

Attachment 13.2.1



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Deed of Termination and Release

Mansfield Shire Council

ABN 74 566 834 923

and

JJ Richards & Sons Pty Ltd

ABN 40 000 805 425 / ACN 000 805 425

Interstate offices
Canberra Sydney

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Deed of Termination and Release

Dated

Parties

Name	Mansfield Shire Council
Address	33 Highett Street, Mansfield Victoria
Facsimile	03 5775 2677
Email	Rebecca.Kirley@mansfield.vic.gov.au
Contact	Rebecca Kirley
Short name	Council

Name	JJ Richards & Sons Ply Ltd ACN 000 805 425
Address	3 Grant Street, Cleveland Queensland
Facsimile	03 9706 5829
Email	simon.mackie@jjswaste.com.au
Contact	Simon Mackie
Short name	the Contractor

Background

- A. Council and the Contractor are parties to the Agreement.
- B. A significant downturn in the recyclables commodities market in 2018 caused the Contractor to incur increased costs associated with discharging its responsibilities under the Agreement.
- C. The parties agreed to vary the Agreement by Deed of Variation to compensate the Contractor for its increased costs. The Deed of Variation is set to expire on 30 June 2020.
- D. The Contractor has communicated its desire not to continue with the remainder of the Agreement following the expiry of the Deed of Variation.
- E. Council and the Contractor have agreed to terminate the Agreement on the terms of this Deed.



This Deed Witnesses

1. Definitions

In this Deed:

Agreement means Contract CM1415.019 between Mansfield Shire Council and JJ Richards & Sons Pty Ltd.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne.

Claim means any action, claim, demand or proceeding however it arises and whether it is present or future, fixed or unascertained, actual or contingent, and includes an action, claim, demand or proceeding:

- (a) based in contract or tort, or under statute;
- (b) arising under an indemnity;
- (c) based on personal injury or death; or
- (d) arising from the termination (or attempted termination) of the Agreement.

Effective Time means 12.01am Melbourne time on 1 August 2020.

2. Termination

From the Effective Time, the Agreement terminates and has no further effect, save for the clauses specified in clause 4.3 of the Agreement which will survive termination.

3. Release

3.1 Release

From the Effective Time, each of Council and the Contractor releases and discharges the other from:

3.1.1 all obligations and liabilities under the Agreement arising or to be performed after the Effective Time; and

3.1.2 all Claims in connection with the Agreement arising after the Effective Time,

other those obligations and liabilities, if any, which are identified in the Agreement as surviving termination.

3.2 Obligations and liabilities arising before the Effective Time

Nothing in this Deed releases Council or the Contractor from:

3.2.1 any obligation or liability under the Agreement arising before the Effective Time; or

3.2.2 any Claim in connection with the Agreement arising before the Effective Time.

4. Confidentiality

4.1 Confidential Information

The terms of this deed are strictly confidential and comprise confidential information of the parties (**Confidential Information**).

4.2 Duty not to disclose or misuse Confidential Information

Each party may disclose Confidential Information only:

- 4.2.1 for the purposes of performing its obligations under this Deed;
- 4.2.2 as required by law; or
- 4.2.3 as permitted or required in writing by the other party.

4.3 Preservation of Confidential Information

Each party must take whatever measures are reasonably necessary to prevent the disclosure or misuse of Confidential Information, including:

- 4.3.1 complying with all security measures established to safeguard Confidential Information from unauthorised access or use; and
- 4.3.2 keeping Confidential Information under the party's control.

5. Notices

5.1 Delivery of notice

5.1.1 A notice or other communication given to a party under this Deed must be in writing and in English, and must be delivered to the party by:

- (a) delivering it personally to the party;
- (b) leaving it at the party's address set out in the notice details;
- (c) posting it by prepaid post to the party at the party's address set out in the notice details; or
- (d) facsimile to the party's facsimile number set out in the notice details; or
- (e) email to the party's email address set out in the notice details.

5.1.2 If the person to be served is a company, the notice or other communication may be served at the company's registered office.

5.2 Notice details

5.2.1 The notice details of each party are set out on page 1 of this Deed under the heading 'Parties' (or as notified by a party to the other parties according to this clause).

5.2.2 Any party may change its notice details by giving notice to the other parties.



5.3 Time of service

- 5.3.1 A notice or other communication is taken to be delivered:
- (a) if delivered personally or left at the person's address, upon delivery;
 - (b) if posted within Australia to an Australian address:
 - (i) using express post, 2 Business Days after posting; and
 - (ii) using any other prepaid post, 6 Business Days after posting;
 - (c) if posted to an address in a different country, 10 Business Days after posting; and
 - (d) if delivered by facsimile, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the recipient's facsimile; and
 - (e) if delivered by email, at the time the email left the sender's email system, unless the sender receives notification that the email was not received by the recipient.
- 5.3.2 Despite clause 5.3.1, a notice or other communication which is received after 5.00pm or on a non-business day (each in the place of receipt), is taken to be delivered at 9.00am on the next business day in the place of receipt.

6. Governing law

This Deed is governed by the law applying in Victoria and the parties submit to the exclusive jurisdiction of the courts of Victoria.

7. Interpretation

7.1 Words and headings

In this Deed, unless expressed to the contrary:

- 7.1.1 words denoting the singular include the plural and vice versa;
- 7.1.2 the word 'includes' in any form is not a word of limitation;
- 7.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 7.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
- 7.1.5 no rule of construction applies to the disadvantage of the party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

7.2 Specific references

In this Deed, unless expressed to the contrary, a reference to:

- 7.2.1 a gender includes all other genders;
- 7.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 7.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 7.2.4 writing includes writing in digital form;
- 7.2.5 'this Deed' is to this Deed as amended from time to time;
- 7.2.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 7.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- 7.2.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 7.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 7.2.10 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 7.2.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

8. General

8.1 Variation

This Deed may only be varied by a document executed by the parties.

8.2 Counterparts

This Deed may be executed in counterparts, all of which taken together constitute one document.

8.3 Liability

If a party consists of 2 or more people or entities, an obligation of that party binds each of them jointly and severally.

8.4 Severability

- 8.4.1 Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.



8.4.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

8.5 Waiver

The failure of a party at any time to insist on performance of any provision of this Deed is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this Deed.

8.6 Further assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.

8.7 No merger

The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion of the transactions contemplated by this Deed.

8.8 Business Day

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.



Signing Page

Executed by the parties as a deed


The Common Seal of the Mansfield Shire Council)
was affixed in the presence of -)

.....
Councillor


.....
Chief Executive Officer

Executed by JJ Richards & Sons Pty Ltd ACN 000)
805 425 in accordance with s 127(1) of the)
Corporations Act 2001:


.....
Signature of Director


.....
Print full name


.....
Signature of Director/Company Secretary


.....
Print full name