

2016

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

Licence Agreement with National Capital Authority for Floriade 2016

**In response to Recommendation 2 from the Standing Committee on
Planning, Environment and Territory and Municipal Services Report on
Annual and Financial Reports 2014-2015**

**Presented by
Mr Andrew Barr MLA
Minister for Tourism and Events**



Australian Government
National Capital Authority

LICENCE AGREEMENT

Venue/Area

COMMONWEALTH PARK WEST, ACT 2600

Date

20 June 2016

Parties

Name

Commonwealth of Australia, represented by the National Capital Authority

Short form name

Commonwealth

Notice details

Ground Floor, Treasury Building, King Edward Terrace,
Parkes ACT 2600
Phone: (02) 6271 2888
Facsimile: (02) 6273 4427
Attention: Natalie Broughton

Name

The Australian Capital Territory, represented by the Chief Minister,
Treasury and Economic Development Directorate

Short form name

Occupier

Notice details

Level 4, Canberra Nara Centre, 1 Constitution Avenue
Canberra ACT 2601
Phone: (02) 6205 0721
Facsimile: (02) 62054835
Attention: Jason Rose

Background

1. The Commonwealth administers the Land through the National Capital Authority (NCA).
2. The Commonwealth agrees to give the Occupier a licence to temporarily occupy and use the Licensed Area for the Term and the Purpose, on the terms set out in this Licence Agreement.

Details

Licence number	15/739
Land	Commonwealth Park West, Parkes, ACT 2600
Licensed Area	As defined in Schedule 3 Floriade 2016 Preliminary Master Plan and Fence Line maps
Commencement Date	20 June 2016
Term	20 June 2016 to 31 December 2016
Days and Hours of Use	<p>General days of use during the Term:</p> <ul style="list-style-type: none"> • As agreed between the parties, with provision for pre-event preparation & post-event remediation • Floriade Event: Saturday 17 September 2016 until Sunday 16 October 2016 <p>Event Hours:</p> <ul style="list-style-type: none"> • Floriade Event: 9.00 am - 5.00pm Monday to Friday and 9.00am to 5.30pm weekends and public holidays • Floriade NightFest Event held over 5 nights from 28 September 2016 until Sunday 02 October 2016 - Event Timings: 6.30pm – 10.30pm
Purpose	Floriade & Floriade NightFest events including site preparation, flower bed installation, commercial trader sites and other associated Works and maintenance and remediation activities.
Licence Fee	<p>Floriade – in accordance with clause 24.2.2 of the Additional Terms of this Licence Agreement, calculated as set out in the table in Schedule 5 NCA Schedule of Fees</p> <p>Pay Parking – the fee calculated in accordance with clause 24.2.7 and 24.2.8 of the Additional Terms of this Licence Agreement at the rate of \$12 per space per day (incl GST) as set out in Schedule 5 NCA Schedule of Fees</p>
Bond	\$50,000 in accordance with clauses 4.1 and 5 of this Licence Agreement and as set out in Schedule 5 NCA Schedule of Fees

General Terms of the Licence

1 DEFINITIONS AND INTERPRETATION

1.1 In this Licence Agreement:

Annual Event Period means the period from lock-down on Monday 22 August 2016 until the fence removal on Friday 04 November 2016.

Annual Site Occupation means the period from 20 June 2016 until the Hand-over Date.

Authority means the National Capital Authority (NCA).

Bond means the security bond for the amount set out in the Details, payable by the Occupier to the Commonwealth under clause 5.

Commencement Date means the first date of the Term set out in the Details.

Commonwealth includes, where the context so admits, the employees, officers, subcontractors and agents of the Commonwealth.

Contact Officer means each of the respective persons whose details appear on the first page of this Licence Agreement under the heading 'notice details'.

Day and Hours of Use means the days and hours during which the Occupier may use the Licensed Area during the Term as set out in the Details.

Details mean the section of this Licence Agreement headed 'Details'.

Event Permit means a permit issued by the Authority to the Occupier authorising the carrying out of the Purpose on the Licensed Area.

GST has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hand-over Date means the date that the Licensee must hand back the Licensed Area to the Commonwealth. The Hand-over Date will be a date in December 2016, as agreed by both parties.

Land means the land described in the Details.

Licence Agreement means this document including any attachments, schedules and annexures.

Licence Fee means the occupation fees for the Licensed Area as specified in the Details.

Licensed Area means the area described in the Details and which is contained within the actual fence line.

Occupier means the person named as Occupier in the preamble and, where the context permits, includes its executors, administrators, successors, permitted assigns, employees, agents, contractors and invitees.

Purpose means the purpose for which the Licensed Area may be used set out in the Details.

Term means the period specified in the Details.

TPZ means the Tree Protection Zone

Vicinity means within 5 metres of the external perimeter fence of the Licensed Area.

WHS Law means all legislative requirements dealing with or relevant to health and safety at work and of workers and others who may be affected by the carrying out of the Occupier's any other work carried out by the Occupier on the Licensed Area, and includes any requirements of an authority exercising regulatory powers in respect of such matters.

Works means all works which are to be carried out by the Licensee in accordance with the Works Approval and include without limitation:

- (a) the construction, alteration, extension of buildings or structures;
- (b) landscaping;
- (c) tree-felling;
- (d) excavations; and
- (e) any other work undertaken on the Land by or for the Licensee in connection with the Licensee's use of the Land for the Purpose, but excludes anything done inside buildings or structures.

Works Approval means the approval for the Works as required by section 12 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

Works Approval Application means an 'Application for Works Approval' in the form prescribed by the Authority, a copy of which is set out in Schedule 2.

1.2 In this Licence Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and the other way round;
- (b) headings are for reference only and do not affect the meaning of this Licence Agreement;
- (c) this Licence Agreement includes its schedules and annexures;
- (d) the time for a thing to be done or to occur means that time in Canberra;
- (e) if a party to this Licence Agreement is made up of more than one person then an obligation of those persons is joint and several and a right of those persons is held by each of them severally; and
- (f) a reference to:
 - i. amounts of money is a reference to Australian currency;
 - ii. a person includes partnerships, bodies corporate, associations, governments and local authorities and agencies;
 - iii. this or any other document includes a reference to that document as novated, altered or replaced from time to time; and

- iv. any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth).

2 GRANT OF LICENCE

- 2.1 The Commonwealth hereby grants to the Occupier, on the terms set out in this Licence Agreement, a licence to use the Licensed Area for the Term, commencing on the Commencement Date, unless terminated earlier in accordance with clause 12.
- 2.2 The Occupier may occupy and use the Licensed Area only for the Purpose during the Days and Hours of Use during the Term.
- 2.3 The Occupier acknowledges that:
- (a) its interest in the Licensed Area is a contractual right only to occupy the Licensed Area in accordance with the terms of this Licence Agreement; and
 - (b) it has no right to exclusive possession and no other interest in the Land or the Licensed Area and may not lodge a caveat against the title of the Land.
- 2.4 The Commonwealth retains possession of, and control over, the Licensed Area and the Land and is entitled to full and free access upon giving reasonable notice, including gaining access to any plant and equipment servicing the Land which is in, or to which access is through, the Licensed Area.
- 2.5 The Commonwealth makes no warranty that the Licensed Area may be used, or is fit, for the Purpose or the Occupier's intended use and the Occupier acknowledges it has made and relied on its own inquiries.

3. LICENCE FEE

The Occupier must pay the Licence Fee, and all other money payable under this Licence Agreement without demand, on time and in accordance with this Licence Agreement.

4. GST

- 4.1 Unless otherwise specified, the Licence Fee and any other money payable by the Occupier to the Commonwealth under this Licence Agreement does not include an amount on account of GST.
- 4.2 If any supply made under this Licence Agreement is subject to GST, the Occupier must, on receipt of a valid tax invoice from the Commonwealth, pay to the Commonwealth an additional amount to ensure the Commonwealth retains, after payment of that GST, the amount the Commonwealth would have received if GST had not been payable.
- 4.3 The Occupier must pay the additional amount on the date for payment of the amount for the supply.

5 SECURITY BOND

- 5.1 As a condition precedent to the grant of this Licence, the Occupier must pay to the Commonwealth an amount of \$50,000 plus GST as a security bond prior to the commencement of Works in earnest of performance of the Occupier's obligations under this Licence Agreement.
- 5.2 The Commonwealth shall not be required to account to the Occupier for any interest accrued on the Bond.

- 5.3 If the Occupier defaults in the payment of the Licence Fee or any other money payable to the Commonwealth or in performing any other obligations under this Licence Agreement, the Commonwealth may:
- (a) appropriate the whole or any part of the Bond and interest accrued on it in satisfaction of the outstanding Licence Fee or other money or for compensation for breach of the Licence; or
 - (b) forfeit the Bond and the accrued interest.
- 5.4 If the Bond is appropriated or forfeited by the Commonwealth under clause 5.3, the Commonwealth shall notify the Occupier that the Bond and interest have been applied in full or partial satisfaction of the Commonwealth's claim and shall itemise the Commonwealth's claim, giving credit for the Bond and interest.
- 5.5 The Commonwealth is entitled to recover the Licence Fee and damages from the Occupier without being limited to the Bond.
- 5.6 The Commonwealth's conduct in forfeiting the Bond or appropriation of the whole or part of the Bond, or in failing to do so, does not constitute waiver of the Occupier's breach or default or preclude the Commonwealth from exercising any of its rights or remedies.
- 5.7 The Occupier shall reinstate or increase the amount of the Bond within 14 days after notice by the Commonwealth requiring the Occupier to do so, setting out the amount required to be paid when the whole or part of the Bond has been appropriated or forfeited under clause 5.3.
- 5.8 If the Occupier is not in default at the expiry of the Term, the Commonwealth will return the Bond or so much of it to which the Commonwealth has not appropriated or forfeited under this clause 5 to the Occupier within 30 days after the expiry of the Term.

6. WHAT THE OCCUPIER MUST DO

- 6.1 The Occupier must:
- (a) complete and submit to the Commonwealth a separate Works Approval Application, and pay the application fee for the Works Approval, for any Works associated with the Purpose;
 - (b) arrange with the Commonwealth an on-site pre-event inspection prior to the erection or placement of any Works;
 - (c) ensure compliance with and implementation of all submitted and required documentation, including all management plans approved by the Commonwealth in the Event Permit and Works Approvals;
 - (d) comply with the terms of this Licence Agreement and any conditions or restrictions on the use of the Licensed Area as notified by the Commonwealth;
 - (e) comply with all reasonable directions from an officer of the Commonwealth concerning the use of the Licensed Area;
 - (f) comply with all laws that govern the Occupier's use and occupation of the Licensed Area, including but not limited to laws regarding safety and public health;
 - (g) ensure that the Occupier's officers, employees, agents, contractors, invitees and customers, do not commit any breach of the terms of this Licence Agreement; and
 - (h) marketing and public relations materials for Floriade 2016 will acknowledge the Commonwealth, through the use of the National Capital Authority's logo, in the category of Precinct Partner for Floriade 2016. The acknowledgement will be commensurate with the hierarchy and in kind dollar value (as set out in the waiver total in Schedule 5) of all sponsors of Floriade 2016.

7. WHAT THE OCCUPIER MUST NOT DO

7.1 The Occupier must not:

- (a) breach any of the terms of this Licence Agreement or any law;
- (b) erect any structures or carry out any Works other than those stipulated in the Works Approvals without the Commonwealth's prior written consent;
- (c) make any changes or alterations to the Licensed Area, infrastructure or any structures on it without the Commonwealth's prior written consent;
- (d) do anything, or allow anybody associated with the Occupier to do anything, that is illegal, dangerous or likely to cause nuisance or interference to members of the public or the Commonwealth;
- (e) do anything or allow anybody associated with the Occupier to do anything that is likely to cause the Commonwealth to be in breach of any of its statutory obligations;
- (f) modify any Commonwealth assets without prior written consent from the Commonwealth; or
- (g) direct the Commonwealth's contractors to remove or modify any Commonwealth assets.

8. WHAT THE COMMONWEALTH MAY DO

8.1 The Commonwealth:

- (a) may permit the Occupier to use parts of the Land adjacent to the Licensed Area in common with other occupiers of the Land, but:
 - (i) only for the purpose of gaining access to the Licensed Area;
 - (ii) on such terms and conditions as the Commonwealth imposes; and
 - (iii) the Occupier must not use the other part of the Land for the Purpose;
- (b) reserves the right at any time to install, maintain, use, repair, alter and replace any pipes, ducts, conduits or wires to convey any matter or services, in, on, through or over the Licensed Area (after consultation with the Occupier where any such works may impact the Purpose);
- (c) may at any time after giving reasonable notice (except in case of emergency when no notice is required) enter the Licensed Area and require the Occupier to vacate a part of the Licensed Area so the Commonwealth may:
 - (i) perform maintenance on; or
 - (ii) remove any asset or tree in or in the vicinity of the Licensed Area;
- (d) may at any time after giving reasonable notice (except in case of emergency when no notice is required) enter the Licensed Area to inspect its state of repair and condition and give the Occupier notice to carry out repairs in accordance with this Licence Agreement; and
- (e) may (but it is not obliged to) do anything which the Occupier has failed to do under this Licence Agreement, or remedy any default by the Occupier under this Licence Agreement, and recover all reasonable costs incurred in doing so from the Occupier as if they were part of the Licence Fee payable on demand.

9. INSURANCE

- 9.1 Throughout the Term, the Occupier must maintain a comprehensive public liability insurance policy in the name of the Commonwealth and the Occupier, against all claims, demands and actions in respect of injury or death to any person or loss of or

damage to any property howsoever sustained arising out of or in connection with this Licence Agreement to a value of not less than \$20,000,000 for any one event with a reputable insurer approved by the Commonwealth.

- 9.2 Throughout the Term, the Occupier must insure itself and ensure that any contractors engaged in Works or other activities the subject of this Licence Agreement are insured against liability to employees engaged in those Works or activities under all relevant WHS Laws and at common law.
- 9.3 The Occupier must give the Commonwealth proof that the insurance policies required under this clause 9 are valid whenever requested to do so including providing, on request, the Commonwealth with a copy of the policy and a certificate of currency on or before the first day of the Term.
- 9.4 The Occupier must notify the Commonwealth immediately if:
- (a) any policy of insurance required under this clause 9 is not renewed, is cancelled or lapses; or
 - (b) the Occupier becomes aware of any situation which may invalidate any of the policies of insurance or cause them to cease to have effect.
- 9.5 The Occupier must not do anything which may prejudice any policy of insurance.

10. WARRANTY AND INDEMNITY

- 10.1 The Occupier warrants that it has or will have all licences, permits, authorisations, consents and approvals necessary to use the Licensed Area for the Purpose.
- 10.2 The Occupier indemnifies the Commonwealth from and against all actions, claims, demands, losses, damages, costs and expenses for which the Commonwealth becomes liable in respect of:
- (a) personal injury to or death of any person whatsoever;
 - (b) loss of or damage to any property; and
 - (c) a breach of any intellectual property rights owned by a third party, which arise out of or in connection with the:
 - (d) use or occupation of the Licensed Area by the Occupier (including any act, negligence or default of its employees, contractors, invitees and agents); and
 - (e) a breach by the Occupier of this Licence Agreement.
- 10.3 The indemnity in clause 10.2 survives the expiry or termination of this Licence Agreement but does not apply in respect of anything which occurs in the Licensed Area after the expiry of the Term.
- 10.4 The Commonwealth will be liable in the event of the Commonwealth's own default, wilful act or negligence (or any wilful act or negligence of the Commonwealth's employees or agents) and the Occupier's indemnity under clause 10.2 will be reduced proportionately to the extent of such defaults, wilful acts or negligence.

11. DEFAULT

- 11.1 The Occupier commits an event of default under this Licence Agreement if the Occupier:
- (a) fails to pay the Licence Fee, or any other money due to the Commonwealth, within 7 days of the due date for payment (whether demanded or not);
 - (b) repudiates its obligations under this Licence Agreement; or
 - (c) does not comply with an obligation under this Licence Agreement and, in the Commonwealth's reasonable opinion:
 - (i) the non-compliance can be remedied but the Occupier does not remedy it within a reasonable time after the Commonwealth gives the Occupier notice to remedy it;
 - (ii) the non-compliance cannot be remedied or compensated for; or
 - (iii) the non-compliance cannot be remedied but the Commonwealth can be compensated and the Occupier does not pay the Commonwealth compensation for the breach within a reasonable time after the Commonwealth gives the Occupier notice to pay it.

12. TERMINATION

- 12.1 The Commonwealth may immediately terminate this Licence Agreement by notice if the Occupier commits an event of default in accordance with clause 11 and may remove the Occupier and all of its property and each of its officers, employees, agents, contractors, invitees and customers from the Licensed Area.
- 12.2 The Commonwealth may immediately terminate this Licence Agreement by notice if the Licensed Area is damaged or destroyed or is inaccessible through no fault of the Commonwealth, so that the Occupier cannot use the Licensed Area for the Purpose.
- 12.3 Termination of this Licence Agreement does not affect any accrued rights or remedies of the Commonwealth.
- 12.4 The Occupier reserves the right to terminate this Licence Agreement by notice in writing.

13. REPAIR

- 13.1 The Occupier must compensate the Commonwealth for any loss or damage incurred or payable by the Commonwealth because of a breach of this Licence Agreement by the Occupier. The Commonwealth's entitlement to damages:
- (a) is in addition to any other remedy, including termination of this Licence Agreement;
 - (b) includes recovery of damages against the Occupier for the loss suffered by the Commonwealth at any time, including the period after termination of this Licence Agreement; and
 - (c) is not affected or limited if:
 - (i) if the Occupier abandons or vacates the Licensed Area;
 - (ii) the Commonwealth elects to re-enter the Licensed Area or to terminate the Licence Agreement; or

- (iii) the Commonwealth accepts the Occupier's repudiation; or the parties' conduct constitutes a surrender by operation of law.

14. REMOVAL OF THE OCCUPIER'S PROPERTY

- (a) On or before the end of the Term, the Occupier must remove from the Licensed Area all of its property and make good any damage caused to the Land or the Licensed Area by that removal.
- (b) If the Occupier does not remove its property, it will be deemed to have abandoned its property and (at the Commonwealth's option) the title to that property passes to the Commonwealth. The Commonwealth may dispose of the property in any way it sees fit (including sale) and use the proceeds to pay for the cost of removing and selling the property and towards any amount owed to the Commonwealth by the Occupier.
- (c) Despite termination of this Licence Agreement, the Occupier must continue to pay the Licence Fee until it has complied with clauses 14(a) and (b).

15. COSTS AND DUTY

- 15.1 Each party must pay its own costs of preparing, negotiating, completing and executing this Licence Agreement.
- 15.2 The Occupier must pay the Commonwealth's reasonable costs and expenses incidental to considering any request for consent or approval and in enforcing this Licence Agreement.

16. DRAFTING RESPONSIBILITY

- 16.1 No provision of this Licence Agreement is to be construed against a party because that party (or its advisers) was responsible for drafting it.

17. NOTICES

- 17.1 A party notifying or giving notice under this Licence Agreement must do so:
 - (a) in writing;
 - (b) signed by that party, or its solicitor, attorney or authorised officer;
 - (c) addressed to the facsimile number or address of the Contact Officer for that party, as altered by notice given in accordance with this clause; or
 - (d) hand delivered or sent by facsimile to that facsimile number or by prepaid post to that address.
- 17.2 A notice given in accordance with this clause will be deemed to be received:
 - (a) if hand delivered, on the date of delivery;
 - (b) if sent by prepaid post, three business days after the date of posting; and
 - (c) if sent by facsimile transmission, when the transmission has been completed.

18. WAIVER

- 18.1 A failure or delay to exercise or enforce any right, remedy, power or privilege under this Licence Agreement by the Commonwealth will not operate as a waiver unless and until expressly communicated in writing by the Commonwealth to the Occupier.

19. ASSIGNMENT AND SUBLICENSES

- 19.1 The rights conferred on the Occupier by this Licence Agreement are personal and may not be assigned or sublicensed without the Commonwealth's prior written consent.

20. GOVERNING LAW AND JURISDICTION

- 20.1 This Licence Agreement is governed by the laws applicable in the Australian Capital Territory and each party submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

21. VARIATION

- 21.1 This Licence Agreement may only be varied by the parties in writing and signed by the parties in one or more counterparts.

22. DISPUTE RESOLUTION

- 22.1 The parties intend to adopt a flexible approach and make reasonable efforts to resolve issues as they arise without recourse to unnecessary escalation.

- 22.2 If any issue or dispute arises between the parties in relation to this Licence Agreement, both parties will endeavour in good faith to resolve the dispute expeditiously and amicably, using the following procedures:

- (a) the Contact Officer of the party identifying the issue or dispute will at first instance raise it with the other party's Contact Officer;
- (b) the Contact Officers will endeavour to resolve the issue or dispute in a reasonable and prompt manner;
- (c) if the issue or dispute cannot be resolved within 5 business days (or such other time as is agreed as reasonable given the circumstances in which it was raised), then it will be escalated to the following officers for resolution:

for the Commonwealth: Executive Director, National Capital Estate,
National Capital Authority

for the Australian Capital Territory: Director, Arts and Events and the
National Arboretum

- (d) if the persons in paragraph (c) are unable to resolve the issue or dispute within 5 business days of it being referred to them (or such other time as is agreed as reasonable given the circumstances in which it was raised), then it will be escalated to each party's chief executive officer for resolution.

- 22.3 Nothing in this clause prevents the exercise of rights by a party under clause 11.

23. CONSENT AND APPROVAL

23.1 Unless this Licence Agreement provides otherwise, the Commonwealth may withhold its consent or approval, or grant its consent or approval on such conditions as it sees fit, in its absolute discretion.

24. ADDITIONAL TERMS

24.1 Works Approvals

The Occupier must ensure that:

24.1.1. All Works Approval Applications must be completed, and relevant information provided, by the Occupier in accordance with the requirements of the NCA Development Application Checklist (refer Schedule 1). The Occupier must organise a meeting with the NCA Planning Unit to present an outline of the proposed Works prior to lodgement of a Works Approval Application (refer Schedule 2).

24.1.2 In accordance with all applicable laws and legislative requirements, the Occupier manages the erection and dismantling of all Works, including access to the Licensed Area by suppliers and contractors.

24.1.3 All Works must be erected as detailed in the relevant Works Approvals.

24.1.4 All Works involving petrol oils, lubricants and cooking related wastes must be disposed of in accordance with the *Environment Protection Act 1997* (ACT) and *Environment Protection Regulation 1995* (ACT).

24.1.5 All Works must be consistent with the *Parliament House Vista Heritage Management Plan (2010)* and the *Lake Burley Griffin and Adjacent Lands Heritage Management Plan (2009)* copies of which are available on request.

24.1.6 All Works must be undertaken in accordance with the terms of this Licence Agreement, Event Permit and relevant Works Approvals. To the extent of any inconsistency, the provisions of this Licence Agreement will take precedence over the Event Permit.

24.2 Fees & Charges

24.2.1 The fees for submitting Works Approval Applications for the conduct of the Purpose will be charged as per the NCA Works Approval Schedule of Fees 2015. The processing time for a Works Approval Application is a minimum of 15 business days.

24.2.2 The Licence Fee for Floriade will be charged in accordance with the table in Schedule 5.

24.2.3 The Occupier is responsible for all outgoings resulting from occupation of the Licensed Area. Electricity meters will be read at the commencement and at the end of the Annual Event Period. All electricity charges calculated as a result of such readings will be invoiced to the Occupier.

- 24.2.4 The Occupier will be responsible for any and all additional costs associated with the use of potable water on the Licensed Area in the event that abstracted Lake water is unavailable for use on the Licensed Area due to any reasonably unforeseen circumstance (such as irrigation infrastructure breakdown or malfunction) or other reason that causes abstracted Lake water to be unavailable or unusable for the purposes of irrigation (such as elevated blue green algae, elevated bacteria or other contaminant). The Commonwealth will make every effort to rectify any defect, breakdown or other fault within the irrigation infrastructure as soon as reasonably practicable, to minimise the additional costs to the Occupier. The Occupier must ensure that water efficiency measures are implemented.
- 24.2.5 During all periods of occupation of the Licensed Area, the costs for any additional works, or special requirements for the Purpose or arising from the impact of the Purpose that are over and above the Commonwealth's normal scheduled maintenance as detailed in clause 24.5.1 will be the responsibility of the Occupier.
- 24.2.6 A deposit fee of \$25.00 for each power and bollard key and \$500 for the Stage 88 key is required prior to issue. The deposit is refundable on return of the keys to the Commonwealth but will be forfeited if keys are not returned or are damaged.
- 24.2.7 Car spaces that are inside the Licensed Area fence line will be charged at the applicable all day parking rate for Commonwealth car parks. The charge will be applied on a per space basis for every operational day that the space is not available for parking. Commonwealth car parks operate between 8.30am and 5.00pm Monday to Friday, excluding public holidays.
- 24.2.8 The charges for car parking will apply for the duration of the Annual Event Period. The number of actual car spaces to be made available by the Commonwealth will be determined following finalisation of fence line site plans, approved Temporary Traffic Management Plans and in accordance with Schedule 5 NCA Schedule of Fees.

24.3 Key Dates

- 24.3.1 The Occupier must conduct a presentation for the Commonwealth detailing the operational plan and site layout prior to the lodgement of the Works Approval Application, in accordance with the timeframes set out in Schedule 4. The presentation shall focus on any changes to the Purpose arrangements.
- 24.3.2 The Occupier must comply with all key dates, as set out in the Floriade & Floriade NightFest significant dates in the submitted Works Approval Application.
- 24.3.3 Prior to the bump in of the event, the Occupier must provide to the Commonwealth for approval a Remediation Plan including a time line, and details on the scope and nature of the remediation.
- 24.3.4 The Occupier will prepare an access plan for vehicles, machinery and equipment for discussion with and approval by the Commonwealth prior to establishment of garden beds or any other associated works for the Purpose. The plan shall have regard to public safety, and minimising impacts on paths, light poles, bridges, bollards and

other infrastructure in the area and must be complied with during all stages of occupation and remediation.

24.4 Inspections

- 24.4.1 The Commonwealth and the Occupier shall complete a pre-bed preparation inspection in accordance with the timeframes in Schedule 4 which shall include an irrigation and services check. At this inspection the Occupier shall provide the constructed design and layout of the garden beds and the parties shall agree as to whether any garden beds or structures may remain on the Land following the expiry of the Term.
- 24.4.2 The Commonwealth and the Occupier shall complete a walkthrough of the Licensed Area to identify any maintenance issues on the Licensed Area including landscape, pathways, light fittings, other infrastructure, sprinklers and taps as outlined in Schedule 4 or agreed dates between both parties.
- 24.4.3 Notes and photographic evidence of each inspection will be recorded by the Occupier and the notes will include all action items and nominate the party responsible for undertaking the action/s.
- 24.4.5 The Occupier is responsible for providing to the Commonwealth a weekly infrastructure status report of all structures and fencing, which must detail any damage sustained after high winds and bad weather onsite.
- 24.4.6 If a breach is identified during an inspection, the Commonwealth must notify the Occupier of the required rectification or remediation. If the Occupier fails to rectify or remediate within the time specified in the notice, the Commonwealth will rectify or remediate at the cost of the Occupier which must be reimbursed by the Occupier upon demand by the Commonwealth.
- 24.4.7 Detailed compliance checks of the Licensed Area will be undertaken periodically by the Commonwealth during the Annual Site Occupation to ensure compliance with the approved Works Approval plans, and this Licence Agreement.

24.5 Maintenance

- 24.5.1 The Commonwealth will undertake normal scheduled maintenance prior to the Licensed Area being fenced, in accordance with the Preventative Maintenance Service Guides for Buildings and Infrastructure and the National Estate Management Services, available on request, and within the agreed service standards under these arrangements. Any additional maintenance required or requested by the Occupier resulting from preparations, operation or post-event activities will be at the Occupier's cost. This includes, but is not limited to, mowing, weeding, trimming, topping up of organic surfaces, cleaning, litter pickups and replacement of light globes outside scheduled replacement periods.
- 24.5.2 The Licensee acknowledges that the Commonwealth's maintenance services contractor, CityWide, maintains and operates a depot within the Licensed Area. The parties agree that CityWide may continue to access and use the depot during the Term. The Commonwealth will endeavour to ensure that CityWide minimises any

disruption to the Licensee's use and occupation of the Licensed Area, such as by moving vehicles outside Event Hours.

- 24.5.3 The Occupier must maintain the Licensed Area from when the Licensed Area has been fenced until the Hand-over date. All Works are to be undertaken to the usual standard of and with the approval of the Commonwealth.
- 24.5.4 Wherever possible, the Occupier should utilise the Commonwealth's contractors responsible for open space and building and infrastructure works to ensure rectification and compliance to Commonwealth standards.
- 24.5.5 Where contractors other than those used by the Commonwealth are used by the Occupier, prior approval must be given by the Commonwealth and documentation provided detailing the maintenance or repairs undertaken. The Occupier must undertake maintenance or repairs to the standards specified and required by the Commonwealth. The Commonwealth reserves the right to inspect the work and request any further works to be undertaken to meet the relevant standards.
- 24.5.6 Any damage or defects within the Licensed Area e.g. irrigation or other Commonwealth assets (including light poles, drains, electrical boxes, pathways and the like) that are a direct result of the activities of the Occupier must be documented and reported immediately to the Commonwealth. The Occupier shall be responsible for all sprinkler heads on the Licensed Area from the commencement of the Annual Event Period until the Handover Date. For other Commonwealth assets, unless otherwise agreed, the Commonwealth will arrange repairs, and the cost will be passed on to the Occupier.
- 24.5.7 The Occupier shall ensure that the temporary fence line installed for the Licensed Area is in accordance with *Australian Standard AS4687-2007 Temporary Fencing and Hoardings*. It is to be maintained, ensuring it is secured at all times and any overgrown grass is maintained to a neat and tidy level (e.g. via whipper snipping).
- 24.5.8 The Occupier must employ sound irrigation methods within the garden beds to minimise the flow of excess water through grassed areas and onto pathways.
- 24.5.9 For health, safety and amenity, gravel or debris that encroaches onto any pathways within the Licensed Area must be cleared promptly.
- 24.5.10 The Occupier must ensure that the Licensed Area and the land in the Vicinity of the Licensed Area are clean and free from rubbish. Stage 88 is to be kept clean and tidy, including the cleaning of the bathrooms, at all times within the Annual Event Period.

24.6 Infrastructure

- 24.6.1 All structures and garden beds within the Licensed Area must be approved by the Commonwealth prior to installation. No additional structures or variations to the landscape, in addition to original approved plans, are to be installed on the Licensed Area without prior approval from the Commonwealth. Variations to the original Works Approvals must be lodged with the Commonwealth as an amendment to the original Works Approval Application.

- 24.6.2 The Occupier shall ensure that access from the Regatta Point toilet block to Citizenship Place in Commonwealth Park West is maintained for access by the general public. This may be achieved by keeping the Purpose to the north or west of this area or by fencing along the pathway.
- 24.6.3 No digging is permitted in the main vista of Commonwealth Park West. Only raised garden beds are allowed to be installed from 4 weeks prior to opening date in this vicinity.
- 24.6.4 An exclusion zone is required around the steel support poles at the rear of Stage 88 within Commonwealth Park West to prevent further erosion to this structure.
- 24.6.5 The Occupier must maintain a permanent vehicle (including parking of vehicles) and infrastructure exclusion zone of a minimum of 5 meters around trees and 5 meters or the minimum as set out in clause 24.11.1 (whichever is greater), around artworks, memorials and sculptures within the Licensed Area.
- 24.6.6 It is the responsibility of the Occupier to identify any potential trip or fall hazards within the Licensed Area and take appropriate steps to remedy in consultation with the Commonwealth.

24.7 Safety/Security/Keys

- 24.7.1 The Occupier will ensure that a constant and appropriate level of safety and security of the Licensed Area, including the temporary fence line, is implemented and maintained for the entire duration of the Annual Event Period.
- 24.7.2 The Occupier will ensure that all suppliers, contractors and workforce to the Licensed Area must be screened and appropriately inducted on the conditions of access to the Licensed Area.
- 24.7.3 The Occupier must submit a register to the Commonwealth of all contractors who will require access to the Licensed Area or will be involved in carrying out the Works prior to the commencement of any Works.
- 24.7.4 The Occupier will keep a register of site inductions for all contractors as evidence of induction and compliance with this Licence Agreement. The Occupier will make the register available to the Commonwealth on request.
- 24.7.5 The Occupier must:
- a) limit vehicle access on grass areas to the minimum necessary and no more than 5kms per hour;
 - b) adhere to all road rules, including speed limits;
 - c) vary the access routes across grass areas;
 - d) ensure all contractors and subcontractors are aware of the vehicle access rules i.e. 5kms per hour, hazard lights on and a spotter required especially when reversing and when traversing shared pathways/cycle ways;
 - e) avoid driving on paths (including cycle paths) unless absolutely necessary and only then with all reasonable precautionary measures such as spotters and hazard lights on and warnings in place; and
 - f) notify the Commonwealth of any continued unauthorised vehicular access.

- 24.7.6 The Occupier must not provide swipe cards or keys to any suppliers, contractors and workforce without prior approval from the Commonwealth.
- 24.7.7 The Occupier will ensure that all gates and bollards are to be opened, closed and secured on each occasion of entry/exit and must not be left opened during each entry/exit, except for the Annual Event Period where the Licensed Area will be secured by temporary fencing and twenty-four hour security.
- 24.7.8 The Commonwealth shall provide a list of all allocated keys prior to the commencement of the Annual Event Period to the Occupier.
- 24.7.9 The Occupier will maintain a complete and up to date register of all keys issued by the Commonwealth. Keys must remain on allocated and labelled key rings and must not be removed or interconnected unless properly managed.

24.8 Floriade NightFest

- 24.8.1 Floriade Nightfest is a ticketed event held over 5 nights and will include additional lighting of the Licensed Area, entertainment and security.
- 24.8.2 A separate Floriade Nightfest Licence Fee will be charged in accordance with clause 24.2.2 and as set out in Schedule 5 NCA Schedule of Fees.
- 24.8.2 A separate Works Approval Application is required to be submitted for any Floriade NightFest infrastructure and works. Submission of such NCA Application for Works Approval for Floriade NightFest will be charged as per the NCA Works Approval Schedule of Fees 2015.

24.9 Temporary traders

- 24.9.1 The Commonwealth agrees to allow temporary traders within the Licensed Area during the Annual Event Period. The Commonwealth will waive the usual requirement for temporary traders to apply for permits and, as such, agrees to forgo temporary traders permit fees during the Annual Event Period.
- 24.9.2 The Occupier shall provide the number of concession/temporary traders and their proposed location within the Licensed Area to the Commonwealth for review prior to the Occupier going out for Expressions of Interest.
- 24.9.3 No temporary traders are permitted around the areas identified by the Commonwealth on the submitted Floriade 2016 Preliminary Master Plan map (refer Schedule 3) and must comply with clause 24.6.5.

24.10 Post-event remediation

- 24.10.1 The Occupier must remediate the Licensed Area and return it to the same state of repair and condition as it was at the Commencement Date (fair wear and tear excepted). All Works must be undertaken to the usual standard of and with the approval of the Commonwealth.

- 24.10.2 Any structure installed for the Purpose must be cleared before the Handover Date unless prior, written approval from the Commonwealth is obtained for specified structures to remain.
- 24.10.3 Any structures remaining on, or immediately bordering, the Licensed Area at the time of the Hand-over Date and that have not been approved to remain, may be removed by the Commonwealth after notification at its absolute discretion. Any associated costs of removal of structures will be the responsibility of the Occupier.
- 24.10.4 The Occupier must, prior to the commencement of the Annual Event Period, provide to the Commonwealth for approval a remediation plan setting out the remediation required to be undertaken to meet the Occupier's obligations under clause 24.10.1 to clause 24.10.3 (Remediation Plan).
- 24.10.5 The Remediation Plan must include the following:
- (a) time line and staging of remediation works;
 - (b) names of contractors undertaking each task associated with the remediation;
 - (c) materials to be used, including turf grades; and
 - (d) maintenance program during the consolidation period.
- 24.10.6 No Commonwealth assets such as artificial ramps or guttering, are to be removed or restored, unless prior approval is obtained from the Commonwealth.
- 24.10.7 The Commonwealth will undertake two remediation inspections in accordance with Schedule 4 and provide a report to the Occupier on areas that do not meet the satisfaction of the Commonwealth.
- 24.10.8 The Commonwealth will not accept the return of the Licensed Area from the Occupier until all remediation issues are addressed.

24.11 Tree Preservation Measures

- 24.11.1 There are to be no structures built, vehicle movements or parking within the Tree Protection Zone (TPZ). The TPZ is calculated as 12 x the diameter of tree trunk at 1.4 meters above the ground. (refer to *Australian Standard AS4970:2009 Protection of trees on development sites*) Infringement of this clause may result in an immediate stop to all work across the Licensed Area until remedied.
- 24.11.2 The Commonwealth shall have the responsibility for the safety of the trees in the Licensed Area, and the cost of maintenance and care of the trees in the Licensed Area, except where any damage or unsafe condition of any tree is as a result of the Purpose or the use or occupation of the Licensed Area by the Occupier.
- 24.11.3 The Occupier must immediately notify the Commonwealth of any tree which in the Occupier's reasonable opinion is unsafe or requires maintenance.
- 24.11.4 The Occupier must ensure there is no negative impact upon trees and vegetation in and adjacent to the Licensed Area.
- 24.11.5 Temporary structures and vehicles must not be placed or encroach on the TPZ of all trees. Nothing is permitted to be hung from or attached to the trees in the Licensed Area without prior approval from the Commonwealth.

24.12 Storm water drains

24.12.1 The Occupier will take appropriate preventative measures to reduce silt from entering the storm water drains and into Commonwealth Park ponds.

24.13 Services, Assets and Infrastructure

24.13.1 The Commonwealth will provide to the Occupier, where possible, any relevant maps, plans and diagrams of all Commonwealth services, assets and infrastructure in, on or under the Licensed Area at the presentation referred to in clause 24.3.1. It is the Occupier's responsibility to verify the above.

24.13.2 The NCA Event Organiser Safe Event Guide (Toolkit) is available for additional information and reference to permitted structures and activities within the Licensed Area.

24.14 Children's entertainment

24.14.1 The Commonwealth agrees to the use of animals for the purpose of children's entertainment during the specified event opening hours during the Annual Event Period. The Occupier will be responsible for:

- (a) the daily safe removal of the animals after the event closes;
- (b) the secure containment of the animals within the designated space;
- (c) the appropriate disposal of related waste and;
- (d) the provision of appropriate health and safety precautions.

24.16 Water Abstraction

24.16.1 The Occupier will be required to organise a separate Water Access Entitlement with the Environment and Sustainability Development Directorate (ESDD) and will be responsible for all fees payable for Water Access Entitlement and Licences under the *Water Resources Act 2007 (ACT)*.

24.16.2 The Commonwealth has installed a sub metering system to calculate water usage in the existing Licensed Area footprint. Water usage in this area can be made available to the Occupier at any time, upon request.

24.17 WHS and Site Safety

24.17.1 The Occupier must maintain a robust Safety Management System and Security Plan and ensure that, during the construction of the Licensed Area, it installs appropriate isolation through barricading and or fencing to ensure that only authorised persons are within any construction areas. Appropriate means of identification/accreditation of authorised persons must be outlined in the Safety Management System and Security Plan. The Occupier must also install all appropriate regulatory signage during construction.

24.17.2 The Occupier must appoint a qualified person to be on site to ensure all WH&S Law requirements are met. This Safety Officer should also be a qualified first aid officer with access to a first aid kit.

24.17.3 Event sites are construction sites during the bump in and bump out period. Under the Occupier's control, the Safety Officer is responsible for ensuring that necessary signage is posted and that a sign-in and induction procedure is implemented for all staff, contractors and visitors to the site.

24.18 Parking Operations

24.18.1 The Occupier is to ensure that all participants, officials, organisers and volunteers are advised to park in designated parking areas consistent with the *National Land (Road Transport) Ordinance 2014* (Cth). Only service vehicles (not their support vehicles) directly involved in the approved event/activity can be parked on open spaces in the Licensed Area i.e. concession vans, display vehicles, emergency vehicles.

24.18.2 The Occupier must implement a Temporary Traffic Management Plan endorsed by the Commonwealth and approved by Roads ACT for the duration of the Annual Event Period.

24.18.3 The Occupier will bear all cost associated with the implementation and operation of the Temporary Traffic Management Plan for the duration of the Annual Event Period.

24.18.4 A separate Parking Fee will be charged in accordance with clause 24.2.7 and 24.2.8.

EXECUTED as an agreement

EXECUTED by the parties on the day and year first above written.

SIGNED BY THE PARTIES

SIGNED for and on behalf of the)
Commonwealth of Australia by)
Natalie Broughton ; Acting Executive Director,)

Estate

.....
(Signature)

National Capital Authority, in the presence of:

Lowe
.....

(Signature of Witness)

CARLIA LOWE
.....

(Name of Witness in Full)

SIGNED for and on behalf of)
Australian Capital Territory)
By ADAM STANKEVICIUS)

in the presence of:

.....
(Signature)

D. Ireland
.....

(Signature of Witness)

Dianne Ireland
.....

(Name of Witness in Full)

SCHEDULES

Schedule 1 NCA Development Application Checklist

Schedule 2 NCA Application for Works Approval

Schedule 3 Floriade 2016 Preliminary Master Plan and Fence Line maps

Schedule 4 Schedule for Submission of Works Approvals & Site Inspections

Schedule 5 NCA Schedule of Fees

Schedule 1 NCA Development Application Checklist

This Schedule commences on the next page.

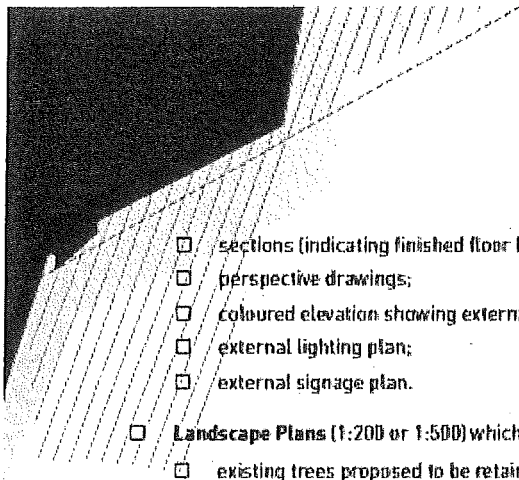


Development Application INFORMATION CHECKLIST

THE FOLLOWING INFORMATION IS REQUIRED FOR MAJOR DEVELOPMENT APPLICATIONS
PLEASE DISCUSS WITH THE DEVELOPMENT ASSESSMENT TEAM THE INFORMATION
REQUIRED FOR YOUR PROPOSED WORKS.

~~TWO SETS OF ALL PLANS /DRAWINGS ARE REQUIRED TO BE PROVIDED.~~

- A Locality Plan** which identifies the site and its context.
- A Site Analysis Plan**
- Design Concept Drawings/Statements** explaining the concept behind the design and siting of buildings and landscaping as proposed.
- A Detailed Site Plan** (1:200 or 1:500) which identifies site boundaries and the key characteristics of the site including:
 - site contours;
 - underground services (water, sewer, gas & electricity);
 - surface drainage pattern;
 - existing vegetation (particularly the established trees) - their size, species, condition and exact location;
 - vehicular and pedestrian access;
 - existing development and other features which may contribute to a full understanding of the site and its context.
- Schedule of Proposed Works** which give details of the works proposed including extent of earthworks, off-site work requirements and works associated with service connections. It should also describe the quantitative characteristics of the proposed development such as:
 - gross floor area;
 - site coverage;
 - building height;
 - building setbacks from property line;
 - external materials and colours (a sample board may be required);
 - on-site and off-site carparking provisions.
- Architectural Drawings** (1:100 or 1:200) sufficient to fully explain the scheme and should include:
 - floor plans;
 - elevations;



- sections (indicating finished floor levels and roof heights);
- perspective drawings;
- coloured elevation showing external finishes;
- external lighting plan;
- external signage plan.
- Landscape Plans (1:200 or 1:500) which include:**
 - existing trees proposed to be retained and the ones to be removed or pruned with a tree survey report/arborist report;
 - proposed planting design;
 - location, size and species details of proposed planting;
 - final site levels (including verge levels) and drainage;
 - location and finishes of pedestrian & vehicular access paths and carpark areas;
 - location and details of signage and external lighting.
- Civil & Excavation Plans** – civil drawings showing changes to site services (including the method of undertaking works, extent of excavation including RL levels).
- A Planning Report** addressing the relevant design and planning matters in accordance with the provisions of the National Capital Plan. Advice in relation to how obligations have been met under other legislation including the Environment Protection and Biodiversity Conservation Act 1999 and the Copyright Amendment (Moral Rights) Act 2000.
- A Design Model** is required for any major development and/or proposed in a prominent location:
- A Public Consultation Report** (in accordance with the NCA's Consultation Protocol) outlining the consultation process carried out by the proponent and how the matters raised during consultation have been addressed in accordance with the requirements of the National Capital Plan.
- Traffic Assessment Report** which considers the potential impact on the area, vehicle access and egress, parking arrangements, road capacity.
- A Site Establishment and Construction (or Demolition) Management Plan** which identifies:
 - the location of temporary work sheds & material storage areas;
 - temporary site fencing & signs;
 - construction/demolition vehicle access & circulation areas;
 - methods to be used for protecting street trees and trees to be retained on site;
 - methods of protection of verge landscaping from possible damage during construction/demolition);
 - measures to contain run-offs from the site with due consideration given to erosion management during construction/demolition;
 - steps to be taken to restore the site and site access after construction/demolition;
 - temporary traffic management.
- External Agency Clearances**
 - Territory and Municipal Services;
 - ACT Planning and Land Authority – leasing;
 - ACT Department of the Environment, Climate Change, Energy and Water.

Schedule 2 NCA Application for Works Approval

This Schedule commences on the next page.



APPLICATION FOR WORKS APPROVAL

(Works Approval under the Australian Capital Territory (Planning and Land Management) Act 1988)

Treasury Building, Parkes ACT 2600 | Telephone 6271 2888 | Fax 6273 4427 | Web www.nationalcapital.gov.au
Do you understand the Development Approval process? Yes No If not, please ring 6271 2888 for further information or visit our website
Note: 3 sets of all drawings to be lodged with application.

APPLICANT'S DETAILS

Applicant: Contact Person:
Postal Address:
Phone: Email:
Invoicing details (if different)
Name:
Postal Address:

Please note:

- that the NCA will provide an invoice in accordance with the details provided above. This invoice is for the cost of making an application not for approval. Applications are not valid until fees are paid in full.
 - I understand there is a cost associated with making an application for works approval
 - that details of this application, location and the name of the applicant will be placed on the NCA's web site.
- If you do not wish to have these details published on the NCA's website, please tick the box below.
- I do not wish to have details of this application published.

LOCATION ON OF PROPOSED WORKS

Block Section Suburb/District

DESCRIPTION OF PROPOSED WORKS

Project Name:
Type of Works Buildings Landscape Signs Demolition
 Temporary Works Other (please specify)
Estimated Cost of Works

DETAILS OF PROPOSED WORKS (WHERE APPLICABLE)

Site Area	<input type="text"/>	SETBACKS	Front	<input type="text"/>
Gross Floor Area	<input type="text"/>		Side(s)	<input type="text"/>
Site Coverage	<input type="text"/>		Rear	<input type="text"/>
Car Park Spaces	<input type="text"/>	HEIGHT	Storeys	<input type="text"/>

Lease Compliance Yes No

NATURE OF SUBMISSION

Sketch Plans Working Drawings Amendments Sample Board

Please list drawing numbers:

DECLARATION: This application is being lodged by: the lessee or a representative of the lessee with his/her approval

Signature of Submitter: Date:

NCA STAFF TO COMPLETE

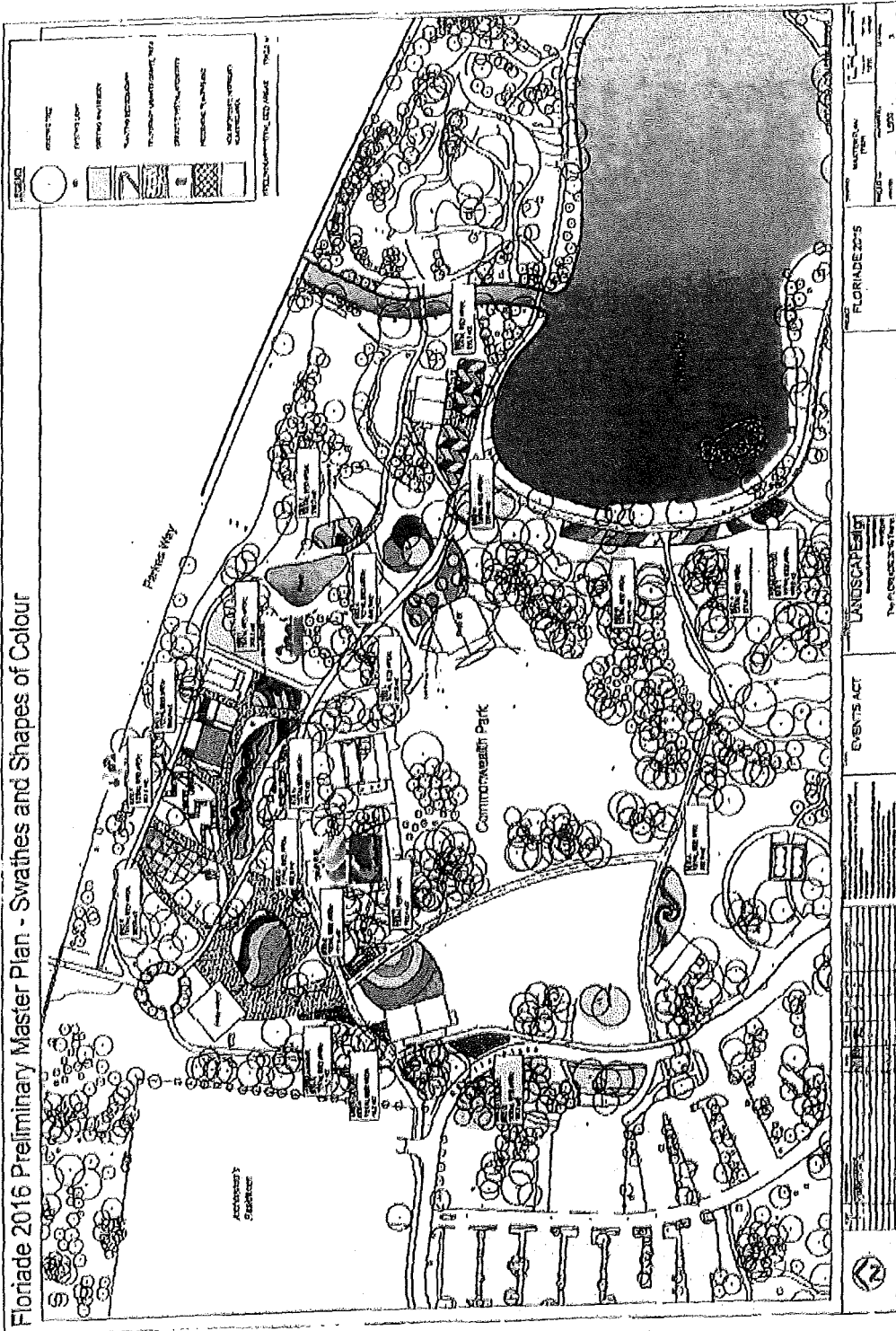
Development Approval Application No.:
Fee Calculated: Fee Received/to be Invoiced:
Signature: Date:

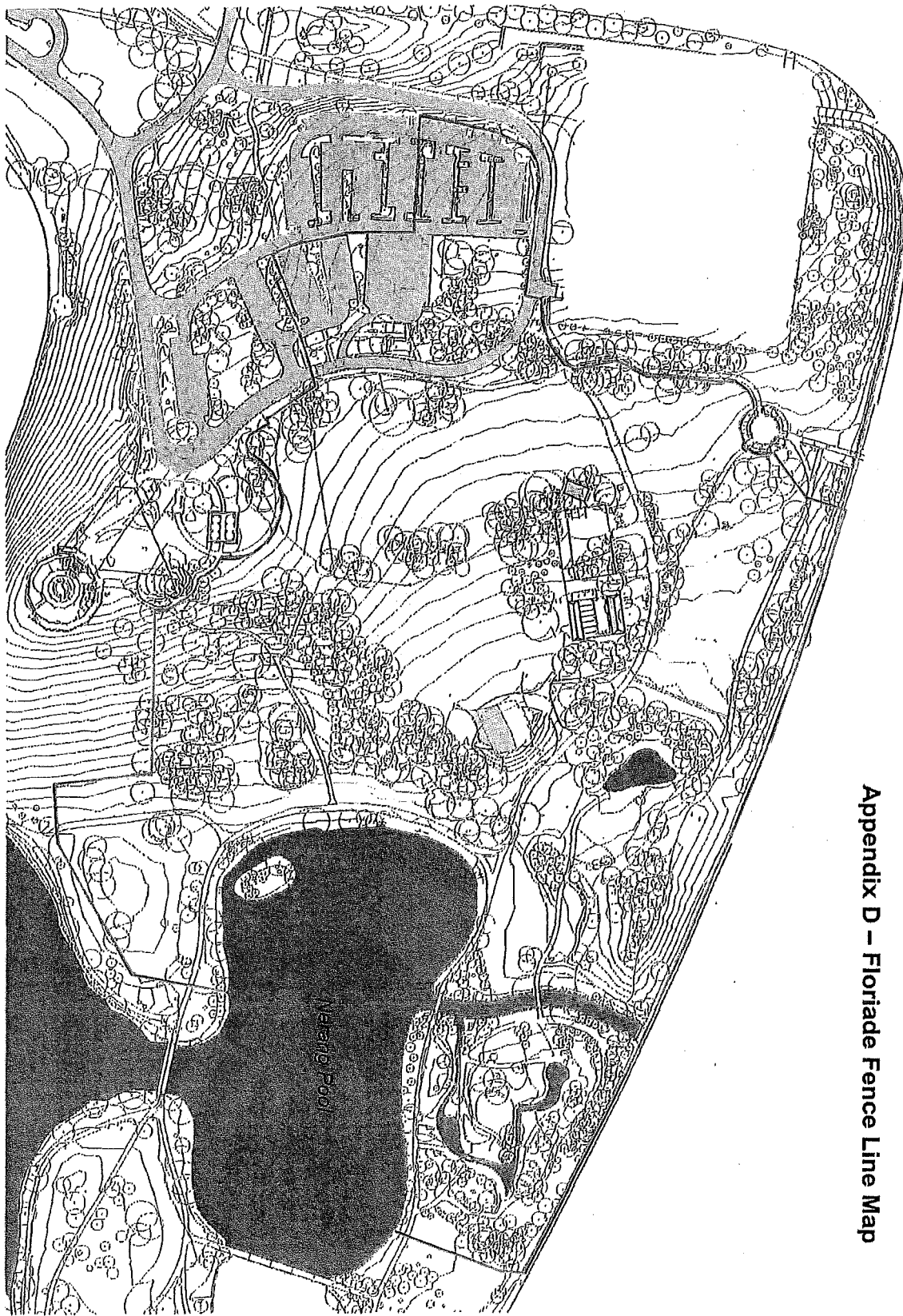
Schedule 3 Floriade 2016 Preliminary Master Plan and Fence Line maps

This Schedule commences on the next page

= Trades or structures not permitted

Floriade 2016 Preliminary Master Plan - Swathes and Shapes of Colour





Appendix D – Floriade Fence Line Map

Schedule 4 Schedule for Submission of Works Approval Applications & Site Inspections Floriade 2016

In principle approval	February 2016
Initial Site inspection	09 March
Commencement of marking out of pathways on grass	10 March
Commencement of marking out of garden beds	15 March
Digging of paths and garden beds commence	21 March
Laying of drainage and importing soil commence	29 March
Construction and Planting of garden beds	12 April
Submission of Works Approval Application 1	15 April
Submission of Works Approval Application 2	June
Handover inspection	August
Venue lock-down	22 August
Hand-back inspection	October
Park reopens to the public	31 October
Hand-back inspection, debrief and review	December 2016
Park handed back to the Commonwealth	December date to be agreed by the Parties

Schedule 5 NCA Schedule of Fees

SCHEDULE OF FEES 2016 (ALL EX GST)		
Type	Cost	Waived
Licence Fee	Waived	\$855,562 based on 40 days for the bump in/out period
Nightfest Licence Fee (as a ticketed event)	\$19,607 based on 5 nights	No
Works Approval Fee (based on the value of works of \$490,000 as per the submitted Application for Works Approval 1)	\$2,650	No
Additional Works Approvals	As per Works Approval Schedule of Fees 2015	
Works Approval Fee for Nightfest	\$110	No
Bond (refundable)	\$50,000	No
Total Cost approx. plus parking fee total to be confirmed	\$72,367	855,562

The Parking Fee is \$12 per car space per day (incl GST).