 39% of Strategically Identified Site Potential*</b></p>	<ul style="list-style-type: none"> <li>• Site currently developed to a low level, and/or</li> <li>• Committed through formal agreement to refurbishment / redevelopment of the site to a base level within a specified time frame and/or to special conditions / requirements of the Board</li> <li>• Detailed business plan required</li> <li>• Public notification process</li> <li>• Consideration of past performance of lessee / Standards of Occupancy</li> </ul>	<ul style="list-style-type: none"> <li>• Development to low level</li> <li>• Detailed business plan required</li> <li>• Land allocation subject to a public competition process</li> </ul>	Up to 21 years**
<p><b>Minimum Level of Development: Less than 25% of</b></p>	<ul style="list-style-type: none"> <li>• Site currently developed to a minimum level</li> <li>• Public notification process</li> </ul>	N/A	Up to 10 years**

<b>Strategically Identified Site Potential*</b>	<ul style="list-style-type: none"> <li>• Detailed business plan required</li> <li>• Consideration of past performance of lessee / Standards of Occupancy</li> </ul>		
<b>Negotiated Level of Development</b>	<ul style="list-style-type: none"> <li>• Permanent ongoing residential occupation</li> <li>• Consideration of past performance of lessee / Standards of Occupancy</li> </ul>	<ul style="list-style-type: none"> <li>• Permanent ongoing residential occupation</li> </ul>	Up to 40 years**

\* **“Strategically Identified Site Potential”** is the maximum level of development able to be erected on the site as specified in the relevant provisions of the Alpine Resorts Planning Scheme.

\*\* All leases shall grant the lessee the first right to negotiate a further term (as outlined in 12.1.2)

**What do I need to do to get a 51 year lease?**

The lease term criteria provide that a new or existing development to 100% of “Strategically Identified Development Potential” of the site, as identified in the Alpine Resorts Planning Scheme, would qualify for lease term of up to 51 years, subject to compliance with other specified conditions. A new development costing \$8 million would also qualify for a lease of up to 51 years, subject to similar conditions.

**Does my club/business need to commit to redevelopment/refurbishment of the premises to be eligible for a new lease?**

No. Lease term will be determined with regard to the current or proposed level of development. For example, if a site is currently developed to 60% of its strategically identified site potential and there are no plans for refurbishment/redevelopment, a lease term of up to 35 years will be considered by the Board. If there are plans to redevelop that site to 85% of the strategically identified site potential, a lease term of up to 45 years will be considered.

**How do I determine the Strategically Identified Site Potential of my club’s/business’s site? What is the existing level of development?**

You should request this information from your Board. The Board will use the Planning Scheme to determine the site’s potential and the existing level of development, and will be able to discuss strategies for maximising the lease term available to you.

**Is it compulsory for my club/business to transfer to a new lease?**

No. There is no obligation to transfer to the revised lease. All existing lessees have the choice of remaining on their existing lease or of surrendering their existing lease in favour of the revised standard lease that provides the first right to negotiate and right to the value of the improvements on the leased land.

### **How does this new policy help permanent residents of the Resorts?**

The lease term criteria provide that for permanent residential occupation lease terms of up to 40 years are available for a “negotiated level of development”. Development levels will be negotiated with the Board taking into account the strategic objectives for the resort. It should be noted that any new lease would also contain the ‘first right to negotiate’ provisions.

### **13.2.2. Options For Further Terms**

Leases may provide for options for further terms. However, the total of the initial term plus any option terms shall be regarded as the total term for the purpose of assessing the length of lease to be offered.

Lease term shall be calculated in accordance with the conditions stipulated in the criteria for determination of lease term in 13.2.1.

The total of the initial term plus any option periods cannot exceed the maximum lease term specified in the criteria for determination of lease term in 13.2.1.

### **13.2.3. Business plan**

A lease proponent will be required to provide the Board with a business plan to accompany an application for a new lease. The provision of the business plan is designed to assist the Board to better understand the business operations of the lessee and their applicability to economic and social benefits of the resort.

The business plan will be treated by the Board as a confidential document, and will not be forwarded to the Minister or NRE.

The business plan should provide an indication of the proposal’s relevance to the Board’s strategic objectives for the resort as stated in the Alpine Resorts Planning Scheme, and should include details of the following:

- Membership;
- Facilities;
- Scope of operation;
- Legal structure;
- Management;
- Financial structure and management;
- Details of planned refurbishment/upgrade of the premises; and
- Marketing strategy.

The level of detail required in the business plan will be dependent upon the specific site and on proposed use and lease terms and conditions being requested. A standard business plan template will be available to assist in the preparation of business plans, and the Boards will provide guidance to lease proponents regarding the level of detail required in a particular application.

The granting of a lease will not be an endorsement of the Business Plan by the Crown or the Board (either in its own right or as an agent of the Crown) nor constrain the Crown or the Board from exercising any statutory power or authority. Nothing in the Business Plan will prevent the Board from granting, omitting or refusing to grant any approvals or rights. The revised standard lease will contain a clause to this effect.

### **13.3. RENTAL AND VALUATIONS**

In line with Government policy that the private use of Crown land under leasehold arrangements across the State shall be based on a fair market value, the Board shall receive a fair return on the Crown's assets through rental that is determined on commercial principles and practices and reflects market rates.

To ensure consistency of approach across all alpine resorts, site rental shall be determined by the Valuer General from site value using a market-based approach. A consequence of adjustment to a market-based approach is that site rental can fall or rise with no restrictions or caps. This approach is consistent with determination of rent for other Crown land leases across Victoria.

Valuations for rental purposes shall not include the value of improvements, consistent with the position adopted in relation to improvements outlined in 13.4.

#### **Will my rental payments change?**

Under the new lease, rentals will be determined by the Valuer General and will be influenced by movement in the value of land in the alpine resorts, so rentals may increase or decrease. If you choose to remain on your existing lease you will continue to be bound by the rent review provisions associated with that lease.

#### **13.3.1. Rent reviews**

All new alpine leases shall include a provision that provides for the site rental to be reviewed every three years and adjusted to market rates, and for CPI adjustments between reviews to be made annually. This approach takes into consideration the potentially fluctuating site values, and ensures that the rental rates reflect current market valuations.

### **13.4. IMPROVEMENTS**

All new leases will recognise that the value of the improvements on the leased land will rest with the lessee for the term of the lease and at the negotiation of a new lease. The value of the improvements may, upon assignment of the lease, be captured by the out-going lessee through the 'sale' of the improvements to the new assignee, provided that improvements have been constructed by the lessee or the lessee has paid a previous lessee for the improvements.

As the value of the improvements will remain with the lessee, the calculation of market rental will be based on the value of the land only.

All responsibilities and liabilities related to the improvements, including structural integrity, shall under the terms of the new lease rest with the lessee for the term of the lease and any further lease term negotiated under the first right to negotiate provision of the lease.

This approach shall provide an incentive to lessees to maintain and improve the standard of the improvements throughout the whole of the lease term.

#### **13.4.1. End of lease term**

In the majority of cases, where a lessee will not continue on a site, the outgoing lessee will sell the existing improvements and assign the lease prior to its expiration, rather than forego the opportunity to maximise return on the asset.

However, in the rare situation where a lessee neither assigns the lease nor exercises the first right to negotiate a new lease, and where the site is not required for resort purposes, the outgoing lessee may be required to remove the improvements on the land at the lessee's own cost. If the improvements are not removed by the outgoing lessee, they shall become the property of the Crown and the cost of their removal shall be a debt due by the outgoing lessee to the Board.

An outgoing lessee shall not be entitled to any compensation by the Board for the value in the improvements erected on the site unless the site has been identified by the Board as being required for resort purposes.

#### **Will it be possible to vary my current lease to provide for improvements to remain with the lessee?**

No. The new policy provisions have been incorporated into a revised standard alpine lease. All site holders will be able to surrender a current lease and replace it with the revised standard lease. You will not be able to vary a current lease to obtain this benefit.

### **13.5. ASSIGNMENT, SUB-LEASE AND MORTGAGE**

All proposals to assign, sub-lease or mortgage leased land within alpine resorts require the consent of the Board, and the following information is required by the Board:

- In the case of proposed assignments, evidence of the financial capacity of the assignee and directors to perform the obligations and responsibilities under the terms of the lease;
- Character references for each assignee and/or director; and
- Copies of all proposed documents, including guarantees where relevant.

The Board may also review information held as a result of reviews of Standards of Occupancy on any site and any other relevant information.

### **13.6. VARIATION OF LEASES**

Subject to the outcomes of investigation into lease registration (refer to 14.2), the Minister may consider variation to an existing lease in limited circumstances. The Board must prepare an approval in principle submission to the Minister providing reasons as to why the variation is required.

All lease variations require the approval of the Minister.

If a proposal for variation of a lease involves substantial or fundamental changes, a surrender of the lease and grant of a new lease shall be required. These fundamental changes would include but are not restricted to a proposed modification or alteration of:

- The term of the lease;
- The area leased; and/or
- The purpose of the lease.

### **13.7. OVERHOLDING**

Overholding of leases should be avoided where possible. A lease that is due for expiry should be replaced with a new lease reflecting contemporary lease conditions.

In order to avoid the expiry of a lease and the need to overhold during the negotiation of a new lease, negotiation of a new lease with the Board should be initiated by the lessee when the current lease term is between three and four years from completion, and a new lease should be operative before the expiration of the prior lease term.

## **14. PRINCIPLE 5 - CONSISTENT LEASE DOCUMENTATION**

*To ensure a consistent approach to the leasing of Crown land, to cater for special requirements of legislation and to address public land values, standard leasing documentation in a form acceptable to the Minister shall be used by managers of Crown land.*

### **POLICY STATEMENT**

#### **14.1. DOCUMENTATION**

Leases in alpine resorts shall be drawn from a suite of standard documents as approved by the Minister to be used for all new alpine leases. A new suite of documents based on contemporary commercial practices and incorporating the changes required as a result of this new Policy is to be prepared as soon as possible.

As a general policy, new developments shall be constructed in accordance with an Agreement to Lease with Lease annexed (executed by the lessee and required to be executed by the lessor subject only to compliance with the conditions of the Agreement). This is a well-accepted form of documentation in alpine resorts and in central city areas.

In the case of development on a site already the subject of a long-term lease (in excess of 10 years), development may proceed in accordance with a development lease. This development lease shall provide that in the event that the agreed development does not proceed within the specified time frame, the term is replaced with the term remaining on the surrendered lease and that this condition is an essential condition not able to be varied by the parties.

In the case of developments involving sub-lessees, the preferred approach of a Company Share arrangement that provides that each unit holder has a share in the Lessee Company shall continue to be used in the short term. It is recognised that the documentation used to achieve this is complicated, however it is currently necessary to protect the interests of sub-lessees. Until a statutory process enabling strata leasing to take place is considered, and subject to the outcomes of investigations outlined in 14.2 and 14.3, the current process will need to remain.

##### **14.1.1. Transitional arrangements**

As an interim measure, to enable new leases to be granted immediately, a revised standard lease that incorporates changes necessary to implement key elements of this policy has been prepared and approved.

In general, where negotiations have recently commenced between the Boards and proposed lessees, the revised standard lease shall replace the former lease documentation.

Where the process is well progressed, it is recommended that the revised standard lease replace the former lease documentation, with application of the agreed term, rental, area and any relevant special conditions.

## **14.2. REGISTRATION OF LEASES**

The development of an appropriate statutory framework for registration of Crown leases, sub-leases, mortgages, lease variations and other legal interests (which is currently possible in limited circumstances under the provisions of the *Transfer of Land Act 1958*) to protect legal interests, will ensure additional confidence in the alpine resort leasehold environment. Subject to the outcomes of investigations being undertaken by Crown Land Management in Land Victoria, NRE, options developed and stakeholder consultation, it is intended that this be implemented as soon as practicable. Registration investigations are interdependent with strata leasing investigations.

## **14.3. STRATA LEASING**

The development of an appropriate statutory framework for strata leasing is being considered so as to provide a far less complex arrangement than currently used for sub-leasing and a higher level of protection to the interests of all parties including site holders (both lessees and sub-lessees), investors and financiers. Subject to the outcomes of investigations being undertaken by Crown Land Management in Land Victoria, NRE, options developed and stakeholder consultation, it is intended that this be implemented as soon as practicable. Strata leasing investigations are interdependent with lease registration investigations.

### **When will standard leasing documentation to support this policy be available?**

A revised standard alpine lease has been prepared by the Department of Natural Resources and Environment as an interim lease to enable leases issued post-30 March 2002 to include the new policy initiatives. It is based on the form of lease approved by the Minister for Environment and Conservation for use in all alpine leases, the "Final Standard Alpine Lease 17 Oct 2000". An entirely new suite of standard documents will be developed at a later stage.

### **How does my club/business go about entering into a lease that embraces the provisions of the new Policy?**

In order to transfer from your current lease to the revised standard lease, you will need to surrender your current lease and enter into the revised standard lease. You can commence this process by making application to the Board.

### **Can I change any of the conditions of the revised standard lease?**

No. The Government in approving the new leasing policy stipulated that consistent lease documentation will be applied to all new leases. Changes may only be made by way of the inclusion of special conditions in the lease by the Board with the approval of the Minister. The inclusion of special conditions generally will relate to site specific requirements and may incur additional legal costs on the lessee.

**My club/business would like to obtain some of the features of the new policy but retain others from its current lease. Will it be able to do this?**

No. The revised standard alpine lease is available as a whole – you will not be able to ‘mix and match’ its features with your current lease.

**Who will prepare the new lease and documentation associated with the transfer from my current lease to a revised lease?**

The Board will prepare all documentation necessary for you to transfer from your current lease to a revised lease. However, this offer to prepare documents does not apply to mortgages, sub-leases or other property interests. This responsibility will rest with the lessee subject to acceptance of the documents by the Board.

**When will Lease Registration and Strata Leasing be available?**

The Department of Natural Resources and Environment is currently investigating the implementation of these important new initiatives. As it will involve a high degree of consultation with stakeholders including the legal profession and it is highly likely to involve legislative amendments, it may be a year or more before implementation is possible. It is likely that registration may be able to be introduced in some form more readily and at an earlier date than strata leasing.

**What changes to new leases will be required to allow for Registration and Strata Leasing?**

At this stage it is unclear as to what changes will be required. However, it is clear that there will be significant changes needed and that leases and all supporting documentation will need to be re-drafted.



# Media release

From the Minister for Environment and Conservation

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Saturday, 30 March 2002

## ALPINE RESORTS GIVEN A NEW LEASE OF LIFE

The Bracks Government has approved a new leasing policy for all site holders including commercial operators and residents at Victoria's six Alpine Resorts, the Minister for Environment and Conservation, Ms Sherryl Garbutt, announced today.

Ms Garbutt said alpine resorts currently inject \$129 million annually into the Victorian economy and support 3700 jobs, mainly in regional Victoria.

"This new leasing policy is essential to ensure that the economic contribution of alpine resorts is maintained and that further sustainable development of these resorts is encouraged," Ms Garbutt said.

"The new leasing policy will offer existing lessees the first right to negotiate a new lease, subject to compliance with clearly spelt out conditions.

"Existing lessees will also be able to transfer their assets to new lessees and thus retain the value of buildings and improvements that they have erected on the land."

Ms Garbutt said the Department of Natural Resources and Environment (NRE) is working on the establishment of an appropriate statutory framework to allow for the proper protection of all involved parties, including sub-lessees and financiers, as well as the registration of leases, sub-leases, mortgages and other interests.

"Lease terms will be commensurate with proposed use and investment and will provide for terms of up to 51 years for major investment.

"The new leasing policy will ensure that buildings are maintained to meet visitor expectations and implementation of environmental policies will be achieved.

"The policy has been approved following extensive consultation with resort stakeholders, including Alpine Resort Management Boards, site holders, interest groups and industry associations.

"The policy sits within the framework of the five broad leasing principles that apply to the management of Crown land in Victoria.

"The Bracks Government will now work with the Alpine Resorts Coordinating Council, Alpine Resort Management Boards and stakeholder representatives to finalise the details necessary to implement the approved policy."

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Ms Garbutt expressed her appreciation for the input from all involved people and organisations, particularly thanking the Alpine Resorts Coordinating Council for its role in bringing together the views of stakeholders.

“The policy is good news for resort site holders, investors and financiers, whilst at the same time ensuring that the Crown receives a fair return for the taxpayers of Victoria,” Ms Garbutt said.

“This will also ensure that environmental policies are implemented and that resorts continue to meet the expectations of visitors.”

**A copy of the approved policy is attached to this media release.**



# **ALPINE RESORTS LEASING POLICY**

## **INTRODUCTION**

The State Government has approved a leasing policy applying to the leasing of land within Alpine Resorts in Victoria. The policy recognises the contribution of the resorts, both to the State and to regional Victoria and the fact that resorts are changing from seasonal destinations to year-round, tourism-based townships with permanent populations.

The Alpine Resorts Leasing Policy sits within the framework of the five broad leasing principles that apply to the management of Crown land in Victoria. Those principles take into account probity, conflict of interest, public interest and competition requirements. The principles are: demonstrated public and economic benefit; transparent lease allocation and process; appropriate lease term and conditions; consistent lease documentation; and, approval in principle requirement.

The key points of the policy are set out below. The Government will work with the Alpine Resorts Co-ordinating Council, Alpine Resort Management Boards and stakeholder representatives to finalise the details necessary to implement the Alpine Resorts Leasing Policy.

## **KEY POINTS**

### **New Leases to Existing Lessees**

Existing lessees will be offered the first right to negotiate a new lease. Such right will only be available where lessees have been fully compliant with the terms of the existing lease, including satisfying the Standards of Occupancy; meeting the resort's strategic intent and environmental policies; and, submitting an acceptable business plan focussing on the contribution of the site to the viability of the resort.

### **Improvements**

All new Alpine Resort leases will incorporate a mechanism that recognises that the full market value in the improvements rests with the lessee during the term of the lease or in the renegotiation of a new lease and that the lessee is able, upon assignment of a lease to an in-coming party, to capture that value through the 'sale' of improvements to the assignee. All responsibilities and liabilities for improvements (including structural) will lie with the lessee and Boards will charge rent only on the land value.

### **Length of Lease Term**

Lease terms will be commensurate with proposed use and investment. For major investment (in excess of \$8 million), lease terms of up to 51 years will be offered. Terms beyond 51 years may be possible subject to acceptance of a verifiable business case. For levels of development and refurbishment of \$8 million or less, shorter lease terms will be negotiated dependent upon the levels and nature of investment and development.

### **Standards of Occupancy**

All new leases will stipulate a number of base requirements in relation to the lessee's Standards of Occupancy. These standards will reflect the Government's objectives and the individual resort's policy planning guidelines for development and usage of the resort, eg compliance with

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strategic, planning, environmental and building policies, guidelines and requirements, opening periods and regular maintenance, repair and upgrade to meet visitor expectations.

### **Rental and Valuations**

Site rental will be determined in relation to site value utilising a market-based approach. A consequence of adjustment to market is that site rental can fall or rise with no restrictions or caps. The site value will be periodically reviewed. Given market values will potentially fluctuate over time, particularly taking into consideration good/poor snow seasons, the review period will be every 3 years, so that rental rates are not locked in for a long period at a rate which does not reflect current market values. Consistent with the position adopted in relation to improvements, valuations for rental purposes will not include the value of those improvements.

### **Strata Leasing Regime**

The development of an appropriate statutory framework will provide a better level of protection to the interests of all parties including site holders (both lessees and sub-lessees), investors and financiers. Subject to the outcomes of investigations and options developed, it is intended that this be implemented as soon as practicable.

### **Registration of Leases**

The development of an appropriate statutory framework for registration of Crown Leases, sub leases, mortgages, lease variations and other legal interests (which is currently possible in limited circumstances under the provisions of the *Transfer of Land Act 1958*), to protect legal interests, will ensure additional confidence in the Alpine Resort leasehold environment. Subject to the outcomes of investigations and options developed, it is intended that this be implemented as soon as practicable.

### **Contemporary Conditions and Consistent Documentation**

All new leases will have consistent documentation, reflecting contemporary commercial conditions, market expectations and market-based rental provisions. The introduction of a statutory framework enabling strata leasing and registration of leases to proceed will greatly assist in the simplification of Alpine Resort leasing documentation.

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