

Authorised Version No. 003
Swan Hill Pioneer Settlement Authority
(Repeal) Act 1994

No. 46 of 1994

Authorised Version as at
18 October 2012

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
1 Purposes	1
2 Commencement	1
3 Approval of plan of survey	2
4 Repeal of Swan Hill Pioneer Settlement Act and related Acts	2
5 Abolition of Swan Hill Pioneer Settlement Authority	3
6 Transfer of Authority's assets, liabilities and staff	3
7 Specific powers—money	4
8 Revocation of reservations of Crown land	5
9 New reserve created	5
10 Extinguishment of rights	5
11 Leasing, sub-leasing and licensing of reserved land	6
12 Application of Local Government Act 1989	7
13 Past action by Council	7
14 Accounts and statements under the repealed Act	10
15 Repeal of unproclaimed Acts concerning historical parks	10
16 No compensation payable by Crown or Council	11
17 Supreme Court—limitation of jurisdiction	11
<hr/>	
SCHEDULES	12
SCHEDULE 1—Land in Respect of which the Reservations are Revoked	12
SCHEDULE 2—Plan of New Reserve	13
<hr/> <hr/>	
ENDNOTES	14
1. General Information	14
2. Table of Amendments	15
3. Explanatory Details	16

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Swan Hill Pioneer Settlement Authority
(Repeal) Act 1994

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The Parliament of Victoria enacts as follows:

1 Purposes

The purposes of this Act are—

- (a) to transfer the management of the Swan Hill Pioneer Settlement from the Swan Hill Pioneer Settlement Authority to the Swan Hill City Council and to clarify the status of that Council's actions in relation to the Settlement;
- (b) to repeal the **Swan Hill Pioneer Settlement Act 1974** and related Acts and abolish the Swan Hill Pioneer Settlement Authority;
- (c) to repeal the **Coal Creek Historical Park Act 1975** and the **Gippsland Folk Museum Act 1976**.

2 Commencement

- (1) Sections 1, 2 and 3 come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day to be proclaimed, being a day on or after the date of publication in the Government Gazette of an Order approving a plan of survey under section 3.

3 Approval of plan of survey

- (1) On receiving a plan of survey signed by the Surveyor-General and complying with this section, the Minister may recommend to the Governor in Council that the plan be approved.
- (2) The plan must show, as land in respect of which the reservation is to be revoked, part of the land described in items 2 and 5 of Schedule 1, being the land shown cross-hatched on the plan in Schedule 2 or that land as nearly as practicable.
- (3) The plan must show, as land to be reserved—
 - (a) the land referred to in subsection (2); and
 - (b) the land shown hatched on the plan in Schedule 2 or that land as nearly as practicable.
- (4) On the Minister's recommendation under subsection (1), the Governor in Council, by Order published in the Government Gazette, may approve the plan of survey.
- (5) The Order must include a copy of the plan of survey.

4 Repeal of Swan Hill Pioneer Settlement Act and related Acts

The following Acts are **repealed**—

- (a) the **Swan Hill Pioneer Settlement Act 1974**;
- (b) the **Swan Hill Pioneer Settlement (Amendment) Act 1981**;
- (c) the **Swan Hill Pioneer Settlement (Amendment) Act 1987**.

5 Abolition of Swan Hill Pioneer Settlement Authority

The Swan Hill Pioneer Settlement Authority is abolished and its directors go out of office.

6 Transfer of Authority's assets, liabilities and staff

- (1) All assets, property and rights vested in or held by the Swan Hill Pioneer Settlement Authority immediately before its abolition vest in the Swan Hill City Council (constituted under the **Local Government Act 1989**).
- (2) All liabilities (including contingent liabilities) of the Swan Hill Pioneer Settlement Authority existing immediately before its abolition become liabilities of the Swan Hill City Council.
- (3) Subject to section 10, the Swan Hill City Council is substituted as a party to any agreement, contract, lease (whether over Crown land or not) or other arrangement and to any proceedings to which the Swan Hill Pioneer Settlement Authority was a party immediately before its abolition.
- (4) Without limiting subsection (3) the Swan Hill City Council is substituted as a party to any contract or agreement to which the Swan Hill Pioneer Settlement Authority was a party and which existed immediately before its abolition—
 - (a) for the employment or engagement of an adviser or consultant under section 19(2) of the **Swan Hill Pioneer Settlement Act 1974**; or
 - (b) for the appointment or employment of an officer or employee of the Swan Hill Pioneer Settlement Authority; or
 - (c) for the appointment of a manager of the business of the Swan Hill Pioneer Settlement.

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- (5) All records and documents of the Swan Hill Pioneer Settlement Authority become the property of the Swan Hill City Council.
 - (6) The Swan Hill City Council is the successor in law of the Swan Hill Pioneer Settlement Authority.
 - (7) Unless the contrary intention appears, a reference to the Swan Hill Pioneer Settlement Authority is deemed to be a reference to the Swan Hill City Council, if the reference—
 - (a) relates to a period on or after the commencement of this section; and
 - (b) is in—
 - (i) an Act other than this Act; or
 - (ii) a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**; or
 - (iii) any other document.

7 Specific powers—money

- (1) On the commencement of this section, the general fund existing under the **Swan Hill Pioneer Settlement Act 1974** immediately before its repeal, forms part of the funds of the Swan Hill City Council.
- (2) The Swan Hill City Council has the same powers in relation to accounts of the Swan Hill Pioneer Settlement Authority as it has in relation to accounts established by the Council.
- (3) This section is in addition to and does not take away from section 6.

8 Revocation of reservations of Crown land

- (1) The Orders in Council specified in items 1, 3 and 4 of Schedule 1 are revoked.
- (2) The Orders in Council specified in items 2 and 5 of Schedule 1 are revoked to the extent that they apply to the land referred to in section 3(2).
- (3) On the revocation by this section of an Order in Council—
 - (a) the land in respect of which the Order is revoked is deemed to be unalienated land of the Crown, freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests; and
 - (b) the appointment of any committee of management is revoked to the extent that it applies to the land; and
 - (c) any regulations under section 13 of the **Crown Land (Reserves) Act 1978** are revoked to the extent that they apply to the land.

9 New reserve created

The land referred to in section 3(3) is deemed to be permanently reserved under the **Crown Land (Reserves) Act 1978** for public purposes (tourism promotion).

10 Extinguishment of rights

- (1) Without limiting section 8(3), on the revocation of an Order in Council by section 8 any lease over the lands shown hatched and cross-hatched on the plan in Schedule 2, existing between the Swan Hill Pioneer Settlement Authority and the Swan Hill City Council, is extinguished.

- (2) Any sub-lease or licence granted by the Swan Hill City Council in accordance with a lease referred to in subsection (1) is also extinguished.

11 Leasing, sub-leasing and licensing of reserved land

- (1) The Minister may lease any land reserved by section 9 to the Swan Hill City Council.
- (2) A lease under subsection (1)—
- (a) must be for a term of not less than 21 years nor more than 50 years; and
 - (b) may be at a rent determined by the Minister; and
 - (c) may provide for the payment of the whole or any part of the rent in advance; and
 - (d) may contain any other exceptions, reservations, covenants, terms and conditions that the Minister determines; and
 - (e) must not be for a purpose inconsistent with the purpose of the reservation; and
 - (f) must provide that, if for any reason the lease ceases to be in force, any improvements on the land which was leased (whether made before or after the commencement of the lease) and which are not removed by the Swan Hill City Council before the end of the period of 6 months after the date on which the lease ceases to have effect become the property of the Crown on the day after the end of that period of 6 months; and
 - (g) must permit the lessee to sub-lease, or grant licences over, any part of the leased land, but may specify restrictions and conditions on the exercise of those powers, including a requirement that a sub-lease or licence may only be granted with the Minister's consent.

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- (3) The Swan Hill City Council may, in accordance with a lease under this section, grant sub-leases or licences over any of the leased land and determine rents for those sub-leases and fees for those licences.
 - (4) This section is in addition to and does not limit the **Crown Land (Reserves) Act 1978**.

12 Application of Local Government Act 1989

- (1) The overdraft of the Swan Hill Pioneer Settlement Authority existing immediately before its abolition is deemed to be an overdraft complying with the **Local Government Act 1989**, even though that overdraft may not be secured in the manner required by that Act.
- (2) Section 186 of the **Local Government Act 1989** does not apply to a lease or contract to which, by virtue of this Act, the Swan Hill City Council is substituted as a party.
- (3) Section 190(3) and (4) of the **Local Government Act 1989** do not apply to a lease or sub-lease under section 11 of this Act.
- (4) Section 192 of the **Local Government Act 1989** does not authorise the Swan Hill City Council to use land leased to it under section 11, or to sub-lease that land, for a purpose inconsistent with—
 - (a) that lease; or
 - (b) the purpose for which the land is reserved.

13 Past action by Council

- (1) This section has effect despite anything to the contrary in the **Swan Hill Pioneer Settlement Act 1974**, the **Local Government Act 1989**, the **Land Act 1958** or the **Crown Land (Reserves) Act 1978** or any instrument under any of those Acts.

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- (2) If on or after 1 October 1992 but before the commencement of this section, the Swan Hill City Council, or a person or body acting on its behalf—
- (a) purported to treat an asset or liability of the Swan Hill Pioneer Settlement Authority as an asset or liability of the Council; or
 - (b) purported to do anything in relation to an asset or liability of the Authority that would have been effective if it were an asset or liability of the Council; or
 - (c) purported to include in an account, statement or report of the Council, as an asset or liability of the Council, an asset or liability of the Authority—

that action is deemed to be as valid and effective as it would have been if, when it occurred, that asset or liability were an asset or liability of the Council.

- (3) If on or after 1 October 1992 but before the commencement of this section, the Swan Hill City Council, or a person or body acting on its behalf—
- (a) purported to treat the manager of the business of the Swan Hill Pioneer Settlement, a consultant or adviser to the directors of the Swan Hill Pioneer Settlement Authority, or an officer or employee of that Authority as being appointed, employed or engaged by the Council; or
 - (b) on that basis, purported to give remuneration or other consideration to that person—

that action is deemed to be as valid and effective as it would have been if, when it occurred, the person had been appointed, employed or engaged by the Council.

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- (4) In respect of the period on or after 1 October 1992 and ending immediately before the commencement of this section, the Swan Hill Pioneer Settlement Authority and the Swan Hill City Council are deemed to have and always to have had authority to enter into the lease to which they were parties, which related to land at Horseshoe Bend and Pental Island, Swan Hill, and which was expressed to commence on 1 October 1992 and which was authorised for execution by the Council on 13 October 1992, and that lease is deemed to have had effect as if executed on its commencement date.
- (5) A sub-lease or licence purported to have been granted, or any other thing purported to have been done, on or after 1 October 1992 but before the commencement of this section and purporting to be in accordance with a lease referred to in subsection (4) is as valid and effective as it would have been if, when it occurred, and since then until the commencement of this section, the lease had continued in force.
- (6) Sections 186 and 190 of the **Local Government Act 1989** are deemed never to have applied to a lease referred to in subsection (4) or a sub-lease or licence referred to in subsection (5).
- (7) If on or after 1 October 1992 but before the commencement of this section the Swan Hill City Council purported to use land shown hatched or cross-hatched on the plan in Schedule 2 for the purpose of the promotion of tourism, that use is as valid and effective as if, when it occurred, the land were reserved for those purposes under the **Crown Land (Reserves) Act 1978** and were vested in the Council.

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- (8) If on or after 1 October 1992 but before the commencement of this section the Swan Hill City Council, or a person or body on its behalf, has purported to fix and collect charges for entering or using the land, or facilities on the land, covered by a lease referred to in subsection (4), that action is deemed to be as valid and effective as it would have been if, when it occurred, a local law complying with the **Local Government Act 1989** had been in force authorising those charges.
- (9) Subsection (7) does not vest land referred to in that subsection in the Swan Hill City Council.
- (10) This section does not limit the operation of sections 10 and 11.

14 Accounts and statements under the repealed Act

The Swan Hill City Council must prepare the accounts and statements that the Swan Hill Pioneer Settlement Authority would have been required to prepare under section 25 of the **Swan Hill Pioneer Settlement Act 1974** for the financial year ending 30 June 1994 if that Act had not been repealed, and that section continues to apply to the submission to the Minister and tabling before each House of Parliament of those accounts and statements.

15 Repeal of unproclaimed Acts concerning historical parks

The following Acts are **repealed**—

- (a) The **Coal Creek Historical Park Act 1975**;
- (b) The **Gippsland Folk Museum Act 1976**.

16 No compensation payable by Crown or Council

No compensation is payable by—

- (a) the Crown in respect of anything done under or arising out of section 8; or
- (b) the Crown or the Swan Hill City Council because of the extinguishment by section 10 of a lease, sub-lease or licence.

17 Supreme Court—limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court entertaining actions for compensation in circumstances where, under section 16, no compensation is payable.

SCHEDULES
SCHEDULE 1
Land in Respect of Which the Reservations are Revoked

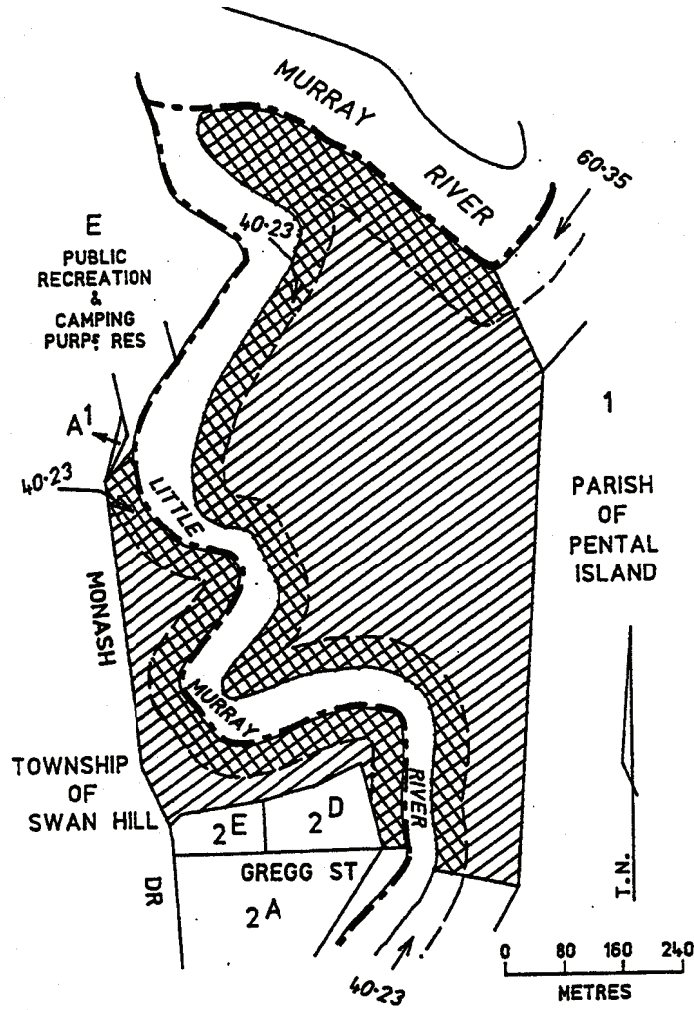
Section 3

Item No.	Situation and Area of Land	Instrument and Date of Reservation	Description by Reference to Government Gazette	Purpose of Reservation	Extent of Revocation
1.	Parish of Pental Island, County of Tatchera, 6 hectares more or less, being Crown allotment 18	Order in Council dated 29 May 1984	Government Gazette dated 6 June 1984, page 1804	Site for public recreation	The entire reserve
2.	The left bank of the Little Murray River (a branch of the Murray River), Township of Swan Hill	Order in Council dated 23 May 1881	Government Gazettes dated 11 February 1881, page 484 and 27 May 1881, page 1389	Site for public purposes	Land cross-hatched on plan in Schedule 2
3.	Township of Swan Hill, Parish of Castle Donnington, 1.2 hectares more or less	Order in Council dated 12 August 1958	Government Gazette dated 20 August 1958, page 2927	Site for public recreation and camping	The entire reserve
4.	Parish of Pental Island, County of Tatchera, 10 hectares more or less, being Crown allotment 1A	Order in Council dated 30 March 1978	Government Gazette dated 26 April 1978, page 1076	Site for public purposes (Pioneer Settlement)	The entire reserve
5.	The left bank of the Murray River and the right bank of the Little Murray River, Parish of Pental Island	Order in Council dated 23 January 1951	Government Gazettes dated 20 December 1950, page 6739 and 31 January 1951, page 847	Site for public purposes	Land cross-hatched on plan in Schedule 2

SCHEDULE 2

Section 3

PLAN OF NEW RESERVE



TOTAL AREA HATCHED AND CROSS HATCHED 35ha±

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 5 May 1994

Legislative Council: 19 May 1994

The long title for the Bill for this Act was "A Bill to transfer the management of the Swan Hill Pioneer Settlement to the Swan Hill City Council, and to repeal the **Swan Hill Pioneer Settlement Act 1974**, the **Coal Creek Historical Park Act 1975** and the **Gippsland Folk Museum Act 1976** and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 5 May 1994

Legislative Council: 19 May 1994

Absolute majorities:

Legislative Assembly: 19 May 1994

Legislative Council: 25 May 1994

The **Swan Hill Pioneer Settlement Authority (Repeal) Act 1994** was assented to on 7 June 1994 and came into operation as follows:

Sections 1, 2 and 3 on 7 June 1994: section 2(1); rest of Act on 30 June 1994: Government Gazette 30 June 1994 page 1803.

2. Table of Amendments

There are no amendments made to the **Swan Hill Pioneer Settlement Authority (Repeal) Act 1994** by Acts and subordinate instruments.

3. Explanatory Details

No entries at date of publication.