

HOTHAM SKI ASSOCIATION INC.

C/O 68 Auburn Parade
East Hawthorn Vic 3168
Email: pres@hsa.asn.au



The Hon. Gavin Jennings MLA
Minister for Environment and Climate Change
Level 22
50 Lonsdale Street
Melbourne VIC 3000

22 August 2008

Dear Minister Jennings

Deviations from the Minister's Alpine Resorts Leasing Policy

The Mt Hotham Ski Association (HSA) has received complaints from a number of lessees applying to renew leases at Mount Hotham. The Mount Hotham Alpine Resort Management Board (MHARMB) has altered the standard leasing procedure and recently included a special condition which was not discussed with the site holders at any time during the negotiations for a new lease.

We believe that the MHARMB is derelict in its duty in not applying Ministerial policy both in law and intent in its administration of Alpine leases, and that it continues to apply the policy on a Hotham Specific basis incorrectly. Our members are often intimidated by the MHARMB and we believe the conduct detailed below constitutes oppression of Lessees by the MHARMB.

There are two main lease issues where the MHARMB's conduct is unreasonable and unacceptable:

1. **Agreements to Lease**

The MHARMB insists that lodges renewing leases enter into an "Agreement to Lease" (ATL) where improvements or maintenance of any kind is to be undertaken.

In accordance with the "Alpine Resorts Leasing Policy Implementation Details" of 24/10/2002, clause 14.1, only new developments require an ATL.

While we agree that lessees applying for new leases on Greenfield sites should be subject to an ATL procedure, there is no such requirement on lease renewals to enter into any document other than the standard form lease approved by the Minister.

The MHARMB is abusing its power in requiring lodges with existing premises to enter into an ATL.

The requirement is discouraging lodge improvements, as an ATL cannot be registered making finance harder, if not, impossible to obtain (Refer Page 4 of the "Alpine Lease Guidelines" July 2008 as displayed on the DSE Website).

The HSA has met with the MHARMB on this issue. The Board has refused to consider community concerns and has insisted on pursuing this procedure which we believe to be contrary to Ministerial policy.

There is a simple alternative which other resorts follow and which resolves the finance problem. If MHARMB considers it is vital for specific works to be undertaken within a defined time frame, a special condition can be inserted into the lease to protect that requirement. At least in that instance a financier can have the security of a registered lease.

2. **Appropriation of Property**

The MHARMB has decreed that "As a matter of policy for all new club style leases, an additional clause be included at Schedule 3 dealing with assignment."

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The clauses are as follows:

2A. Assignment

2A.1 The Tenant acknowledges that the landlord has agreed to the grant of this Lease on the basis of representations by the Tenant that it will occupy the Premises for the full Term and will not seek to assign the Lease ("Tenant's Representations").

2A.2 Without limiting the provisions of Part 13 of this Lease, in the event of a request for assignment or a deemed assignment, the Tenant acknowledges and agrees that the Landlord may take account of the Tenant's Representations and the Landlord will not be acting unreasonably if it refuses consent to an assignment or grants consent subject to conditions, including the requirement of a premium."

These additional clauses are in total contravention of the Minister's standard lease approved on 28 June 2004. They are yet another example abuse of power by the MHARMB and in conflict with Ministerial policy. The Alpine leasing policy specifically states that leaseholders are to retain ownership of site improvements and the above clause runs totally contrary to this fundamental policy.

We are aware of two site holders who negotiated for leases, spent money making improvements and maintenance to lodges at the specific direction and request of MHARMB and received draft leases at the completion of negotiations which did not contain these clauses.

However having undertaken the work those siteholders have now received leases for signing which contain these clauses that were not at any time mentioned during negotiations.

The clauses have a insidious and detrimental effect on our member's interests. In effect the clause means the MHARMB can arbitrarily and unreasonably withhold consent to an assignment or it can demand a "price" for its consent.

The clauses are also an example of unfair and inappropriate discrimination against Club lodges. There is no basis for inclusion of these clauses in any lease.

The HSA has not discussed this last issue with the MHARMB as previous discussions have proved to be absolutely fruitless. The MHARMB does not seem to take into consideration the views of stakeholders who contribute substantially to the running costs of the resort.

We request that you direct MHARMB to desist with its ATL policy and to abandon its requirement for the assignment clause which we believe is an illegal appropriation of our member's proprietary interests.

Yours faithfully

Peter Sandow
President
Hotham Ski Association

CC Mr Peter Harris – DSE Department Secretary **DSE Head Office**
Ms Caroline Douglass – by email caroline.douglass@dse.vic.gov.au
Mr Wayne Malone – by email wayne.malone@dse.vic.gov.au
Mr Rob Anderson – Chairman Alpine Resorts Working Group

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