

Event Name: Head of the Yarra
Event Location: Yarra River
Event Date: 25 November 2017

Event Permit

Organised activities in Ports or on Waterways

Recitals

This Permit is issued by Parks Victoria to the Permittee in its capacity as Port Manager under section 44B of the *Port Management Act 1995* or in its capacity as Waterway Manager under section 216 of the *Marine Safety Act 2010* or Regulation 5 of the *Water Industry (Waterways Land) Regulations 2013*.

Parks Victoria was appointed Port Manager of the Port by the Governor in Council on Wednesday 19 September 2007 by notice published in Victorian Government Gazette No. S227 and was appointed Waterway Manager of the Waterway by the Minister for Ports on 28 June 2012 by notice published in Victorian Government Gazette No. S 220.

This permit permits the Permittee to use the Permit Area for the Permitted Purpose during the Permit Period upon the terms and conditions of this permit.

The parties must:

- complete the Particulars;
- attach any plan and documents referred to in the Particulars;
- the Permittee must take out public risk insurance in accordance with condition 6.1 and must comply with conditions 6.2 and 6.3 in relation to such insurance; and
- sign/execute this permit.

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Particulars

1. **Permittee:**
 - Name:** Hawthorn Rowing Club
 - Contact person:** Fiona Hilbert
 - Address:** PO BOX 75 Hawthorn VIC 3122
 - Ph:** 0414 909 730
 - Fax:**

2. **Parks Victoria:**
 - Contact person:** Event Officer
 - Address:** Level 10, 535 Bourke Street VIC 3000
 - Ph:** 13 1963
 - Fax:**

3. **Port/Waterway:** Yarra River

4. **Permit Area:** Y7 Princes Bridge to Y11 Victoria Street Bridge

5. **Permitted Purpose:** To hold an organised rowing event for 1800 participants

6. **Permit Period:** Saturday 25 November 2017 6.00am to 4.00pm

7. **Permit Fee:** \$485.90 Inclusive of GST

8. **Permit Bond:** N/A

9. **Times of Access:** 6.00am to 4.00pm

10. **Additional Conditions:** The parties agree that the following additional conditions shall apply:

See 0

Standard Conditions

1. Interpretation

1.1 In this permit, the following words or phrases have the following meaning:

GST means the goods and services tax levied under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended).

Input Tax Credit in relation to a Taxable Supply, means a credit under the GST Act for the GST payable by the recipient in respect of the Taxable Supply.

Occupational Health and Safety Laws means all laws, requirements and regulations concerning the health, safety and welfare of people at work, including (without limitation):

- (a) *Occupational Health and Safety 2004 (Vic)*;
- (b) *Occupational Health and Safety Regulations 2007 (Vic)*;
- (c) *Dangerous Goods Act 1985 (Vic)*;
- (d) *Dangerous Goods (Storage and Handling) Interim Regulations 2011 (Vic)*; and
- (e) *Work Health and Safety Act 2011 (Cth)*.

Parks Victoria means the public authority established under Part 2 of the *Parks Victoria Act 1998* and includes, where the context so admits, its authorised officers.

Permit means this permit granted by Parks Victoria to the Permittee.

Permit Area means the area so described in the Particulars and shown on the attached Plan.

Permit Bond means the amount (if any) so described in the Particulars.

Permit Fee means the amount so described in the Particulars.

Permit Period means the period so described in the Particulars.

Permitted Purpose means the purpose so described in the Particulars.

Permittee means the person or persons so described in the Particulars.

Permittee's Members and Agents means any one or more of the members, officers, employees, agents, contractors, subcontractors, guests, patrons and invitees of the Permittee.

Port/Waterway means the Port/Waterway described in the Particulars within which the Permit Area is located.

Taxable Supply has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Tax Invoice in relation to a Taxable Supply means an invoice for the Taxable Supply required by the GST Act to support a claim by the recipient for an Input Tax Credit for the GST on the Taxable Supply.

1.2 In this permit, unless the contrary intention appears:

1.2.1 When this permit requires anything not to be done, this includes not allowing or permitting such thing to be done;

1.2.2 If this permit prohibits the Permittee from doing a thing, the Permittee must:

(a) ensure the Permittee's Members and Agents not do that thing; and

(b) not allow or cause any person to do that thing;

1.2.3 If this permit requires the Permittee to do a thing, the Permittee must ensure that, if applicable, the Permittee's Members and Agents do that thing;

1.2.4 A word or expression in the singular includes the plural and the plural includes the singular;

1.2.5 A person includes an individual and a corporation; and

1.2.6 A heading may be used to help interpretation, but is not legally binding.

1.3 Individual and Joint Liability

If the Permittee includes two or more persons, each such person is liable to perform the obligations imposed by this permit individually with each other such Permittee.

1.4 Victorian Law Applies

This permit is governed by the laws of the State of Victoria.

1.5 Remedies Cumulative

The rights and obligations, powers and remedies provided in this permit are not exclusive of the rights, duties, powers or remedies provided by law independently of this permit but, unless otherwise provided by law, the provisions of this permit shall prevail in the event of conflict.

2. Permit and Permit Fee

2.1 Parks Victoria grants and the Permittee takes a permit for the Permit Period to use the Permit Area for the Permitted Purpose on the terms and conditions of this permit in consideration of the payment to Parks Victoria by the Permittee of the Permit Fee.

2.2 This permit is personal to the Permittee and may not be assigned. Where the Permittee is a corporation, the Permittee must not effect a change in the control of the corporation, or a change in the holding of more than one-half of its issued share capital (either beneficially or otherwise) without the prior written consent of Parks Victoria.

2.3 No refund shall be given whether in whole or in part once the Permit Fee has been paid.

2.4 The rights granted by this permit are a mere permit to enter and make use of the Permit Area for the Permitted Purpose. No proprietary interest or right to exclusive possession is created and Parks Victoria may use, or permit other parties to use the Permit Area.

3. Goods and Services Tax

- 3.1 The consideration payable by any party under this permit is the GST exclusive amount of the Taxable Supply for which payment is to be made.
- 3.2 Subject to clause 3.4, if a party makes a Taxable Supply in connection with this permit for a consideration, then the party liable to pay for the Taxable Supply must also pay, at the same time and in the same manner as the consideration is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.
- 3.3 Where this permit requires a party (**first party**) to pay, reimburse or contribute to an amount paid or payable by the other party (**other party**) in respect of an acquisition from, or a transaction with a third party for which the other party is entitled to claim an Input Tax Credit, the amount for payment, reimbursement or contribution will be the GST exclusive value of the acquisition by the other party plus any GST payable in respect of the other party's recovery from the first party.
- 3.4 A party's right to payment under clause 3.2 is subject to a Tax Invoice being delivered to the party liable to pay for the Taxable Supply.

4. Permittee's rights and obligations

- 4.1 In consideration of the payment of the Permit Fee and not before payment of the Permit Bond, the Permittee may, for the Permit Period:
- 4.1.1 occupy (subject to the rights of Parks Victoria in this permit) the Permit Area for the Permitted Purpose;
- 4.1.2 use in common with Parks Victoria and other persons from time to time permitted by Parks Victoria, those parts of the Port/Waterway reasonably required by the Permittee for access to the Permit Area.
- 4.2 The Permittee must not use the Permit Area for any purpose other than the Permitted Purpose.
- 4.3 The Permittee may not bring on to the Permit Area during the Permit Period any equipment which is necessary for the Permitted Purpose unless the location of any such things at the Permit Area are in accordance with a plan approved by Parks Victoria.
- 4.4 The Permittee shall have access to the Permit Area at all times nominated in the Particulars throughout the Permit Period unless otherwise expressly provided in this permit.
- 4.5 The Permittee must obtain at its expense all necessary permits, licences, approvals, consents and authorities required for the Permitted Purpose including any necessary planning permit, and must comply with any lawful conditions of such permits, licences, approvals, consents, authorities and the law including the *Marine Safety Act 2010*, *Marine Safety Regulations 2012*, vessel operating and zoning rules, *Port Management Act 1995* and *Port Management (Local Ports) Regulations 2004*.
- 4.6 The Permittee must carry out all activities under this permit with as much care for the Port/Waterway and as little inconvenience to any person as possible.
- 4.7 The Permittee must not make any structural or other alterations to any fixtures, improvements or fittings of Parks Victoria at the Permit Area without the consent in writing of Parks Victoria and must remove all equipment, furnishings, facilities and other things fitted or installed by the Permittee prior to the end of the Permit Period (or within such other time frames as directed by Parks Victoria) and make good all damage caused by such removal to the satisfaction of Parks Victoria.

- 4.8 The Permittee must erect, operate and dismantle any equipment required for the Permitted Purpose at the Permit Area in a competent manner without negligence and without causing any nuisance.
- 4.9 The Permittee must keep the Permit Area and immediate surrounding parts of the Port/Waterway tidy and free from rubbish.
- 4.10 The Permittee must permit Parks Victoria or any person authorised by Parks Victoria to enter the Permit Area at any time for the purpose of checking whether the Permittee's obligations are being performed and to check the condition of the Permit Area.
- 4.11 The Permittee must promptly repair any damage to the Permit Area to the extent caused or contributed to by the act, omission or default of the Permittee or the Permittee's Members and Agents.
- 4.12 The Permittee must carry out repairs within 14 days of being served with a written notice of any defect or lack of repair which the Permittee is obliged to make good under this permit. If the Permittee does not comply with the notice, Parks Victoria may carry out the repairs and the Permittee must repay the cost of such repairs to Parks Victoria on demand.
- 4.13 The Permittee must observe any directions of Parks Victoria relating to the use of any specific part of the Port/Waterway including safety requirements.
- 4.14 The Permittee must, at the end of the Permit Period, vacate the Permit Area and ensure that it is in the same condition as at the commencement of the Permit Period.
- 4.15 The Permittee must not, except in quantities necessary for the Permitted Purpose, bring on to the Permit Area any flammable, volatile or explosive oil or dangerous substance without the consent of Parks Victoria.
- 4.16 The Permittee must immediately notify Parks Victoria if an accident or incident occurs on the Permit Area which results in injury or death of persons or environmental damage or pollution or damage to property.
- 4.17 The Permittee must give due consideration to the weather forecast, the prevailing weather and Port/Waterway conditions in making the decision for the Permitted Purpose to proceed or be cancelled.

4.18 Permit Fee and Permit Bond

The Permittee must pay to Parks Victoria no later than 7 days prior to the commencement of the Permit Period the Permit Fee and the Permit Bond unless otherwise agreed in writing.

4.19 Permittee's Behaviour

4.19.1 The Permittee must not:

- (a) do anything that is or may be dangerous, annoying or offensive or that may interfere with other persons;
- (b) do anything which might affect any insurance policy relating to the Permit Area by causing it to become void or voidable or having any claim on it being rejected or by causing any premium payable by Parks Victoria to be increased;
- (c) except in an emergency interfere with any of the services or fixtures or fittings of Parks Victoria or any person other than the Permittee at or in Permit Area; or

(d) remove any of Parks Victoria's property from the Permit Area.

4.19.2 Any activity in breach of the requirements of this permit by the Permittee or the Permittee's Members and Agents will amount to a breach of this permit by the Permittee.

4.19.3 The Permittee must observe all additional obligations so specified in the Particulars.

4.20 Payment of Fees and Interest on Overdue Monies

4.20.1 The Permittee must pay all legal costs and other expenses reasonably incurred by Parks Victoria as a result of any default by the Permittee in the performance of the Permittee's obligations.

4.20.2 The Permittee must pay interest on any overdue monies payable to Parks Victoria, if demanded by Parks Victoria, at a daily rate equivalent to 2% higher than the rate for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* from the time when such monies first become payable until paid in full.

4.21 Obligations after the Permit Period

In addition to any of its obligations under clause 4.14 the Permittee must prior to the end of the Permit Period:

4.21.1 leave the Permit Area in a clean and tidy condition to the reasonable satisfaction of Parks Victoria; and

4.21.2 repair any damage to the Permit Area as a result of the Permittee's use of the Permit Area under the terms of this permit.

5. Permit Bond

5.1 Parks Victoria may apply such part of the Permit Bond in performance of any of the Permittee's obligations not properly performed, as provided in this permit.

5.2 Parks Victoria will refund the Permit Bond (if any) to the Permittee within 30 days of the expiry or earlier termination of this Permit, less any amount required to:

5.2.1 repair any damage to the Permit Area;

5.2.2 clean the Permit Area; and

5.2.3 recover any other costs arising under this Permit that are the responsibility of the Permittee, including costs that are incurred due to the Permittee's breach of these Permit conditions.

6. Insurance

6.1 The Permittee must effect and maintain throughout the Permit Period with an insurer approved by Parks Victoria, which approval shall not be unreasonably withheld provided the insurer is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia:

- 6.1.1 a public and products liability insurance policy for not less than \$20 million (or any greater amount required by Parks Victoria) in respect of any single claim arising out of the activities of the Permittee, covering all third party claims arising out of:
- (a) loss, including financial loss, destruction or damage to real or personal property and ensuing loss of use of that property; and
 - (b) death, injury to, or disease of persons,
- including all associated marine liabilities (**Policy**).
- 6.1.2 an employers' liability and workers' compensation policy which covers any damage, loss or liability suffered or incurred by any person engaged by the Permittee arising:
- (a) by virtue of any statute relating to workers' or accident compensation or employers' liability; or
 - (b) at common law.
- 6.2 The Permittee must effect and maintain the Policy noting the interests of Parks Victoria.
- 6.3 The Permittee must provide Parks Victoria with:
- 6.3.1 a certificate of currency for the Policy which clearly confirms the requirements of clauses 6.1 and 6.2:
- (a) prior to the commencement of the Permit Period;
 - (b) within 14 days of the renewal of the Policy throughout the Permit Period; and
 - (c) at any other time upon request by Parks Victoria;
- 6.3.2 evidence of confirmation of registration with the Victorian WorkCover Authority prior to the commencement of the Permit Period and at any other time upon request by Parks Victoria; and
- 6.3.3 a copy of the Policy upon request by Parks Victoria.
- 6.4 The Permittee must promptly notify Parks Victoria if:
- 6.4.1 an event occurs at the Permit Area which may give rise to a claim under or prejudice the Policy; or
- 6.4.2 the Policy is cancelled.
- 6.5 The Permittee must not do anything or allow anything to be done which may:
- 6.5.1 prejudice any insurance held in connection with the Permit Area; or
- 6.5.2 increase the premium payable for any insurance held in connection with the Permit Area.
- 6.6 The Permittee must effect and maintain all other insurances in a manner and to such extent which is reasonable and customary for an organisation engaging in activities of the kind referred to and permitted by this permit.

7. Release and Indemnity

7.1 Release

7.1.1 The Permittee agrees that it:

- (a) has not relied upon any representation by or on behalf of Parks Victoria concerning the Permit Area or its use;
- (b) is aware of all laws and legal requirements in relation to the Permit Area and the Permitted Purpose;
- (c) occupies and uses the Permit Area at its own risk; and
- (d) has inspected the Permit Area and is of the opinion that the Permit Area is safe and suitable for the activities of the Permittee.

7.1.2 The Permittee releases Parks Victoria and its officers, employees and agents from:

- (a) all claims and demands resulting from any accident, damage, death or injury occurring at the Permit Area or any other area used by the Permittee or the Permittee's Members and Agents in connection with this permit; and
- (b) all loss, cost, damage, liability or other detriment (whether direct or consequential) suffered or incurred by the Permittee or the Permittee's Members and Agents;

as a direct or indirect result of the Permittee's or the Permittee's Members and Agents occupation and use of the Permit Area, except to the extent caused or contributed to by the negligence of Parks Victoria or its officers, employees or agents.

7.2 Indemnity

The Permittee indemnifies and agrees to keep indemnified Parks Victoria and its officers, employees and agents against all actions, claims, demands, losses, damages, costs and expenses (whether direct or consequential) suffered or incurred by Parks Victoria or its officers, employees and agents or for which Parks Victoria or its officers, employees and agents is or may be or become liable concerning:

- 7.2.1 the default of the Permittee or the Permittee's Members and Agents under this permit;
- 7.2.2 the Permittee's or the Permittee's Members and Agents use of the Permit Area or any other area used by the Permittee or the Permittee's Members and Agents in connection with this permit; or
- 7.2.3 loss, damage or injury to property or persons caused or contributed to by the act, omission, default or negligence of the Permittee or the Permittee's Members and Agents,

except to the extent caused or contributed to by the negligence of Parks Victoria or its officers, employees or agents.

8. Force Majeure

8.1 Subject to clause 8.2, neither party shall be liable to the other party for any failure or delay in the performance of any obligations under this permit if:

- 8.1.1 the breach was due to a Force Majeure Event; and

8.1.2 it could not reasonably have avoided or overcome the Force Majeure Event or its effects.

Notwithstanding this clause, in the event that the Permittee decides not to proceed with the Permitted Purpose (including due to unsuitable weather) no refund of any fee paid shall be payable by Parks Victoria to the Permittee.

8.2 For the purposes of this permit 'Force Majeure Event' means any impediment beyond the reasonable control of the party including (but not limited to) act of God, strike, lockout or other industrial disturbance, illness or injury of any major performer, flood, fire, storm, civil disturbance, order of any public authority, court or tribunal issued after the date hereof, or any federal, state or local government law or regulation.

9. Breach of Permittee's obligations

9.1 The Permittee breaches this permit if the Permittee fails to fulfil any of the Permittee's obligations as and when required, or if no time is prescribed, within a prompt and reasonable time.

9.2 In the event of any breach of the Permittee's obligations, except in an emergency, Parks Victoria must give the Permittee notice requiring the Permittee to remedy the breach within a reasonable time. If the Permittee fails to remedy or rectify the breach, Parks Victoria may do any one or more of the following:

9.2.1 exclude the Permittee from the Permit Area;

9.2.2 end this Permit;

9.2.3 recover from the Permittee any loss Parks Victoria suffers due to the Permittee's breach;
or

9.2.4 exercise any of Parks Victoria's other legal rights.

10. Immediate Termination of Permit

Where there is evidence of unruly behaviour, an emergency or a risk to any persons in or about the Permit Area, or if the Permittee is in breach of clause 6, Parks Victoria may terminate the Permit immediately by written notice to the Permittee and any Permit Fee paid by the Permittee will be forfeited.

11. Occupational health and safety and emergency evacuation

11.1 The Permittee acknowledges that occupational health and safety in relation to the Permit Area is the responsibility of the Permittee (other than to the extent Parks Victoria cannot at law contract out of its obligations with respect to occupational health and safety).

11.2 The Permittee must, in relation to the Permit Area:

11.2.1 comply with, all Occupational Health and Safety Laws and any applicable Australian Standards and its safety management plan attached as Annexure C;

11.2.2 ensure that there is no risk to the environment or the health, safety and welfare of the Permittee and the Permittee's Members and Agents;

- 11.2.3 without limiting clauses 11.2.1 and 11.2.2, ensure that no person is exposed to a risk to his or her safety or health arising out of or in connection with the carrying out of the Permittee's Permitted Purpose;
 - 11.2.4 ensure that a complete copy of the occupational health and safety plan referred to in clause 11.3 is available for inspection by every person to whom such plan is relevant; and
 - 11.2.5 as soon as practicable notify Parks Victoria of any incident or dangerous occurrence at the Permit Area which is notifiable to the Victorian WorkCover Authority pursuant to the provisions of any Occupational Health and Safety Laws, including without limitation, the *Occupational Health and Safety Act 2004 (Vic)* and the *Work Health and Safety Act 2011 (Cth)*.
- 11.3 If requested by Parks Victoria, the Permittee must:
- 11.3.1 develop and implement an occupational health and safety plan and supply same to Parks Victoria upon request; and
 - 11.3.2 in conjunction with Parks Victoria, develop and implement an emergency evacuation and management plan for the operation of the Permitted Purpose.
- 11.4 The Permittee must ensure that at all times if requested pursuant to clause 11.3, its occupational health and safety plan:
- 11.4.1 complies with Australian Standard AS/NZ 4804-2001 (or other similar substitute standard);
 - 11.4.2 includes the Permittee's occupational health and safety policy;
 - 11.4.3 identifies the obligations of the Permittee's under the Occupational Health and Safety Laws;
 - 11.4.4 describes the practices that will be employed to secure the health, safety and welfare of persons at work; and
 - 11.4.5 identifies measures to eliminate risks to the health, safety and welfare of persons at work.
- 11.5 The Permittee acknowledges that referral of, and any subsequent approval by, Parks Victoria of the plans referred to in clause 11.3 does not amount to a warranty by Parks Victoria of the suitability of the content of the plans and does not create any liability on behalf of Parks Victoria or their respective officers, employees and agents for loss or damage incurred as a result of complying with those plans.
- 11.6 The Permittee acknowledges that it is bound to comply with Parks Victoria's emergency plans for the Permit Area and the Port/Waterway and that the Permittee's emergency evacuation and management plan and occupational health and safety plan cannot conflict with Parks Victoria's plan. The Permittee is required to comply with all directions of the Parks Victoria in an emergency, even if such direction contradicts the Permittee's emergency evacuation and management plan.
- 11.7 To the extent permitted by the law, the Permittee indemnifies and agrees to keep indemnified Parks Victoria and their respective officers, employees and agents against all actions, claims, demands, losses, damages, costs and expenses which Parks Victoria or its respective officers, employees and agents may suffer or incur, arising out of or in connection with a breach by the Permittee or the Permittee's Members and Agents of any of the obligations under this clause 11.

12. Miscellaneous provisions

12.1 Notices

12.1.1 A notice required under this permit must be in writing.

12.1.2 Parks Victoria may serve a notice on the Permittee by:

- (a) giving it to the Permittee personally; or
- (b) leaving it at or posting it to, or faxing it to the Permittee's registered office, the address set out in the Particulars or the Permittee's business address as last known to Parks Victoria.

12.1.3 The Permittee may serve a notice on Parks Victoria by leaving it at, or posting it to, or faxing it to:

- (a) the facsimile or address of Parks Victoria as set out in the Particulars; or
- (b) any other address that Parks Victoria nominates.

12.2 Waiver or Variation

A provision of or a right created under this permit may not be:

- 12.2.1 waived except in writing signed by the party granting the waiver; or
- 12.2.2 varied except in writing signed by the parties.

12.3 Enforcement of Indemnity

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this permit.

12.4 Standard Conditions

12.4.1 Each party agree to comply with any additional obligations imposed on it as described in the Particulars.

12.5 Additional Acknowledgements

The Permittee acknowledges and accepts that:

- 12.5.1 No offers of gifts, benefits and hospitality are to be made to any Parks Victoria employee at any time; and
- 12.5.2 Parks Victoria retains the right to publish this agreement in its entirety, subject to information deemed by Parks Victoria to be commercial-in-confidence, on its website or other online medium accessible by the general public

Signing page

By signing this permit the permittee acknowledges that the attached standard conditions and additional conditions will apply.

Executed as an agreement.

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

Event: Head of the Yarra
Location: Yarra River
Date: 25 November 2017

Signature of Witness

Signature of authorised officer

Name of Witness

Edena Critch

Name of authorised officer

Date

District Manager – Waterways

Position of authorised officer

Use when Permittee is a corporation

EXECUTED by

Event: Head of the Yarra
Location: Yarra River
Date: 25 November 2017

Hawthorn Rowing Club in accordance with
Section 38 of the Associations Incorporation Act
2012 in the presence of:

Fiona Morrison
Signature of Director *Head of Yarra
Committee*

FIONA MORRISON
Name of Director *Head of Yarra
Committee*

Belinda Goslin
Signature of Director/Secretary *Head of the Yarra
Committee*

BELINDA GOSLIN
Name of Director/Secretary *Head of the Yarra
Committee*

Additional conditions

The parties agree that the following additional conditions shall apply:

1. Certificate of Currency

The parties acknowledge and agree that upon the receipt of the certificate of currency for the Policy in accordance with clause 6.3, Parks Victoria may attach a copy of the certificate of currency for the Policy at Annexure B of this Permit.

Annexure A

Plan

See attached

Annexure B

Certificate of currency of public risk insurance

Workers Compensation Insurance

See attached

Annexure C

Safety Management Plan

See attached