
Deed of Variation

The Minister for Education

Mansfield Secondary College School Council

Mansfield Shire Council

THIS DEED OF VARIATION is made on the date the Minister signs this Deed

PARTIES

The Minister for Education of 2 Treasury Place, East Melbourne, Victoria, 3002 for and on behalf of the State of Victoria and the Department of Education and Training (**Minister**)

Mansfield Secondary College Council of 15 View Street Mansfield, Victoria, 3722 (**School Council**)

Mansfield Shire Council (ABN 74 566 834 923) of 33 Highett Street, Mansfield, Victoria, 3724 (**Shire Council**)

BACKGROUND

- A** The Parties entered into the Agreement on 10 January 2014.
- B** The Parties wish to effect a variation to the Agreement on the terms of this Deed.
- C** The Parties acknowledge that this Deed constitutes a variation pursuant to Clause 14.1 of the Agreement.

1 Agreed Definitions

1.1 Definitions

In this Deed:

- (i) **Agreement** means the Joint Use Agreement dated 10 January 2014 made between (1) The Minister (2) the School Council and (3) the Shire Council, a copy of which is annexed to this Deed as **Annexure A**;
- (ii) **Deed** means this document, including any schedule or annexure to it;
- (iii) **Party/Parties** means a party or the parties of this Deed;
- (iv) **Variation(s)** means the variations listed in Schedules 1 to 3 of this Deed; and
- (v) **Variation Date** means the date the Minister signs this Deed.

1.2 Previous definitions

Unless the contrary intention appears, a word or phrase defined in the Agreement has the same meaning in this Deed.

2 Variation of the Agreement

With effect from the Variation Date, the Agreement is varied by adopting the Variations.

3 Variations not to affect accrued rights and obligations

- 3.1 Subject only to the Variations, the Agreement shall remain in full force and effect and shall be read and construed and be enforceable as if the terms of this Deed were incorporated therein and the Parties shall in all respects perform and observe the covenants and conditions of the Agreement as varied by this Deed.
- 3.2 In all other respects the terms, conditions and covenants of the Agreement are hereby confirmed.

4 General and interpretation

4.1 Entire understanding

Despite this Deed, Clause 18 of the Agreement relating to “Entire Agreement” will continue to apply.

4.2 Deed Supplementary

This Deed is supplementary to the Agreement and will be interpreted having regard to the provisions of the Agreement.

4.3 Costs

Each Party must pay its own costs and expenses connected with the negotiation, preparation and execution of this Deed.

4.4 Counterparts

- (i) This Deed may be executed in any number of counterparts all of which taken together constitute one instrument.
- (ii) The parties agree that execution by counterpart effected by electronic transmission must meet the requirements of the *Electronic Transactions (Victoria) Act 2000*.

4.5 Governing law and jurisdiction

The law of Victoria governs this Deed. The Parties submit to the jurisdiction of the courts of Victoria to the exclusion of all other jurisdictions.

4.6 Severance

In this Deed:

- (i) if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and
- (ii) if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Deed.

4.7 Legislation

In this Deed, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements or any of them.

EXECUTION

Executed as a Deed

Signed by **[insert name]**, Manager, Property Unit
this day of 2020 for
and on behalf of **James Merlino, MP** in his capacity as
Minister for Education, in the presence of:

.....
Signature

.....
Signature of witness

.....
Name of witness in full (print)

The common seal of **Mansfield Secondary College School Council** was affixed by order of the council and in the presence of the President of the School Council and its authorised appointee:

.....
Signature of President of School Council

.....
Signature of authorised appointee

.....
Name of President of School Council in full (print)

.....
Name of authorised appointee in full (print)

The common seal of **Mansfield Shire Council** was affixed in the presence of:

.....
Signature of Councillor

.....
Signature of Chief Executive Officer

.....
Name of Councillor in full (print)

.....
Name of Chief Executive Officer in full (print)

Schedule 1 - Variations to Agreement's Clauses

1. Definitions to be inserted

1.1 *The following definitions are to be inserted at SECTION A: DEFINITIONS AND INTERPRETATION:*

“**Initial Term**” means the first term of the Licence, as set out in **Part D1** of the Schedule.

2. Definitions to be deleted and replaced

2.1 *Delete and replace the following definitions as follows:*

“**Department**” means the Department of Education and Training of the State of Victoria.

3. Clauses to be amended

3.1 *In Clause 33.5, delete “Victorian Chapter of the Institute of Arbitrators and Mediators, Australia” and replace with “Resolution Institute”.*

4. Clauses to be deleted and replaced

4.1 *Delete and replace clause 50.10 as follows:*

50.10 The Further Term of the Licence is for a period up to the period set out in **Part D2** of the Schedule.

5. Clauses to be deleted and inserted

5.1 *Delete and replace clause 51 as follows:*

51 LICENCE FEE RENEWAL PROCESS

51.1 The Community Partner must notify the School Council in writing at least 6 months but not more than 12 months before the expiry of the Initial Term whether it wishes to renew the Licence for a period up to the Further Term.

51.2 If the Community Partner notifies that the School Council that it wishes to renew the Licence, the School Council must meet with the Community Partner within 21 days of receipt of the notice to discuss whether any adjustments are required to the arrangements set out in Sections H, I, J and K of this Agreement to reflect the passage of time or changes to Department policy or Laws. The School Council must ensure that any agreed adjustments are finalised in writing between the School Council and the Community Partner (**Written Adjustments**).

51.3 Once the School Council has prepared any Written Adjustments, the School Council must consult with the Minister regarding the request for renewal of the Licence.

51.4 After the School Council has consulted with the Minister, the School Council must as soon as practicable notify the Community Partner in writing either that:

- (a) the Minister and the School Council do not agree to renew the Licence, in which case the Licence Term will terminate at the end of the Initial Term; or
- (b) the Minister and the School Council agree to a renewal of the Licence for an agreed period up to the Further Term, in which case the Licence is deemed to be renewed from the expiry of the Initial Term for the agreed period on the terms and conditions of this Agreement as varied by the Written Adjustments, except for clause 50.10 and this clause 51.

Schedule 2 - Variations to Agreement's Schedule

1. Items of Schedule to be Amended

A THE SCHOOL AND THE FACILITY		
A1	The School – Clause 1	Mansfield Secondary College
A2	The Facility – Clause 1	<p>Multi-purpose sporting complex as shown on Plan B including:</p> <ul style="list-style-type: none"> • irrigation system, AFL goal post, soccer goals and soccer nets (shown on Plan B at D) • Soccer field (shown on Plan B at D) • Synthetic Cricket Pitch (shown on Plan B at H) • Toilet block (shown on Plan B at F) • bay shed, incorporating storage and changing facilities and water tanks (shown on Plan B at E) • 2 car parks, access driveway and access pathways including pedestrian solar security lighting (shown on Plan B at A, C, G and I) • Surrounding Area (within the Facility boundary outlined by a red broken line and coloured light green on Plan B) • Carpark and Bus Turnaround • Light Towers (8-10)
A3	Works – Clause 1	<p>Upgrade and develop playing field for multi-use sports, including:</p> <ul style="list-style-type: none"> • the installation of an irrigation system • construction of a permanent soccer field including: <ul style="list-style-type: none"> ○ contour levelling; ○ installing permitter and radial drainage; ○ installing an irrigation system; ○ top dress and sod installed grass playing surface; ○ line marking; and ○ installation of goals • refurbishment of existing toilet block and new extension to include a universal access toilet • Construction of a 5 bay shed incorporating storage and changing facilities and installation of water tanks • Construction of a gravel car park with access driveway via Bellview Court and construction of access paths including the installation of pedestrian solar security lighting • upgrade and extension of a car park and access driveway via View Street • construction of Carpark and Bus Turnaround • installation of Light Towers (8-10)

1.2 Delete and replace Item D "LICENCES" as follows:

D LICENCES		
D1	Licence Term – Clauses 1 and 50.9	30 years
D2	Further Term – Clause 50.10	15 years
D3	Licence Fee – Clauses 1 and 50.7	\$1.00 per annum if demanded

1.3 Delete and replace Item E “USE OF THE FACILITY” as follows:

E USE OF THE FACILITY		
E1	School Hours – Clauses 1 and 55	Monday to Friday 8.00am to 3.45pm
E2	Community Partner’s Hours – Clauses 1 and 56	Monday to Friday 7.00am – 8am and 3.45pm to 10.00pm Saturday and Sunday 7.00am to 10.00pm
E3	Facility Operating Hours – Clauses 1 and 56	Monday to Friday, Saturday and Sunday: 7.00am to 10.00pm unless the Planning Scheme or Planning Permit authorises other hours
E4	Community Hiring Party – Clauses 1 and 58	Community Partner
E5	Permitted Use – Clauses 1 and 22.2	The playing, performing or conducting of, recreation and sporting activities that normally would be played, performed or conducted in Victoria at a Facility which by law is capable of being played, performed or conducted at the Facility.

1.4 Delete and replace Item G “ADDRESSES FOR NOTICES” as follows:

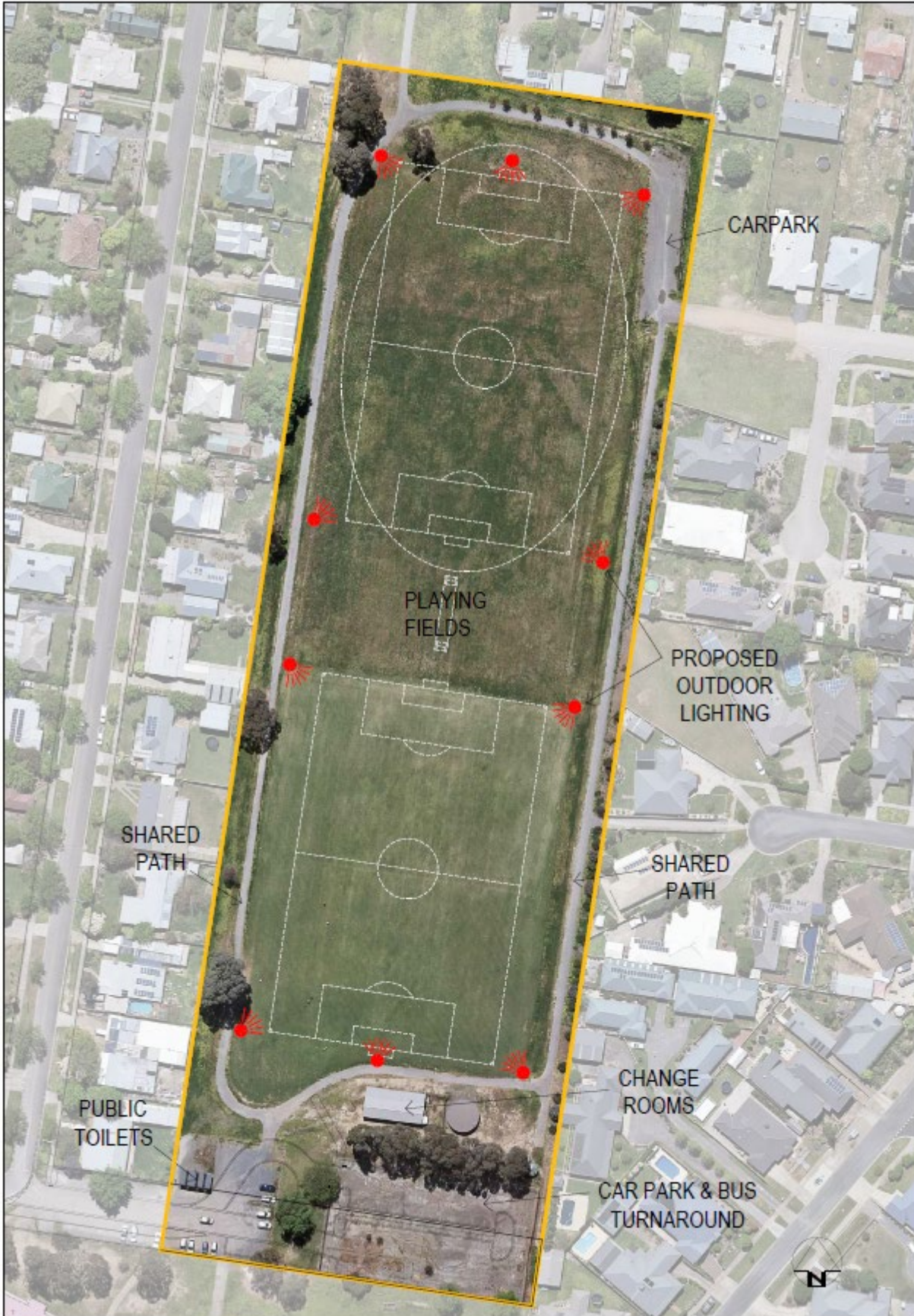
G ADDRESSES FOR NOTICES		
Minister	Addressee	<i>Chief Executive Officer Victorian School Building Authority Department of Education and Training</i>
	Street Address	<i>2 Treasury Place East Melbourne Victoria 3002</i>
	Postal Address	<i>GPO Box 4367 Melbourne Victoria 3001</i>
School Council	Addressee	<i>The Executive Officer Mansfield Secondary College Council</i>
	Street Address	<i>15 View Street Mansfield Victoria 3722</i>
	Postal Address	<i>P O Box 203 Mansfield 3724</i>
Community Partner	Addressee	<i>Chief Executive Officer Mansfield Shire Council</i>
	Street Address	<i>33 Highett Street Mansfield Victoria 3722</i>
	Postal Address	<i>PB 1000 Mansfield Victoria 3722</i>

Schedule 3 Variations to Agreement's Annexures

Delete and replace Annexure B – Plan B:

Annexure B – Plan B

Plan of the Facility



Annexure A – Agreement

[to insert]

DRAFT