



Mansfield Shire

Licence

Council:

Mansfield Shire Council (“Council”)

Licensee:

Cleanaway Pty Ltd (“the Licensee”)

Licensed Area:

Part 141 Lakins Road, Mansfield – Mansfield Shire Depot

Mansfield Shire Council License Agreement - Cleanaway

THIS LICENCE is made on the 1 July 2024

BETWEEN:

Mansfield Shire Council described in Item 1 of the Schedule (Council)

Cleanaway Pty Ltd (Licensee)

RECITALS:

- A. The Council is the Managing Body of the Licenced Area.
- B. The Licensee has requested the Council to permit the Licensee to have the use and occupation of the Licenced Area for the Permitted Use for the Term.
- C. The Council has agreed to provide the Licensee with access to the Licenced Area for its use and occupation on the terms and conditions of this Licence.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

7.1 Definitions

In this Licence:

Additional Provisions means the clauses (if any) specified in Item 15.

Annexure means an annexure to this Licence.

Commencement Date means the commencement date listed in Item 5 of the Schedule.

Council's Installations means all those fittings, fixtures and chattels contained in the Licenced Area at the Commencement Date.

Expiry Date means the date listed in Item 6 of the Schedule.

Further Term means the Further Term listed in Item 11 of the Schedule.

GST means GST within the meaning of the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (as amended).

Licence Fee means the licence fee specified in Item 8 of the Schedule. **Licenced Area** means the licenced area described in Item 3 of the Schedule. **Licensee's Property** means the Licensee's fixtures, fittings, plant and equipment, goods, and personal property which the Licensee brings onto the Licenced Area during the Term or any Further Term.

Maintenance Schedule means the maintenance schedule attached to this Licence as Annexure B which contains the details of the Licensee's maintenance obligations under the Licence.

Permitted Use means the use stated in Item 10 of the Schedule.

Term means the term specified in Item 7 of the Schedule.

2. GRANT OF LICENCE

In consideration of the payment of the Licence Fee, the Council will permit the Licensee to use and occupy the Licenced Area and any improvements on the Licenced Area from the Commencement Date in common with the Council and persons authorised by the Council for the Term and if applicable any Further Term.

3. LICENCE FEE

The Licensee must pay the Licence Fee to the Council in the manner specified in Item 8 of the Schedule.

The Licence Fee shall be increased at the intervals and in the manner specified in Item 8 of the Schedule.

The Licensee must pay to the Council the increased Licence Fee at the intervals and in the manner specified in item 8 of the Schedule.

4. PAYMENT OF RATES, TAXES AND SERVICES

Not applicable

5. LICENSEE'S ACKNOWLEDGEMENTS

The Licensee acknowledges and agrees with the Council that:

- a) it inspected the Licenced Area prior to the Commencement Date;
- b) the Licensee is not entitled to exclusive occupation of all of the Licenced Area;
- c) the Council may use, or permit other persons authorised by the Council to use or access the designated parts of the Licenced Area;
- d) this Licence does not create any estate or interest in the Licenced Area, other than a contractual right;
- e) this Licence does not constitute a lease at law and the Licensee will not claim before a court or tribunal that this Licence constitutes a lease at law; and
- f) in the event that a court or tribunal determines that this Licence is a lease at law, the Council may, at its option, terminate this Licence by written notice to the Licensee with immediate effect.

On and from the Commencement Date, the Licensee accepts the condition of the Licenced Area, Council's Installations, and any improvements on the Licenced Area, and shall not be entitled to make any claim for loss or damage by reason of the condition of the Licenced Area, Council's Installations, or any improvements on the Licenced Area.

6. USE OF LICENCED AREA

The Licensee must only use the Licenced Area for the Permitted Use. The Licensee must not use the Licenced Area for any other purpose.

The Council does not warrant that the Licenced Area is suitable for the Permitted Use and the Licensee acknowledges it has made its own enquiries and satisfied itself that it can use the

Mansfield Shire Council License Agreement - Cleanaway

Licensed Area for the Permitted Use.

The Licensee must comply with all laws and any requirements of any authority in connection with the Licensed Area and the Licensee's use and occupation of the Licensed Area.

The Licensee must not do anything in connection with the Licensed Area which may cause a nuisance or interfere with any other person.

The Licensee is responsible for and must maintain at all times all licences and permits required for the Licensee's Permitted Use of the Licensed Area and obtain the Council's consent before varying any licence or permit or applying for any new licence or permit in respect of the Licensed Area.

The Licensee must keep the Licensed Area secure at all times when the Licensed Area is not being used by the Licensee.

7. RELEASE AND INDEMNITY

7.1. Acceptance of risk

The Licensee uses and occupies the Licensed Area entirely at the Licensee's own risk.

7.2. Release of Council

The Licensee releases the Council from all costs, claims, liability, loss, or damage incurred or suffered by the Licensee directly or indirectly in connection with the Licensed Area and the Licensee's use and occupation of the Licensed Area.

7.3. Indemnity

The Licensee agrees to indemnify and to keep indemnified the Council, its employees, and agents, and each of them, from and against all actions, costs, liability, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them, in connection with the Licensee's use of the Licensed Area or impacted areas.

Licensee indemnity shall be reduced proportionally to the extent that any act or omission of the Council, its employees, or agents, contributed to the loss or liability.

8. INSURANCE

The Licensee must:

- a) take out and keep current public liability insurance cover in relation to the Licensed Area in the name of the Licensee and noting the Council's interest for the amount of \$20 million (concerning 1 single event) or such other sum as reasonably required by the Council which is specified in Item 14 of the Schedule
- b) produce satisfactory evidence to the Council on or before the Commencement Date that the insurance referred to in clause 8(a) has been effected
- c) ensure that the insurance policies effected by the Licensee contain a condition that the insurer will notify the Council at least 14 days before the policies will lapse.
- d) pay all insurance premiums at least 14 days before the due date for payment and produce to the Council copies of the certificate of currency on or before each anniversary of the Commencement Date: and

Mansfield Shire Council License Agreement - Cleanaway

- e) not do anything which may make any insurance effected by the Licensee or the Council invalid or which may increase the insurance premiums. In the event that the insurance premiums increase, the Licensee must pay that increase.

The Council will take out and keep current:

- a) Building insurance cover for all improvements on the Licensed Area; and insurance for the Council's Installations for their full replacement value.

8.1. Property Insurance

- a) The Licensee may choose to maintain Property Insurance, during the License Term, for contents, equipment, materials, purchased or supplied by the Licensee.
- b) In the event of insured damage requiring repairs or replacement, Council's Property Insurance Policy covers cleaning of the building structure, walls, fixed cupboards, bench tops and floor coverings. Council's policy does not extend to indemnify the Licensee.

Contents, equipment, materials purchased or supplied by the Licensee and not forming a fixture or fitting of the Licensed Area, remain the property of the Licensee and are not insured by the Council. This includes equipment such as refrigerators, computers, and furniture, etc.

Council will not insure personal belongings, money and private property brought onto the premises.

9. SIGNAGE

- a) The Licensee must obtain the Council's prior written consent which consent may be withheld by the Council in its absolute discretion before displaying or affixing any signs, advertisements, or notices to any part of the Licensed Area where such signs, advertisements or notices are visible from outside the Licensed Area.
- b) The Licensee must not display, and the Council reserves the right to remove any signs, advertisements or notices placed on or attached to any part of the Licensed Area which are deemed offensive or contrary to Council policies applying during the Term.

10. HEAVY EQUIPMENT AND INFLAMMABLE SUBSTANCES

The Licensee must obtain the Council's prior written consent before bringing onto the Licensed Area any heavy plant or equipment or inflammable substances, except to the extent to which it is consistent with the Licensee's use and occupation of the Licensed Area for the Permitted Use.

- ▶ per week, typically being Mondays and Thursdays,
- ▶ must book the Oval using a Council booking form or online booking system, and
- ▶ when not used by the Licensee, Council may make bookings of the oval with other community groups.

Licensee priority use is defined as, Council will inform a Licensee representative by email of a community booking at least 24 hours before Council confirms the community booking. This gives the Licensee the opportunity to object to a community booking if it clashes with permitted priority Licensee use.

The cost of this access is included in the Licensee's annual usage fee.

Mansfield Shire Council License Agreement - Cleanaway

Any Licensee use of the oval in addition to that allowed for in the pre- season winter training period will be charged at the community use rates specified as per Mansfield Shire Council's current Fees & Charges Schedule.

The cost of this access is included in the Licensee's annual usage fee.

11. RELATIONSHIPS WITH OTHER USERS OF THE PREMISES

Council may make the premises available for use by other parties at times other than those specified by the Licensee in the seasonal/annual facility booking.

The Licensee must leave the premises in a clean and tidy condition after each use.

12. FEES

- a) The Licensee must pay the Licence Fee to the Council in the manner specified in Item 8 of the Schedule
- b) The Licence Fee shall be increased at the intervals and in the manner specified in Item 8 of the Schedule
- c) The Licensee must pay to Council the Increased Fee at the intervals and in the manner specified in Item 8 of the Schedule.

13. REPAIRS, MAINTENANCE AND DAMAGE

13.1. Repairs and Maintenance

The Licensee must at the Licensee's cost keep and maintain in good condition and repair (fair wear and tear excepted):

- a) The Licensed Area including the interior and exterior of all improvements on the Licensed Area the Council's Installations;
- b) Any gardens and grounds in the Licensed Area and keep them free from weeds and well-watered.

13.2. Removal of Rubbish and Waste

The Licensee must pay the costs for the removal of the Licensee's rubbish and waste from the Licenced Area for special events or any extra non -scheduled pick-ups.

13.3. Breach

If the Licensee breaches clause 13, the Council may serve a notice giving the Licensee 14 days to remedy the breach, failing which the Council may enter the Licenced Area to carry out such repairs, maintenance and works at any reasonable time after giving the Licensee reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Licensee to the Council on demand.

13.4. Works

The Licensee must obtain the prior written consent of the Council before carrying out any works or alterations on or to the Licenced Area. The Licensee must ensure that any works or alterations on or to the Licenced Area are carried out:

- a) strictly in accordance with plans and specifications approved by the Council;

Mansfield Shire Council License Agreement - Cleanaway

- b) in a proper and workmanlike manner;
- c) to the Council's reasonable satisfaction and in accordance with the Council's reasonable requirements; and
- d) in accordance with all rules and requirements of any authorities having jurisdiction over the Licenced Area.

13.5. Damage

The Licensee must give the Council prompt written notice of any material damage to the Licenced Area or anything likely to be a risk to the Licenced Area or any person in the Licenced Area.

14. DEFAULT AND TERMINATION

If the Licensee breaches any obligation under this Licence and fails to remedy such breach within 14 days of written notice by the Council, then:

- a) this Licence automatically terminates; and
- b) the Licensee must immediately remove the Licensee's Property from the Licenced Area and if the Licensee fails to do so, the Council may treat the Licensee's Property as abandoned and deal with the Licensee's Property as the Council sees fit, at the Licensee's cost.

The Licensee shall remain liable for any loss or damage suffered or incurred by the Council after the termination of this Licence in respect of any breach of the Licensee's obligations under this Licence, including the loss of benefit of the Licensee performing its obligations under this Licence up to the expiration of the Term.

15. GST

15.1. Amounts Otherwise Payable Do Not Include GST

Except where express provision is made to the contrary and subject to this clause 14 the *consideration payable* by any party under this Licence represents the value of any *taxable supply* for which payment is to be made.

15.2. Liability to Pay Any GST

Subject to clause 16.4, if a party makes a *taxable supply* in connection with this Licence for a *consideration* which, under clause 16.1 or clause 16.3 represents its *value*, then the party liable to pay for the *taxable supply* must also pay at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.

15.3. Reimbursements

If this Licence requires a party to pay, reimburse or contribute to an amount paid or payable by the other party in respect of an *acquisition* from a third party for

which the second party is entitled to claim an *input tax credit* the amount required to be paid, reimbursed or contributed by the first party will be the *value* of the *acquisition* by the second party plus, if the second party's recovery from the first party is a *taxable supply*, any

Mansfield Shire Council License Agreement - Cleanaway

GST payable under clause 16.2.

15.4. Tax Invoice

A party's right to payment under clause 16.2 is subject to a valid tax *invoice* being delivered to the party liable to pay for the *taxable supply*.

15.5. Interest Payable

The Licensee must pay to the Council on demand interest at the rate per annum equal to the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic) on any money payable by the Licensee under this Licence and remaining unpaid for 7 days. Interest will be computed from the date on which such payment became due until the date that payment is made by the Licensee.

16. NO DEDUCTION OR SET-OFF

The Licensee must pay all amounts due under this Licence to the Council without deduction or right of set-off.

17. LICENCE PERSONAL

The parties acknowledge and agree that this Licence is personal to the Licensee and is not capable of assignment or transfer in any way and the Licensee must not deal with its interest in the Licenced Area including the assignment of or sub-licensing of any part of the Licenced Area to another party.

18. LICENSEE'S OBLIGATIONS AT END OF LICENCE

At the end of this Licence, the Licensee must:

- a) vacate the Licenced Area and give it back to the Council in a condition consistent with the Licensee having complied with its obligations under this Licence;
- b) immediately remove from the Licenced Area the Licensee's Property and make good any damage caused by such removal; and
- c) return to the Council all keys and other security devices required for access to the Licenced Area.

The Licensee acknowledges and agrees that anything remaining in the Licenced Area at the end of this Licence, including the Licensee's Property will become the property of the Council and the Council may treat the Licensee's Property as abandoned and deal with the Licensee's Property as the Council sees fit, at the Licensee's cost.

19. COUNCIL'S CONSENT

The Licensee must pay to the Council within 7 days of demand:

- a) the Council's reasonable costs in giving any consent or approval under this Licence; and
- b) the Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Licence by the Licensee.

20. DAMAGE OR DESTRUCTION OF LICENCED AREA

20.1. Reduction in Licence Fee

If the Licenced Area or any part of the Licenced Area is destroyed or damaged to the extent that the Licensee cannot use or have access to the Licenced Area (except if the Licensee causes or contributes to the destruction or damage, or the insurer of the Licensee or the Council is not legally required to reinstate the Licenced Area because the Licensee caused or contributed to the destruction or damage) then the Council will reduce the Licence Fee by a reasonable amount depending on the nature and extent of the destruction or damage until the Licensee can use or have access to the Licenced Area.

20.2. Reinstatement of Licenced Area

If the Licenced Area or any part of the Licenced Area is destroyed or damaged, the Council may, within 3 months from the date of such damage or destruction, give notice to the Licensee:

- a) terminating this Licence, where the Council considers that the damage destruction
- b) is such that repairing it is impractical or undesirable; or
- c) that the Council will commence reinstatement of the Licenced Area to a condition where the Licensee can use or have access to the Licenced Area.

20.3. Licensee's Right to Terminate

The Licensee may give written notice to the Council terminating this Licence where:

- a) the Council does not give notice to the Licensee pursuant to clause 21.2;
- or
- b) the Council does not commence reinstatement within 6 months of the date of damage or destruction.

The Licensee acknowledges that the Council does not have any obligation to reinstate the Licenced Area and will not be liable to pay the Licensee any compensation if it does not reinstate the Licenced Area.

20.4. Dispute Resolution

The Council and Licensee agree that if a dispute arises under this clause 20, the aggrieved party must give a written notice to the other party that there is a dispute ("**Dispute Notice**").

Upon receipt of the Dispute Notice by the other party, both parties must within 30 days of the date of the Dispute Notice meet and attempt to resolve the dispute ("**Resolution Period**").

If the parties are unable to resolve the dispute within the Resolution Period, the parties agree that the dispute must be referred to the chairperson of the Council's relevant committee ("**Chairperson**") who shall convene a meeting between the parties within 30 days of the referral. The Chairperson shall determine the dispute and notify the parties of the Chairperson's decision within 5 business days of the date of the meeting. The parties agree that the Chairperson's decision will be final and binding on the parties.

21. FURTHER TERM

21.1. Option for a Further Term

The Council may agree, at its sole discretion, to grant to the Licensee a new licence for the Further Term described in Item 11 of the Schedule if the Licenced Area is not required by the Council for any other purpose and if the Licensee:

- a) gives to the Council written notice asking for a new licence, not earlier than 6 months or later than 3 months, before the end of the Term (the last date for exercising the option for the Further Term is specified in Item 12 of the Schedule;
- b) is not in breach of any of the terms or conditions of this Licence at the date of giving written notice or at the end of the Term;
- c) has not persistently defaulted under this Licence throughout the Term;
- d) complies with all reasonable requirements of the Council including where the Licensee is a corporation, incorporated association, or other legal entity, procuring such directors, shareholders or members of the Licensee as may be reasonably required by the Council to execute a guarantee and indemnity in a form approved by the Council and providing whatever other form and amount of security the Council may reasonably require;
- e) pays the Council's reasonable costs for the preparation, negotiation and finalization of the new licence.

The new licence for the Further Term if granted, will commence on the day after this Licence ends and contain the same terms and conditions as this Licence but with no option for a further term where the last option for the Further Term has been exercised. The Licence Fee and the method to adjust the Licence Fee during the Further Term is specified in Item 8 of the Schedule.

21.2. Overholding

If the Licensee continues in occupation of the Licenced Area after the end of the Term, without objection by the Council:

- a) the Licensee occupies the Licenced Area subject to the same terms and conditions as contained in this Licence;
- b) the Council or the Licensee may end this Licence during any period of overholding by giving 30 days written notice to the other party expiring at any time; and
- c) the Council may increase the monthly licence fee by giving the Licensee one month's written notice.

22. ADDITIONAL PROVISIONS

This Licence is subject to the Additional Provisions contained in Item 15 of the Schedule.

To the extent of any inconsistency between this Licence and the Additional Provisions, the Additional Provisions will prevail.

23. OTHER MATTERS

23.1. Governing Law, Jurisdiction and Service

This Licence is governed by the law applicable in Victoria and each party irrevocably and

Mansfield Shire Council License Agreement - Cleanaway

unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

23.2. Notices

Notifications, consents, approvals, requests or demands in connection with this Licence may be sent to the nominated email address and to property@council.com.au and thus sent are taken to be received.

In addition, notices of dispute in connection with this Licence must be left at or posted by prepaid post to the address of the addressee as stated in this Licence, or to such other address notified in writing by that party to the other party and is taken to be received:

- a) if hand delivered, upon delivery;
- b) if posted in Australia, on the fifth business day after posting; and
- c) if posted outside Australia, on the seventh business day after posting.

23.3. Entire Understanding

This Licence and the documents referred to in or contemplated by it embody the entire agreement and understanding between the parties concerning its subject matter and succeeds and cancels all other agreements and understandings concerning the subject matter of this Licence and any warranty, representation, guarantee or other term and condition of any nature not contained in this Licence is of no force or effect.

23.4. Severance

If any provision of this Licence is deemed to be unlawful or unenforceable, such provision will be severed and all other provisions will remain in force.

23.5. No Waiver or Variation

A provision of, or a right created under, this Licence may not be waived or varied except in writing signed by the parties.

23.6. Table of Contents

The Table of Contents and any headings are for ease of reference only and do not affect the interpretation of this Licence.

23.7. No Waiver or Variation

The parties acknowledge that the Recitals are true and correct and shall form part of this Licence.

23.8. Non-Merger of Provisions

A provision of this Licence which can and is intended to operate after its conclusion will remain in full force and effect.

23.9. Costs

Each party must pay its own costs of and incidental to the negotiation, preparation, and execution of this Licence.

24. INTERPRETATIONS

In this Licence:

- a) a reference to a person includes a reference to a corporation, firm, partnership, association, or other entity, and vice versa;

Mansfield Shire Council License Agreement - Cleanaway

- b) a reference to any gender includes a reference to all other genders;
- c) any word or expression defined anywhere in this Licence shall if expressed in the singular include the plural and vice versa and a cognate expression shall have a corresponding meaning;
- d) the obligations imposed and the benefits conferred under this Licence on each of the parties will be binding and inure for the benefit of the respective parties and each of their respective executors, administrators, successors in title, legal personal representatives and permitted assigns and a reference to any party to this Licence includes the party's executors, administrators, successors in title, legal personal representatives and permitted assigns; and
- e) an agreement, representation or warranty made by two or more persons is made by them jointly and by each of them severally and an agreement, representation or warranty made in favour of two or more persons is made for the benefit of them jointly and for each of them severally.

DRAFT

Mansfield Shire Council **License Agreement - Cleanaway**

EXECUTED as an agreement.

SIGNED SEALED AND DELIVERED by)

on behalf of **MANSFIELD SHIRE**)
COUNCIL, pursuant to an instrument of)
Delegation authorised by Resolution of the)
Mansfield Shire Council in the presence of)

.....
Signature

Kirsten Alexander

) (Print) Full Name of Signatory

.....
Signature of Witness*

(Print) Full Name of Witness*
33 Highett Street, Mansfield

*Signature and identity have been verified by
Legal Officer for Mansfield Shire Council

EXECUTED by CLEANAWAY PTY LTD)
in accordance with)
S22 of the Associations Incorporation Act 2009:)

.....
President

.....
{Print) Full Name

Mansfield Shire Council License Agreement - Cleanaway

SCHEDULE

Item 1	Council	Mansfield Shire Council of 33 Highett Street, Mansfield, Victoria 3722.
Item 2	Licensee	Cleanaway Pty Ltd, ABN 79 000 164 938 of Level 4, 441 St Kilda Road, Melbourne VIC 3004
Item 3	Licensed Area	The areas outlined on the plans attached to this Licence in Annexure A being part of the land contained in certificate of title volume 9022 Folio 665, being part of Mansfield Shire Council Depot, 141 Lakins Road, Mansfield Victoria 3722 comprising approximately 1000m ²
Item 4	Council's Installations	Any works of a capital nature including to any fittings, fixtures and chattels contained in the Licensed area. Must have written consent by an authorized Council Officer prior to commencement.
Item 5	Commencement Date	1 July 2024
Item 6	Expiry Date	30 June 2029
Item 7	Term	5 Year Licence
Item 8	Licence Fee	<p>A License Fee will be payable annually on 1 July of each Financial Year.</p> <p>The License Fee will be \$12,000 GST EXCL. per annum</p> <p>Payable annually in advance on the Commencement Date</p> <p>The Licence Fee will be increased each year by the Australian Bureau of Statistics' All groups CPI, index for Melbourne. This index currently resides at: https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia</p> <p>All other usage fees will be based upon the <i>Mansfield Shire Council's Fees & Charges Schedule</i>.</p>
Item 9	Allocation of Hour of Use	Not Applicable
Item 10	Permitted Use	Cleanaway administration activities, car park facilities, toilets, truck wash, truck parking and bin storage.
Item 11	Further Term	1 x 5 Years
Item 12	Last Date for exercising option for Further Term	Not less than 3 months before the end of the Term.