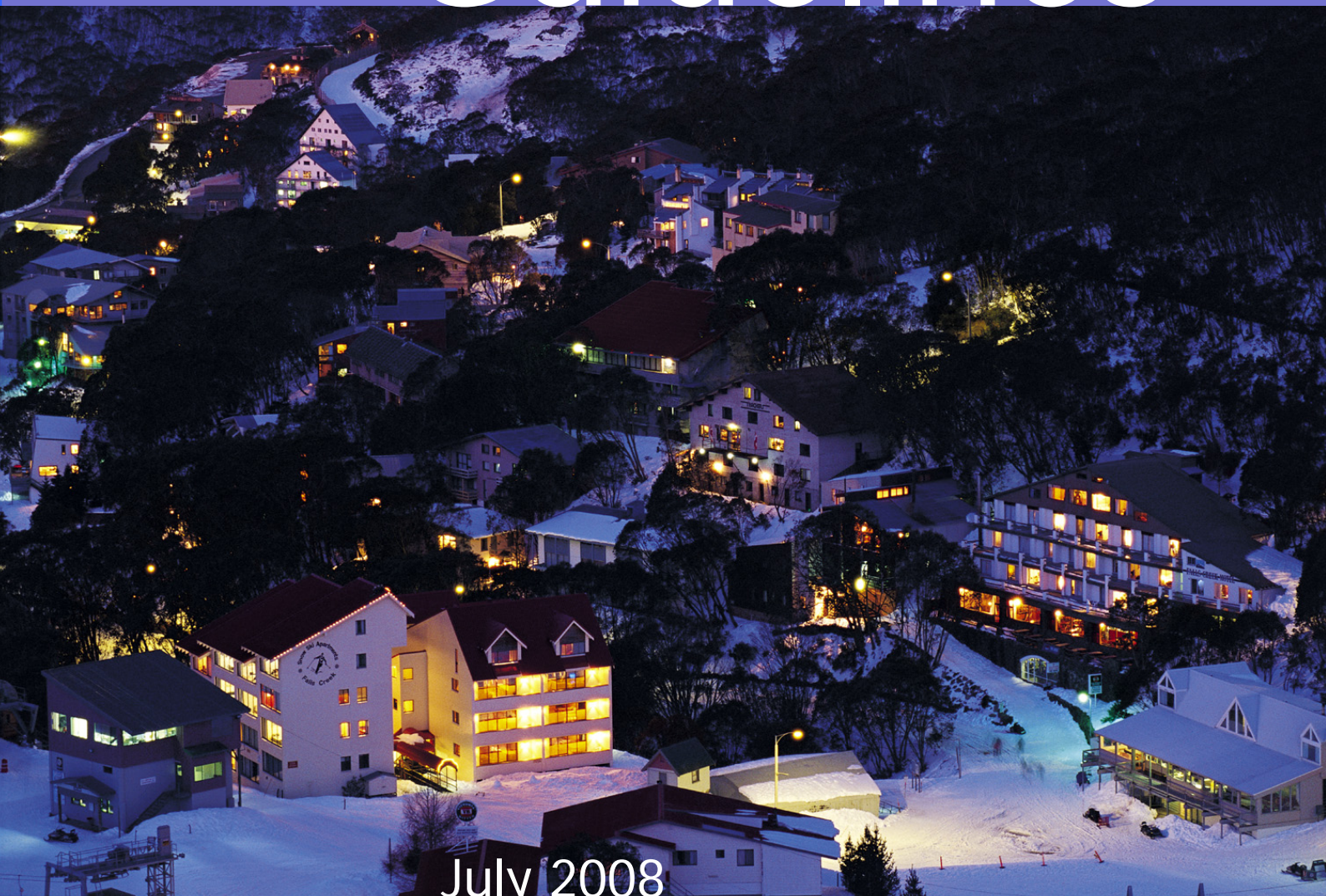


Alpine Lease Registration Guidelines



July 2008

Front Cover: Courtesy of Falls Creek Alpine Resort Management Board

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INTRODUCTION

The purpose of these guidelines is to establish a framework for the registration of leases and sub-leases in the alpine resorts.

Land Victoria's Land Titles Register holds certificates of title, plans of subdivision and other property documents that comprise the State's official land and property records. The Government guarantees the accuracy of this register of property ownership interests. The register is open to public search.

Lease and sub-lease registration offers the benefits of transparency, clarity of land and property description, the ability of others such as mortgagees to register their interest on the lease or sub-lease, and greater protection of that interest. Once registered, a certificate of title is created for each lease and a searchable record is created for each sub-lease.

The registration system is familiar to conveyancing practitioners and lawyers and is accepted by financial institutions, with simple forms and processes directing common transactions such as transfer of ownership.

There are technical requirements that must be met before a lease or sub-lease can be registered. These guidelines set out requirements and procedures and provide sample documents to assist Alpine Resort Management Boards, tenants, sub-tenants, lawyers, surveyors and other professionals to accurately prepare documentation in accordance with the technical requirements for registration.

Context

Prior to 1983, alpine leasing was administered by three government bodies under different legislative arrangements. The *Alpine Resorts Act 1983* removed the alpine resorts from past managing bodies and established the Alpine Resorts Commission and common leasing provisions. The *Alpine Resorts (Management) Act 1997* replaced those arrangements and established the Alpine Resorts Coordinating Council (ARCC) responsible for planning and facilitating the establishment, development, promotion, management and use of the alpine resorts and five separate Alpine Resort Management Boards (Boards) which have direct management and operational responsibilities for their alpine resorts. The Boards have the power to grant leases and do so in accordance with the government's Alpine Resorts Leasing Policy and supporting implementation details approved by Government in 2002.

In general, development in the alpine resorts was initially based on the need for ski lodge accommodation by clubs, whereas today there is a greater focus on commercial development and residential apartment-style accommodation for tourists.

The Government's Alpine Resorts 2020 Strategy released in 2004 identified the need for a contemporary leasing policy that meets market needs, provides an attractive environment for long term investment and provides market confidence in the Crown leasehold system in the alpine resorts. One of the agreed actions in the strategy was to pursue the capacity to register leases and sub-leases in the alpine resorts.

The ARCC in conjunction with the Department of Sustainability and Environment canvassed stakeholders with a discussion paper and background paper investigating lease registration and strata titling of leases. Following a period of consultation with stakeholders, the ARCC released a number of recommendations to implement a lease registration system in alpine resorts. The ARCC recommendations have been used as the basis for these guidelines and can be viewed on the ARCC website at www.arcc.vic.gov.au.

The *Transfer of Land (Alpine Resorts) Act 2006* which amended the *Transfer of Land Act 1958* and the *Alpine Resorts (Management) Act 1997* came into effect on 21 June 2006. The amendments support the establishment of the alpine lease registration system, and these guidelines provide the supporting framework, technical requirements and procedures to satisfy lease and sub-lease registration in Victoria's alpine resorts.

Summary of registration requirements

- For leases to be capable of registration, they must meet a number of technical requirements.
- Registration of leases entered into on or after 21 June 2006 is compulsory.
- Registration of leases entered into before 21 June 2006 is voluntary.
- Registration of sub-leases is voluntary.
- Sub-leases can be registered only where the head lease has been registered and technical requirements for registration have been met.

PART 1:

LEASE REGISTRATION

Following amendment to the *Transfer of Land Act 1958*, registration of leases granted after 21 June 2006 is compulsory. Section 8 of the *Transfer of Land Act 1958* requires the registration of leases granted by Boards in the alpine resorts.

For leases to be registered, they must satisfy a number of requirements that are strictly applied by Land Victoria:

- The land must be in the State cadastre and correctly described by a lease plan certified by the Surveyor General;
- The form and content of the lease must be acceptable for registration by use of the standard Alpine Resorts Lease document or DSE approved alternative lease;
- The lease must be submitted for registration at Land Victoria.

Land description

For a lease to qualify for registration, the land must be properly identified and described in the lease plan certified by the Surveyor General. This requires an accurate description of the land by survey, measurement and identification of boundaries on the ground, and reference to a unique land parcel identifier in the State cadastre.

- The Board must be informed of any intention of a tenant to undertake survey work in the alpine resort.
- Lease plans must be prepared by a licensed surveyor under instruction of the Board at the tenant's cost in accordance with the *Surveying Act 2004* and the *Surveyors (Cadastral Surveys) Regulations 2005*.
- The plan with accompanying field records and a surveyor's report must be accepted by the Board and then submitted by the surveyor to the Office of the Surveyor General for examination and certification by the Surveyor General.

Refer to sample lease plan in [Appendix A](#).

Form and content of lease

As the Government guarantees the accuracy of records of ownership held by the Registrar of Titles, documentation lodged for registration must meet specific requirements to be accepted.

The standard Alpine Resorts Lease was approved by the Minister after consultation with snowsports industry stakeholders and is used by all Boards. This lease is accepted for registration by Land Victoria.

Agreements for lease and leases that have variable lease terms are not registrable.

The standard lease is available on the DSE and Board websites.

- All proposed leases should be in the standard Alpine Resorts Lease format.
- If in special circumstances a Board or tenant seeks to deviate from the standard Alpine Resorts Lease it will be necessary for the Board to seek advice from DSE (Public Land Services).

Lodgment of lease for registration

Lease registration provides a secure record of the lease, greater protection of interests in the lease and the ability of others such as mortgagees to register their interest on the lease.

Registration of leases occurs after execution of the lease by the landlord and tenant and approval of the lease by the Minister for Environment and Climate Change.

As a result of amendment to section 8 of the *Transfer of Land Act* 1958, only one executed lease may be presented for registration.

Upon registration of a lease at Land Victoria, a Certificate of Title (leasehold) under section 28 of the *Transfer of Land Act* 1958 will be issued to the lodging party.

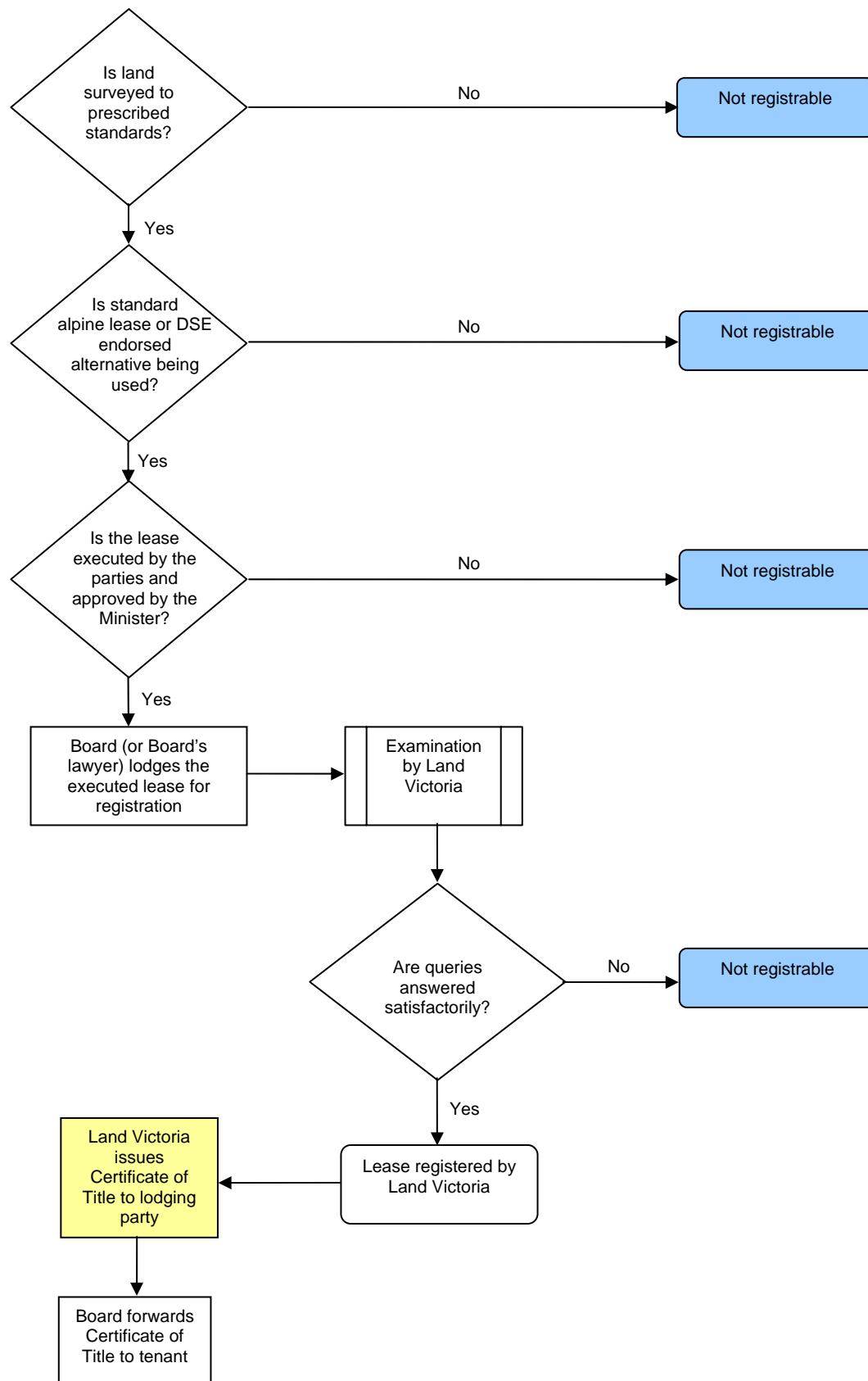
A sample Certificate of Title is provided in [Appendix B](#).

- The lease is to be executed by the tenant, approved by the Minister for Environment and Climate Change and then executed by the Board (landlord).
- One executed and approved lease is to be presented for registration to Land Victoria by the Board or the Board's lawyers. Arrangements to facilitate any recording of a mortgage may be made by the Board, tenant or mortgagee following submission of the lease to Land Victoria for registration.
- The Certificate of Title issued by Land Victoria must be forwarded by the Board or the Board's lawyers to the tenant.

Note that there is no lease registration fee charged by Land Victoria, however a Board may recover costs under conditions of the lease.

[Flowchart 1](#) following provides a summary of the process for the registration of a lease.

FLOWCHART 1: LEASE REGISTRATION



PART 2:

SUB-LEASE REGISTRATION

As a consequence of amendment to the *Transfer of Land Act* 1958 which facilitated registration of alpine resort leases granted after 21 June 2006, registration of sub-leases is also possible where technical requirements can be met.

Registration of sub-leases is not compulsory but is strongly encouraged where possible to ensure a reliable record of the agreement between the sub-tenant and the head tenant.

For sub-leases to be capable of registration, they must satisfy a number of requirements that are strictly applied by Land Victoria:

- Consent to sub-lease must have been granted by the Board;
- The sub-leased area must be correctly identified by a plan;
- The sub-lease must be in a prescribed format (Form 29);
- The head lease under which the sub-lease has been granted must be registered; and
- The sub-lease must be submitted for registration by the sub-tenant (or agent) to Land Victoria.

Area description

Sub-lease plans differ from lease plans because they usually reference an existing building and are defined by walls rather than dimensions. The conventions adopted for the preparation of alpine sub-lease plans are similar to those applying to apartments on freehold land under the *Subdivision Act* 1988. It should be noted however that the *Subdivision Act* 1988 does not apply to Crown land under a sub-lease.

- The survey of buildings and preparation of sub-lease plans describing sub-leased and shared areas must be prepared by a licensed surveyor under instruction of the head tenant in accordance with the Land Victoria guidelines for the preparation of alpine sub-lease plans.

Refer to Land Victoria guidelines in [Appendix C](#).

A sample sub lease plan is provided at [Appendix D](#).

Form and content of sub-lease

Sub-leases must be in the Form 29 format specified in the *Transfer of Land (General) Regulations 2004*. Sub-leases not in Form 29 format will not be accepted for registration by Land Victoria.

To assist in complying with this requirement, an example sub-lease has been prepared using an example Memorandum of Common Provisions (MCP) incorporating covenants and conditions to facilitate the granting of multiple sub-leases in a building development.

The use of the example sub-lease and example MCP is encouraged because it will streamline processing and ensure that the sub-lease is in a form acceptable for registration by Land Victoria.

The example sub-lease and example MCP is available on the DSE and Board websites.

- Sub-leasing requires the consent of the Board under the conditions of the head lease.
- All sub-leases must be prepared in the Form 29 format to be capable of registration. An example sub-lease and example MCP is available and is recommended for use.

Lodgment of sub-lease for registration

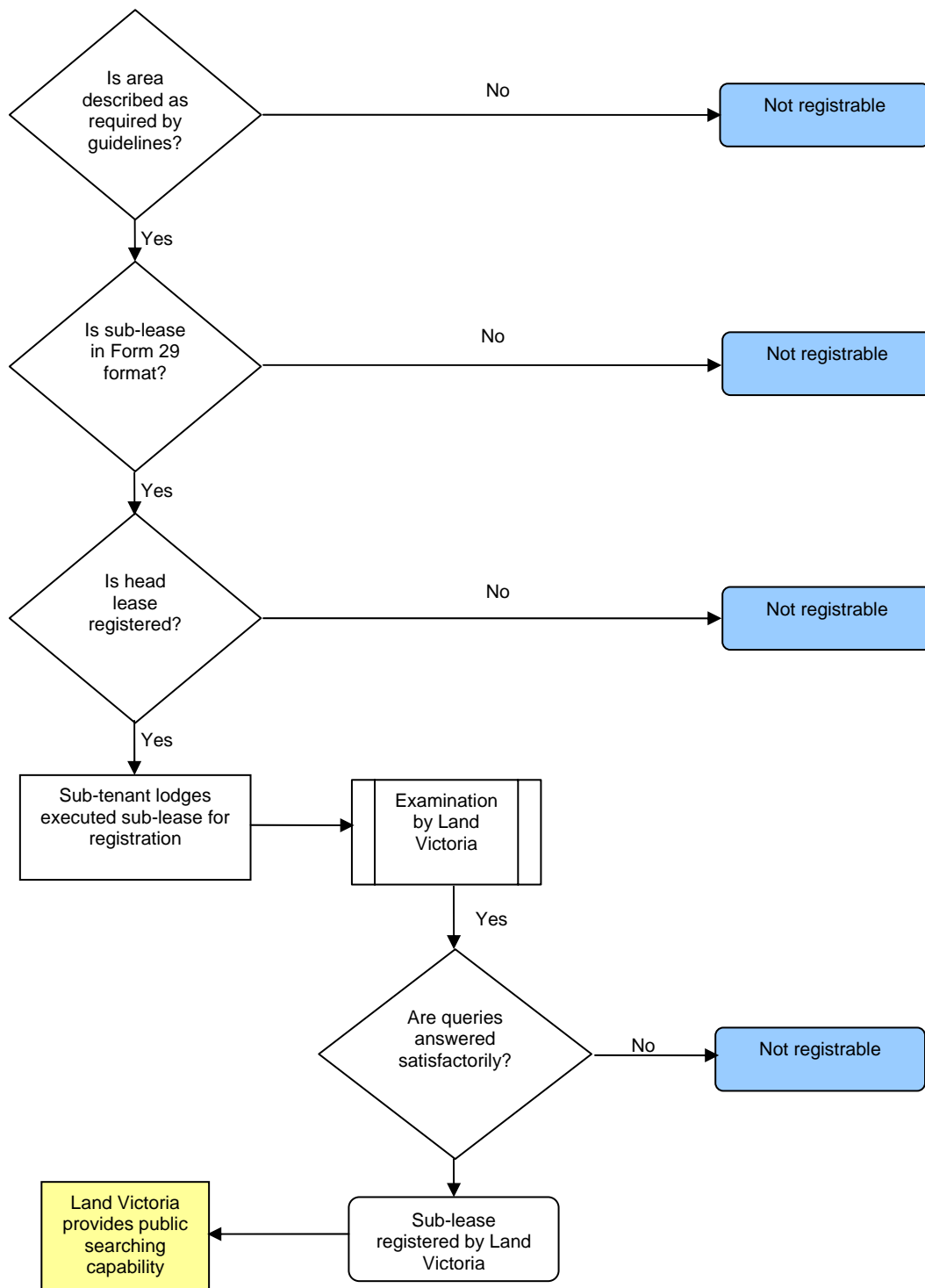
The registration of sub-leases will provide the capability to search sub-lease details and all registered interests.

- The sub-tenant (or agent) is responsible for submission of a sub-lease to Land Victoria for registration.

There is a fee charged for registration of sub-leases by Land Victoria. A Board may recover its costs in consenting to a sub-lease under the conditions of the head lease.

[Flowchart 2](#) following provides a summary of the process for the registration of a sub-lease.

FLOWCHART 2: SUB-LEASE REGISTRATION



PART 3:

REGISTRATION OF PREVIOUSLY GRANTED LEASES AND SUB-LEASES

Registration of leases and sub-leases entered into before the amendments to the *Transfer of Land Act* 1958 which came into effect on 21 June 2006 is voluntary and is not always possible due to inability to comply with the technical requirements for registration. If registration is required and the lease or sub-lease does not meet the technical requirements for registration, it will be necessary for the parties to surrender the existing lease or sub-lease and enter into a new lease or sub-lease compliant with the current alpine resorts leasing policy and these guidelines.

Any one of the following will prevent leases from being registered:

- The lease was granted by the former State Electricity Commission of Victoria;
- The lease is not current;
- The parties to the lease have changed (i.e. lease has been transferred);
- The term is unclear;
- The area of land leased has changed or is inadequately described;
- The lease has been varied; or
- The original lease is not available.

Any one of the following will prevent sub-leases from being registered:

- The sub-lease is not in Form 29 format;
- The head lease is not registered;
- The sub-lease is not current;
- The tenant in the head lease is not the same as the head tenant in the sub-lease (i.e. the head lease has been transferred);
- The sub-tenant in the sub-lease has changed (i.e. the sub-lease has been transferred);
- The term is unclear;
- The area sub-leased has changed or is inadequately described;
- The sub-lease has been varied; or
- The original sub-lease is not available.

The Board should be advised of an intention to register a lease or sub-lease entered into before 21 June 2006 so that it may assist in achieving compliance with the technical requirements.

PART 4:

DEALINGS ON REGISTERED LEASES AND SUB-LEASES

Variation of registered leases and sub-leases

Amendment to the *Transfer of Land Act* 1958 provides for the variation of covenants and conditions of a registered lease or sub-lease (section 67A) other than an alteration of

- the term of the lease,
 - the area of leased land, or
 - the parties to the lease.
- The consent of the Board as landlord and the approval of the Minister is required for any variation of lease or sub-lease under the terms of the lease.
 - The Variation of Lease and Variation of Sub-lease instruments should be in the recommended form (Refer to sample documents in Appendix E).
 - The instrument must be signed by the parties to the lease or sub-lease and any mortgagee.
 - The Certificate of Title (leasehold) must be presented with the executed Variation of Lease at Land Victoria.

There is a fee charged by Land Victoria for registration of a Variation of Lease and Variation of Sub-lease. The Board may recover its costs associated with variation from the tenant under the conditions of the head lease.

Surrender of registered leases and sub-leases

Section 69 of the *Transfer of Land Act* 1958 provides for the surrender of a registered lease or sub-lease. A surrender of lease or sub-lease and the granting of a new lease or sub-lease may be required in circumstances such as where there is a change required to the term of the lease or area of leased land (which cannot be achieved through variation).

- The consent of the Board as landlord is required for any surrender of lease under the terms of the head lease and by a mortgagee under section 69 of the *Transfer of Land Act*.
- The Surrender of Lease and Surrender of Sub-lease instruments should be in the recommended form (Refer to sample documents in Appendix F)
- The instrument must be signed by the parties to the lease or sub-lease and any mortgagee. Land Victoria may require a discharge of mortgage.
- The Certificate of Title (leasehold) must be presented with the executed Surrender of Lease instrument at Land Victoria.

There is a fee charged by Land Victoria for registration of the Surrender of Lease. The Board may recover its costs associated with surrender of lease from the tenant under the conditions of the head lease.

Mortgage of registered leases and sub-leases

- Board consent is required under the lease to any mortgage of a lease or sub-lease.
- The Mortgage must be in a form approved by Land Victoria.
- The Certificate of Title (leasehold) must be presented to Land Victoria and may also be retained by a mortgagee as security after registration.

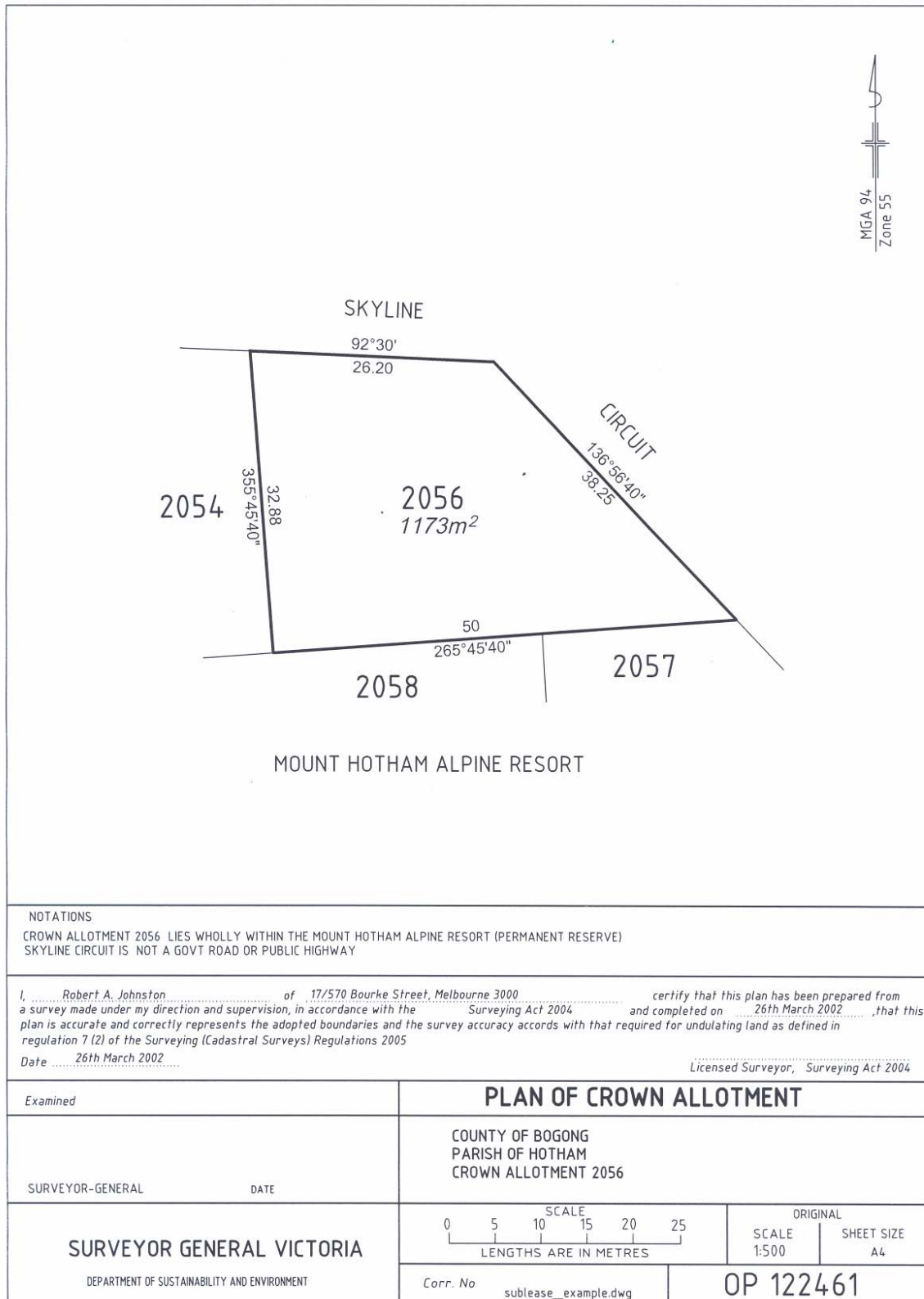
There is a fee charged by Land Victoria for registration of a mortgage of a registered lease or sub-lease. The Board may recover its costs associated with the mortgage of a lease or sub-lease under the conditions of the head lease.

Transfer of registered leases and sub-leases

- Board consent is required under the lease to any transfer of a lease or sub-lease.
- Transfer of registered leases and sub-leases should be on a form 12 under s45(1) of the *Transfer of Land Act 1958*.
- The Certificate of Title (leasehold) must be presented with the executed transfer document to Land Victoria.

There is a statutory fee charged by Land Victoria for registration of a transfer of a registered sub-lease. A Board may recover its costs in dealing with the transfer under the conditions of the head lease

APPENDIX A: EXAMPLE LEASE PLAN



NOTATIONS
 CROWN ALLOTMENT 2056 LIES WHOLLY WITHIN THE MOUNT HOTHAM ALPINE RESORT (PERMANENT RESERVE)
 SKYLINE CIRCUIT IS NOT A GOVT ROAD OR PUBLIC HIGHWAY

I, Robert A. Johnston of 17/570 Bourke Street, Melbourne 3000 certify that this plan has been prepared from a survey made under my direction and supervision, in accordance with the Surveying Act 2004 and completed on 26th March 2002, that this plan is accurate and correctly represents the adopted boundaries and the survey accuracy accords with that required for undulating land as defined in regulation 7 (2) of the Surveying (Cadastral Surveys) Regulations 2005
 Date 26th March 2002 Licensed Surveyor, Surveying Act 2004

Examined	PLAN OF CROWN ALLOTMENT	
SURVEYOR-GENERAL	DATE	COUNTY OF BOGONG PARISH OF HOTHAM CROWN ALLOTMENT 2056
SURVEYOR GENERAL VICTORIA DEPARTMENT OF SUSTAINABILITY AND ENVIRONMENT	SCALE 0 5 10 15 20 25 LENGTHS ARE IN METRES	ORIGINAL SCALE 1:500 SHEET SIZE A4
	Corr. No sublease_example.dwg	OP 122461

APPENDIX B: EXAMPLE CERTIFICATE OF TITLE



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Under the Transfer of Land Act 1958

I certify that the registered proprietor is the proprietor of the estate and interest in the land subject to the encumbrances, caveats and notices described

REGISTRAR OF TITLES

ALPINE LEASE

LAND DESCRIPTION

Crown Allotment 2056 Parish of Hotham

REGISTERED PROPRIETOR

Estate Leasehold

EXPIRY DATE 31/12/2050

Sole Proprietor

SKYLINE CIRCUIT HIGH PLAINS ACCOMODATION PTY LTD
of 1 SMITH STREET SMITHVILLE 3000

ENCUMBRANCES, CAVEATS AND NOTICES

Any crown lease reservations exceptions conditions limitations and powers noted on the plan or imaged folio set out under DIAGRAM LOCATION below.

For details of any other encumbrances see plan or imaged folio set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE TP000123N FOR FURTHER DETAILS AND BOUNDARIES

END OF CERTIFICATE

THIS CERTIFICATE CONTAINS INFORMATION CORRECT AT THE TIME OF PRINTING.
CURRENT INFORMATION SHOULD BE OBTAINED BY A SEARCH OF THE REGISTER.

CERTIFICATE OF TITLE - VICTORIA

APPENDIX C

GUIDELINES FOR THE PREPARATION OF ALPINE SUB-LEASE PLANS

Diagrams or plans prepared to support dealings lodged in Land Victoria or the purposes of registration of Alpine Sub-Leases pursuant to Section 71 of the Transfer of Land Act 1958 must be prepared in accordance with the following.

- 1 Diagram defining the sub-lease parcels to be fully dimensioned plans, also relating the parcels to the external boundaries of the site.
Where applicable, height limitations are to be defined by levels based on the Australian Height Datum.

OR

Where buildings have been constructed, a plan may be supplied showing the sub-lease boundaries defined by reference to monuments, similar to those prepared for the subdivision of buildings pursuant to the Subdivision Act 1988.

Boundaries may be shown on the plan by reference to a building.

Where a boundary on a plan is defined by reference to a building or part of a building, the plan must contain a notation "Location of boundaries defined by buildings"

and specify whether the boundary is

- (a) the interior face of the walls, ceilings and floors of the relevant part of the building; or
- (b) the exterior face of the relevant part of the building; or
- (c) in some other location.

Where applicable for multi-storey buildings cross-sectional elevations should be used to define storeys.

Plans must not show reference to Bodies Corporate, Common Property, easements or Entitlements and Liabilities etc because such references are specific only to plans prepared pursuant to the Subdivision Act 1988.

OR

Plans being a combination of dimensions and boundaries defined by reference to monuments.

- 2 Plans should be headed Plan for Sub-Lease Purposes.
- 3 Dealings with attached plans showing reference to buildings defining boundaries will not be accepted for registration by Land Victoria unless the existence of the building and accuracy of the plan is verified by a Licensed Surveyor with a certification in the following form.

“CERTIFICATE BY LICENSED SURVEYOR FOR PLAN

*I, (insert full name) of (insert office address) certify that this plan has been prepared from a survey made under my direction and supervision in accordance with the **Surveying Act 2004** and completed on (insert date of completion), that this plan is accurate and correctly represents the adopted boundaries and the survey accuracy accords with that required for (insert land characteristics) as defined in regulation 7(2) of the Surveying (Cadastral Surveys) Regulations 2005.*

Date: (insert date of certificate)

(signature)

Licensed Surveyor,

Surveying Act 2004.”

Dealings with attached plans showing boundaries defined by proposed buildings are not acceptable for registration purposes.

4 Method of showing boundaries on a sub-lease plan.

A boundary must be shown by a continuous line.

The only exception to the use of a continuous line is where a boundary is a projection of a boundary defined by reference to a building shown on a cross-section, where a broken line must be used.

A continuous line must not be used to show a building which does not constitute a boundary.

Where the whole or part of a boundary is defined by a wall or other part of a building, a hatched line must be used.

Hatching need not be used if the plan specifies which boundaries or parts of boundaries are defined by a wall or other parts of a building.

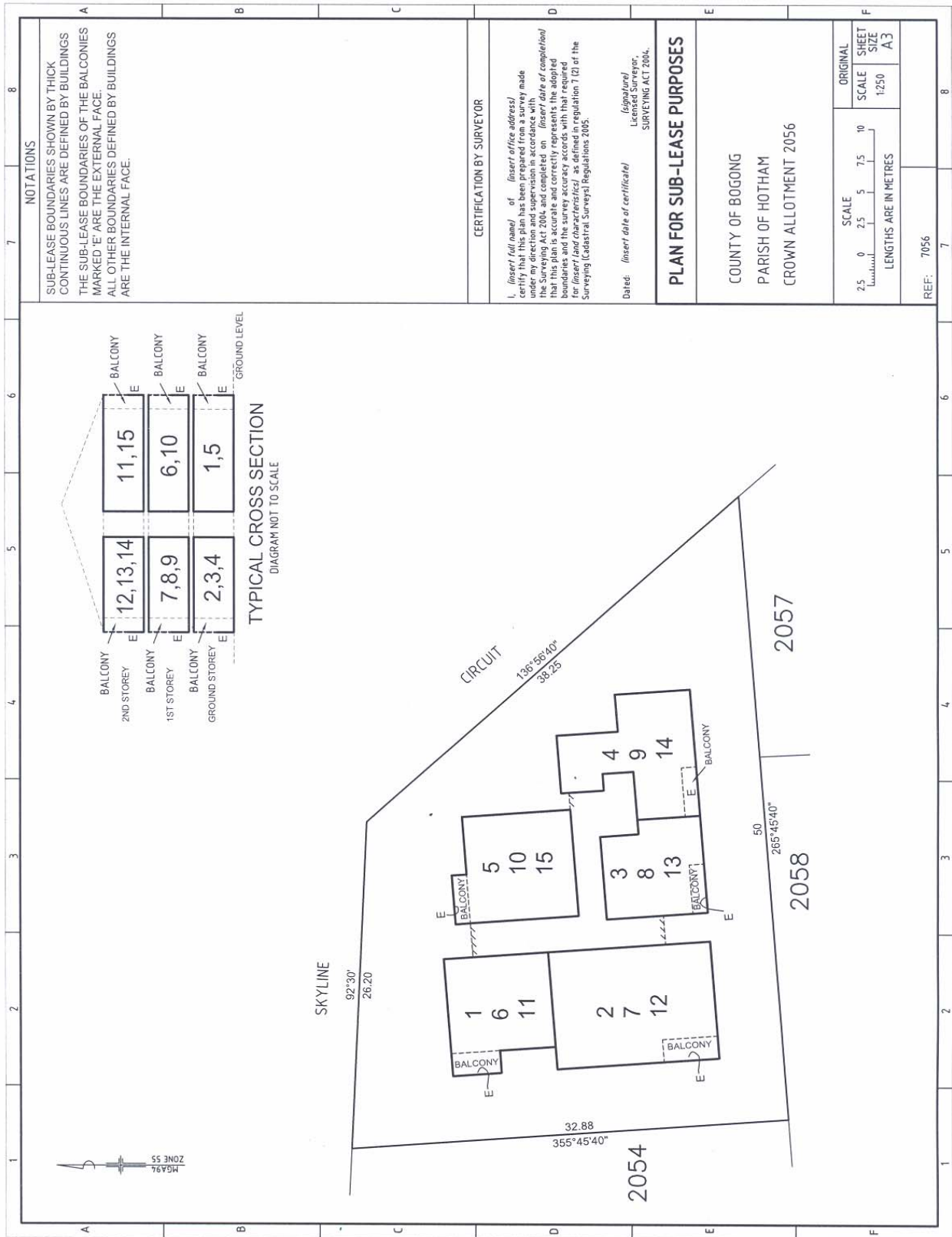
Hatching need not be used if a notation on the plan indicates that all the boundaries are defined by walls or other parts of a building.

Except in the case of a boundary defined by reference to a natural feature, dimensions must be shown for—

- (a) all the boundaries of the land the subject of the plan; and
- (b) each other boundary or part of a boundary not defined by a wall or part of a building.

5 The plan is to include a legend that defines the meaning of the lines used in the plan for sub-lease purposes.

APPENDIX D: EXAMPLE SUB-LEASE PLAN



APPENDIX E:

VARIATION OF LEASE

SECTION 67A TRANSFER OF LAND ACT 1958

FEE: See item 2 of Miscellaneous Fees and Amounts
Transfer of Land (Fees) Regulations 2004

DUTY: Not payable.

FORM: See below

**LODGING
REQUIREMENTS:** Variation of lease
Certificate of Title
Consent of mortgagee/chargee (if applicable)

Variation of lease
Section 67A **Transfer of Land Act 1958**

Privacy Collection Statement

The information under this form is collected under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

Lodged at the Office of Titles by:

Name:
Phone:
Address:
Ref:
Customer Code:

The lessor and lessee vary the covenants and conditions of the lease with the consent of mortgagees/chargees.

Land: *(volume and folio reference of lease)*

Lessor: *(name of the Board)*

Lessee: *(full name)*

Particulars of variation: *(insert details of variation)*

Date:

Signed by the Lessor
in the presence of:

Signed by the Lessee
in the presence of:

Signed by the mortgagee/chargee

APPENDIX F:

VARIATION OF SUB-LEASE

SECTION 67A TRANSFER OF LAND ACT 1958

FEE: See item 2 of Miscellaneous Fees and Amounts
Transfer of Land (Fees) Regulations 2004

DUTY: Not payable.

FORM: See below

**LODGING
REQUIREMENTS:** Variation of sub-lease
Certificate of Title for the lease
Consent of mortgagee/chargee (if applicable)

Variation of sub-lease
Section 67A **Transfer of Land Act 1958**

Lodged at the Office of Titles by:

Name:
Phone:
Address:
Ref:
Customer Code:

Privacy Collection Statement

The information under this form is collected under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

The sub-lessor and sub-lessee vary the covenants and conditions of the sub-lease with the consent of the mortgagees/chargees.

Land: *(volume and folio reference)*

Sub-lessor: *(full name)*

Sub-lease: *(registered sub-lease number unless the sub-lease record is a volume and folio)*

Sub-lessee: *(full name)*

Particulars of variation: *(insert details of the variation)*

Date:

Signed by the Sub-lessor
in the presence of:

Signed by the Sub-lessee
in the presence of:

Signed by the mortgagee/chargee

APPENDIX G:

SURRENDER OF LEASE

SECTION 69 TRANSFER OF LAND ACT 1958

FEE: Sec. 69 Transfer of Land (Fees) Regulations 2004

DUTY: Not payable.

FORM: See below

LODGING REQUIREMENTS: Surrender of lease
Certificate of Title
Consent of mortgagee (if applicable) (note – consent will result in cancellation of the mortgage/charge)

Surrender of lease
Section 69 **Transfer of Land Act 1958**

Lodged at the Office of Titles by:

Name:
Phone:
Address:
Ref:
Customer Code:

Privacy Collection Statement

The information under this form is collected under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

The lessee surrenders to the lessor the lease for the consideration expressed.

Land: *(volume and folio reference of lease)*

Lessor: *(name of the Board)*

Lessee: *(full name)*

Consideration:

Date:

Signed by the Lessor
in the presence of:

Signed by the Lessee
in the presence of:

APPENDIX H:

SURRENDER OF SUB-LEASE

SECTION 69 TRANSFER OF LAND ACT 1958

FEE: Sec. 69 Transfer of Land (Fees) Regulations 2004

DUTY: Not payable.

FORM: See below

**LODGING
REQUIREMENTS:**

Surrender of sub-lease
Certificate of Title for the lease
Consent of mortgagee/chargee (if applicable) (note- consent will result in cancellation of the mortgage/charge)

Surrender of sub-lease
Section 69 **Transfer of Land Act 1958**

Lodged at the Office of Titles by:

Name:
Phone:
Address:
Ref:
Customer Code:

Privacy Collection Statement

The information under this form is collected under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

The sub-lessee surrenders to the sub-lessor the lease for the consideration expressed.

Land: *(volume and folio reference)*

Sub-lessor: *(full name)*

Sub-lease: *(registered sub-lease number)*

Sub-lessee: *(full name)*

Consideration:

Date:

Signed by the Sub-lessee
in the presence of:

Signed by the Sub-lessor
in the presence of: