



MUNICIPAL ENVIRONMENTAL HEALTH FUNCTIONS WITHIN THE MT BULLER AND MT STIRLING ALPINE RESORTS

THIS AGREEMENT is entered into between:

MANSFIELD SHIRE COUNCIL of Highett St, Mansfield, Victoria

And

MT BULLER AND MT STIRLING ALPINE RESORT MANAGEMENT BOARD
of 10 Summit Rd, Mt Buller, Victoria

FROM: July 2021

RECITALS:

- Previous Municipal Environmental Health Services agreements between Council and the Board have existed and notwithstanding the earlier agreement having a nominal expiry date of 31 October 2020, the services referred to below have continued to be provided by Council.
- The Governor of Victoria under section 5(2) of the Health Act 1958 (Health Act) has proclaimed an extension of all the provisions of the Health Act to places situated within an alpine resort within the meaning of the *Alpine Resorts (Management) Act 1997* being land deemed not to be part of a municipal district by section 24 of the *Alpine Resorts Act 1983* and fixed the commencement date for the proclamation as 30 April 1998.
- The Governor of Victoria under section 7(1) of the *Food Act 1984* (Food Act) has proclaimed an extension of all the provisions of the Food Act to places situated within an alpine resort within the meaning of the *Alpine Resorts (Management) Act 1997* being land deemed not to be part of a municipal district by section 24 of the *Alpine Resorts Act 1983* and fixed the commencement date for the proclamation as 30 April 1998.
- By updated instrument of delegation dated 26 February 2008 the Secretary Department of Health made an order which delegates the powers, duties and authorities vested in the Secretary under the Food Act and the Health Act to the municipal council and their authorised officers in respect of any land situated in an alpine resort.
- The *Public Health and Wellbeing Act 2008* (PHWA) was gazetted 12 December 2008 and provided that all persons, things and circumstances authorised, appointed or created by or under the Health Act 1958 or existing or continuing under the Health Act immediately before the commencement of the PHWA continue under and subject to the PHWA to have the same status, operation and effect as they respectively would have had if that Health Act had not been so repealed.

- The Food Act Instrument of Delegation was updated by the Secretary on 10 June 2010.
- On 30 June 2010, a delegation was made by the Secretary under section 19 of the PHWA conferring powers and functions of the Secretary under the Food Act and the PHWA to Mansfield Shire Council to exercise in relation to the Mt Buller and Mt Stirling alpine resorts
- Separately, on 5 July 1999, the Minister gazetted that the Mt Buller and Mt Stirling Resort Management Board was responsible for administering and enforcing Parts 3, 4, 5, 7 and 8 of the Building Act 1993 (Vic) and the building regulations.
- And, tenanted sites at Mt Buller and Mt Stirling are under a Crown Land Lease with the Board as the Landlord. Tenants are required to obtain, maintain and comply with registration and approvals from Authorities and any failure to do so is a breach that may trigger lease termination. Tenants are also required to promptly provide the Landlord with copies of written communication from an Authority requiring action. Leases also require tenants:
 - To notify the Landlord and all relevant Authorities of any notifiable infectious illness
 - Not to do anything that may cause nuisance, damage, disturbance or danger to building occupiers, owners of any other property or the Landlord.
- The parties have agreed to enter into this agreement to:
 - Detail the scope of Council's delegated statutory responsibilities under the PHWA and the Food Act; and
 - Acknowledge the direct links between each party's respective municipal statutory responsibilities within the resorts and the need to share information to facilitate efficient and effective service delivery and maximise protection of public health and safety and legal compliance.

THE PARTIES AGREE THAT:

1. DEFINITIONS

In this Agreement, unless inconsistent with the context, the following terms have the meanings indicated:

- "the Alpine Resort" means the area declared to be the Mt Buller and Mt Stirling Alpine Resort under the *Alpine Resorts (Management) Act 1997*;
- "the Council" means Mansfield Shire Council;
- "the Board" means the Mt Buller and Mt Stirling Alpine Resort Management Board established under Section 34(4) of the *Alpine Resorts (Management) Act 1997*;
- "the Food Act" means the *Food Act 1984*;
- "the PHWA" means the *Public Health and Wellbeing Act 2008*;
- "the Services" means the powers, duties and functions conferred on the Council as defined in clause 4 of this Agreement.

2. INTERPRETATION

2.1. General

In this agreement, unless inconsistent with the context:

- headings and under-linings are for the convenience only and do not affect the interpretation of this Agreement,
- words importing the singular include the plural and vice versa,
- a reference to a gender includes a reference to each other gender,

- a reference to a person includes a reference to a firm, corporation or other corporate body,
- a reference to any Act, regulation, proclamation, planning scheme or local law includes all Acts, regulations, proclamations, planning schemes or local laws (to the extent that they are applicable) amending, consolidating or replacing same and a reference to an Act includes all regulations, proclamations, planning schemes or local laws (to the extent they are applicable) made under the Act; and
- a reference to a party in a document includes that party, its successors and permitted assigns.

2.2. No Waiver

No time or other indulgence granted by a party to the other party or any other variation of the terms and conditions of this Agreement or any other judgement or order obtained by a party against another party will in any way amount to a waiver of any right or remedy of a party in relation to the terms of this Agreement.

2.3. Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void, then it must be severed and the other provisions of this Agreement will remain operative.

2.4. Whole Understanding

This Agreement constitutes the whole understanding between the parties and embodies all terms and conditions of the transaction.

2.5. Governing Law

The law of the State of Victoria governs this Agreement and any legal proceedings or arbitration under this Agreement.

3. TERM

The term of this Agreement is three years from 1 November 2020. The term may be extended in writing by agreement between the parties.

4. SERVICES

The Services include all things necessary to be done in performing or exercising all powers, duties and functions conferred or imposed on the Council under the Food Act and the PHWA in relation to the Alpine Resort.

The Services include, but are not limited to, the operational activities listed in Appendix 1.

The Services, powers, functions and duties conferred or imposed on Council shall be exercised consistently within the Alpine Resort and Mansfield Shire Council.

Fees, penalties and other monies paid or payable to the Council and all related policies of the Council, insofar as they relate to this Agreement, shall be consistent between the Mansfield Shire Council and the Alpine Resort. This shall include, but not be restricted to, registration fees payable by proprietors of businesses.

5. COLLABORATION

The parties agree that nothing in this Agreement is intended to:

- fetter the manner in which the Council performs its statutory responsibilities in relation to the Services; or
- permit the Board to direct the Council to perform its statutory responsibilities in relation to the Services in a particular manner.

The parties agree to work cooperatively to facilitate the efficient and effective discharge of their respective statutory responsibilities and protect public health and safety and legal compliance.

Cooperation includes, but is not limited to, the sharing of information relating to municipal statutory responsibilities in a manner that complies with:

- the *Privacy and Data Protection Act 2014* and the Information Privacy Principles;
- sections 43(3), 54 and 54D of the Food Act;
- section 57(4) of the PHWA;
- section 36 of the *Tobacco Act 1987*; and
- the privacy policies of each party.

For the avoidance of doubt, any information that would normally be shared by the Environmental Health Officer function with other functions of Council including, but not limited to, the Municipal Building Surveyor and local laws compliance, will be shared in the same manner with the Board to the extent that that function sits with the Board and not Council.

Council agrees to consult with the Board prior to any significant changes to organisational policies and/or operational processes, systems or actions that may adversely impact Services in the resorts. The Board agrees to work collaboratively with the Council to implement and communicate changes.

The Board and the Council may agree that Council may for an agreed fee or charge perform related or any other municipal services additional to the Services within the Alpine Resort.

6. REMUNERATION

The parties acknowledge that Council has the statutory power to set fees for registration and renewal applications to cover the costs associated with routine monitoring and enforcing the PHWA and the Food Act at registered premises.

If Council is prevented by government policy or otherwise impeded or constrained from recovering service costs through fees the Board agrees to work collaboratively with Council to fairly fund the Service.

The Board shall be responsible for providing appropriate vehicle access pass, commercial services licence and ski field access (or payment for same), to enable access to premises, necessary for performing the Service.

7. GENERAL

The Council is responsible for all wages, salary, long service and holiday leave entitlements, WorkCover premium payments, other insurance premiums, superannuation, contributions, taxation instalments and all other payments, rights and entitlements due to staff of the Council performing the Service.

This Agreement is not to be construed as appointing the Council as an agent of the Board in any capacity and the Council shall not purport to be such an agent.

Any dispute or grievance arising between the parties under this Agreement which cannot be resolved by the parties must be submitted by the parties to an arbitrator appointed by the Minister responsible for the Board in conjunction with the Minister administering the *Local Government Act 1989* and *Local Government Act 2020*. The parties must abide by the decision of the arbitrator.

EXECUTED by the parties on the later date set out below as the date for the commencement of this replacement Agreement.

Signed by Mark Bennetts a duly authorised officer of the Mount Buller Mount Stirling Resort Management Board

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in the presence of:

Dated: ____/____/____

.....
Witness Signature

.....
Full name

.....
Position held

Signed by Kaylene Conrick a duly authorised officer of the Mansfield Shire Council of:

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in the presence of:

Dated: ____/____/____

.....
Witness Signature

.....
Full name

.....
Position held

Appendix 1 – Service activities

This Appendix is not intended to limit in any way the Services as defined in clause 4. This Appendix establishes minimum operational practices to support service delivery and collaboration.

1. Operational Service delivery

Food Premises:

- Registration of food Premises in accordance with Section 35 & Section 35A of the Food Act.
- Inspection of food premises to ensure compliance.
- Follow-up and enforcement as required to ensure compliance.

Prescribed Accommodation:

- Registration of prescribed accommodation under section 67 of the PHWA and in accordance with Division 4 of Part 6 of the PHWA.
- Inspection of prescribed accommodation premises to ensure compliance.
- Follow-up and enforcement as required to ensure compliance.

Hairdressers, beauty parlours, body piercing and like establishments and aquatic facilities:

- Registration under section 69 or section 69A (as applicable) of the businesses referred to in section 68 of the PHWA in accordance with Division 4 of Part 6 of the PHWA.
- Inspection of the businesses referred to in section 68 of the PHWA to ensure compliance.
- Follow-up and enforcement as required to ensure compliance.

Nuisance complaint investigations:

- Investigation of complaints of nuisance in accordance with the provisions in Division 1 of Part 6 of the PHWA.
- Enforcement action and follow up action as is reasonably required.

Infectious diseases:

- Investigate infectious disease notifications from tenants, the Board or the Department of Health and Human Services.
- Report on the outcome of investigations to both the Department of Health and Human Services and the Board.
- Undertake follow up actions as is required or recommended by the Department of Health and Human Services.

Other Environmental Health complaint investigations:

- Investigate complaints in accordance with the PHWA and Food Act and undertake enforcement as required.
- Test purchases, educating and enforcing where applicable the *Tobacco Act 1987*.
- Provision of information and educational material as deemed appropriate in the discharge of statutory and broad public health responsibilities
- Other environmental health activities as deemed appropriate in the discharge of delegated statutory responsibilities.

2. Collaboration

The Board and the Council will meet at least annually to discuss compliance, emerging issues and risks and the upcoming inspection schedule. The Council and the Board will aim to undertake joint inspections of sites where this is deemed appropriate and mutually beneficial.