

Maddocks Draft: 30 November 2023



Maddocks

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Heads of Agreement - Chelsworth Park

Banyule City Council
and

The Ivanhoe Grammar School ACN 004 083 247
and

[8588078:41777463_2]

Interstate offices
Canberra Sydney

Heads of Agreement

Dated

Parties

Name	Banyule City Council
Address	1 Flintoff Street, Greensborough
Email	Nicole.maslin@banyule.vic.gov.au
Contact	Nicole Maslin
Short name	Council

Name	The Ivanhoe Grammar School ACN 004 083 247
Address	The Ridgeway, Ivanhoe
Email	Leyton.MILES@ivanhoe.com.au
Contact	Leyton Miles
Short name	IGS

Background

- A. Council owns the Land and has entered into the Existing Lease with IGS.
- B. The parties have agreed that, subject to conducting community consultation, and satisfaction of Council's statutory requirements and their respective internal governance processes, IGS will surrender the Existing Lease and enter into the Agreement for Lease with Council.
- C. The parties have entered into this Agreement to record their respective intentions and expectations in regard to the above transaction and to outline the process and documentation required for the transaction.

The parties agree

1. Definitions

In this Agreement:

Agreement means these heads of agreement.

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Canberra Sydney

Agreement for Lease means an agreement for the New Lease , which contains the key terms specified in Part A of the Terms Sheet and such other terms and conditions as are reasonably agreed between the parties.

Business Day means Monday to Friday excluding public holidays in Victoria.

Concept Plans means the plans for the new pavilions to be constructed by IGS on the Premises attached as Attachment 1 to Schedule 1 of this Agreement.

Confidential Information means any information relating to the past, present or future business of a party that comes to the knowledge of any other party and includes the existence and subject matter of this Agreement but does not include information in the public domain (unless in the public domain due to a breach of confidentiality by any person).

Deed of Surrender of Lease means a deed to be entered into between Council and IGS to give effect to the surrender of the Existing Lease, which Deed shall contain the key terms specified in Part B of the Terms Sheet and such other terms and conditions as are reasonable agreed between the parties

Existing Lease means the lease dated 23 March 2015 between Council as landlord and IGS as tenant in respect of the Premises.

Insolvency Event means, in relation to a person, any of the following:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person assigns any of its property for the benefit of creditors or any class of them;
- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;
- (e) if the person is an incorporated association under the *Associations Incorporation Reform Act 2012* (Vic), a statutory manager is appointed to the person;
- (f) the holder of a Security Interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale.
- (g) a judgment or order is made against the person in an amount exceeding \$10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 Business Days after being made;
- (h) any step is taken to do anything listed in the above paragraphs; and
- (i) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

Land means the land in certificates of title volume 5883 and folio 571 and volume 7926 folio 113 and known as Chelsworth Park, Ivanhoe.

Local Government Act means the *Local Government Act 2020* (Vic).

Negotiation Period means the period of 3 months, commencing on the date of this Agreement (or such longer period agreed by the parties).

New Lease means a new lease between Council and IGS for the Premises, which contains the key terms specified in Part C of the Terms Sheet and such other terms and conditions as are reasonably agreed between the parties.

Premises means the premises described in the Premises Plan.

Premises Plan means the plans attached to the Existing Lease as Attachment D.

Project Documents means:

- (a) the Deed of Surrender of Lease;
- (b) the Agreement for Lease; and
- (c) the New Lease,

and any other supporting documentation reasonably required by Council in a form agreed by the parties.

Security Interest means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009*); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

Terms Sheets means the terms sheets for the Project Documents attached in Schedule 1.

2. Nature of Agreement

2.1 Intention of Parties

In consideration of the mutual promises made by the parties, the parties intend to be bound by the terms of this Agreement.

2.2 Period of Agreement

This Agreement shall be binding on the parties during the Negotiation Period, unless terminated earlier in accordance with the terms of this Agreement

3. Project Documents

3.1 Negotiation

During the Negotiation Period, Council and IGS agree to negotiate expeditiously and in good faith the terms and conditions of the Project Documents.

3.2 Terms and conditions

The Project Documents will contain the terms and conditions set out in the Terms Sheet and such other terms and conditions as are reasonably agreed between the parties.

3.3 Execution of Project Documents by IGS

If Council and IGS have reached agreement as to the terms and conditions of the Project Documents by the end of the Negotiation Period, Council will submit two copies of the Agreement for Lease to IGS for execution and, within 10 Business Days of receipt of such documents, IGS must execute the Agreement for Lease in duplicate and return both copies to Council.

3.4 No agreement

If, at the end of the Negotiation Period, Council and IGS have failed to reach agreement as to the terms and conditions of the Project Documents, either party may terminate this Agreement by written notice to the other party within 5 Business Days after the expiry of the Negotiation Period.

3.5 Council's exercise of statutory powers

3.5.1 Following execution of this Agreement, Council will comply with its obligations under s115 of the Local Government Act .

3.5.2 IGS acknowledges that Council will not make a decision whether or not to proceed with the Project Documents until it has complied with the statutory process described in clause 3.5.1.

3.5.3 If by the date which is 6 months after the date of this Agreement, Council has not resolved to proceed with the Project Documents, either party may terminate this Agreement by written notice to the other party at any time prior to Council resolving to proceed with the Project Documents and neither party shall have any action, right, claim or demand against the other.

3.6 Execution of Project Documents by Council.

3.6.1 If, following the statutory process described in clause 3.5.1, Council resolves to proceed with the Project Documents, Council will promptly execute the Agreement for Lease and return a fully executed part of the Agreement for Lease to IGS.

3.6.2 The Deed of Surrender of Lease and the New Lease will be held in escrow by Council until the commencement date of the Lease has been determined in accordance with the terms of the Agreement for Lease, following which: -

3.6.2.1 the surrender date will be inserted by Council in the Deed of Surrender of Lease and the Deed of Surrender of Lease will be forwarded to IGS for signing and return to Council for execution; and

3.6.2.2 the commencement date of the Lease will be inserted by Council and the Lease will be forwarded to IGS for signing, if not already signed by IGS, and return to Council for execution.

4. Default

This Agreement will terminate if:

4.1 any party suffers an Insolvency Event; or

4.2 a party does not remedy any default of this Agreement within 10 Business Days of receiving written notice from the other party.

5. Effect of Termination

If this Agreement is terminated under clause 3.4, 3.5.3 or 3.6, the rights and obligations of the parties will cease except for:

- 5.1 any rights or obligations accrued as a result of a default under this Agreement; and
- 5.2 any rights or obligations which are expressed to continue after termination of this Agreement.

6. No fettering of Council's powers

This Agreement does not in any way limit, fetter or restrict the power or discretion of Council in the exercise of its statutory rights, duties or powers under the *Planning and Environment Act 1987*, the *Local Government Act 1989*, the *Local Government Act*, the *Subdivisions Act 1988* or the exercise of any other statutory right, power or duty that Council may lawfully exercise in respect of the Project set out in this Agreement.

7. No warranties

IGS acknowledges and declares that in entering this Agreement it does not rely on any representation or warranty of any nature made by or on behalf of Council.

8. Confidential Information**8.1 Duty not to disclose or misuse Confidential Information**

- 8.1.1 Each party may disclose Confidential Information only:
 - (a) for the purposes of performing its obligations under this Agreement;
 - (b) as required by law; or
 - (c) as permitted or required in writing by the other party.
- 8.1.2 The parties may only use Confidential Information to perform their obligations under this Agreement.

8.2 Preservation of Confidential Information

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

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

8.3 Return or destruction of Confidential Information

A party must immediately on termination of this Agreement or on the other party's written request at any other time:

- 8.3.1 return to the other party Confidential Information provided to or obtained or accessed by the party under this Agreement; or
- 8.3.2 destroy Confidential Information so that it is incapable of being revived; and
- 8.3.3 provide a statutory declaration to the other party that all Confidential Information has been returned or destroyed in accordance with this clause.

9. GST

9.1 Definitions

In this clause:

- 9.1.1 words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 9.1.2 GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

9.2 GST Exclusive

Except as otherwise provided by this Agreement, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

9.3 Increase in consideration

If GST is payable in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

9.4 Payment of GST

Subject to clause 9.5, the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

9.5 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 9.4.

9.6 Reimbursements

If this Agreement requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- 9.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- 9.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

9.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Agreement:

- 9.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and
- 9.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

10. Assignment

A party must not:

- 10.1.1 sell, transfer, novate, delegate, assign, licence; or
- 10.1.2 mortgage, charge or otherwise encumber,
- any right or obligation under this Agreement to any person.

11. Notices**11.1 Delivery of notice**

- 11.1.1 A notice or other communication given to a party under this Agreement 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) email to the party's email address set out in the notice details.
- 11.1.2 If the person to be served is a company, the notice or other communication may be served at the company's registered office.

11.2 Notice details

- 11.2.1 The notice details of each party are set out on page 1 of this Agreement under the heading 'Parties' (or as notified by a party to the other parties according to this clause).
- 11.2.2 A party may change its notice details by giving notice to the other parties.

11.3 Time of service

- 11.3.1 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; and

- (c) 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.
- 11.3.2 Despite clause 11.3.1, 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.

12. Governing law

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

13. Interpretation

13.1 Words and headings

In this Agreement, unless expressed to the contrary:

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

13.2 Specific references

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

- 13.2.1 a gender includes all other genders;
- 13.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 13.2.3 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;
- 13.2.4 writing includes writing in digital form;
- 13.2.5 'this Agreement' is to this Agreement as amended from time to time;
- 13.2.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 13.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Agreement;

- 13.2.8 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;
- 13.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 13.2.10 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
- 13.2.11 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.

14. General

14.1 Variation

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

14.2 Counterparts

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

14.3 Entire agreement and no reliance

This Agreement constitutes the entire agreement between the parties about the subject matter contained in it and supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation relating to the subject matter contained in it, that was imposed, given or made by a party (or an agent of a party) prior to entering into this Agreement.

14.4 Liability

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

14.5 Severability

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

14.6 Waiver

The failure of a party at any time to insist on performance of any provision of this Agreement 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 Agreement.

14.7 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 Projects contemplated by this Agreement.

14.8 Survival and enforcement of indemnities

14.8.1 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.

14.8.2 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

14.9 No merger

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

14.10 Business Day

If a payment or other act is required by this Agreement 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.

14.11 Electronic execution

Each party consents to the signing of this Agreement by electronic means. The parties agree to be legally bound by this Agreement signed in this way.

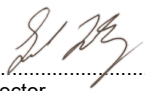
Signing Page

Executed by the parties

Signed for and on behalf of **Banyule City Council** by)
Allison Beckwith, Chief Executive Officer, in exercise)
of a power delegated by an Instrument of Delegation)
dated 7/2/2023)

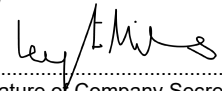


Executed by **The Ivanhoe Grammar School** in)
accordance with section 127(1) of the *Corporations*)
Act 2001:)


.....
Signature of Director

Gerard Foley

Print full name


.....
Signature of Company Secretary

Leyton Miles

Print full name

Schedule 1 Terms Sheet for Agreement for Lease

TERMS SHEET - AGREEMENT FOR LEASE (AFL) AND LEASE – CHELSWORTH PARK, IVANHOE		
Part A - AFL		
1.	Landlord	Banyule City Council of 1 Flintoff Street, Greensborough (Council).
2.	Tenant	The Ivanhoe Grammar School ACN 004 083 247 of The Ridgeway, Ivanhoe (Tenant).
3.	Land	The land contained in certificates of title volume 5883 folio 571 and volume 7926 folio 113 and known as Chelsworth Park, Ivanhoe (Land).
4.	Premises	That part of the Land delineated in the Premises Plan.
5.	Commencement of AFL	The date of execution of the AFL.
6.	Conditions subsequent	<p>6.1 The Tenant shall lodge an application for a planning permit for a development consistent with the Concept Plans within 3 months of the date on which the Landlord confirms the condition set out in clause 3.5.1 has been satisfied and that the Landlord has resolved to proceed with the Project Documents.</p> <p>6.2 The grant of the Lease to the Tenant is conditional on the Tenant obtaining the planning permit described in clause 6.1 by a date not later than 18 months from the date of lodgement of its application for a planning permit (Planning Approval Date);</p> <p>6.3 If the Tenant is unable to obtain a planning permit in accordance with clause 6.2 by the Planning Approval Date, either party may terminate this AFL;</p> <p>6.4 Upon the Tenant obtaining a planning permit in accordance with clause 6.2, the Lease will commence the following day.</p>
Part B – Surrender of Existing Lease		
7.	Surrender Date	The day following the grant of a planning permit in accordance with clause 6.1.
8.	Mutual Release	From the Surrender Date, each party will release the other party from any future liability in respect of the Existing Lease, but reserves their respective rights under the Existing Lease in respect of any loss, claim or action arising prior to the Surrender Date.
Part C – New Lease		
9.	Lease Commencement Date	The day following the grant of a planning permit in accordance with clause 6.1.
10.	Term	30 years from the lease commencement date.
11.	Further Terms	2 further terms of 5 years each

12.	Rent	\$12,000 per annum plus GST (subject to annual rent review), payable annually in advance on the Lease Commencement Date and every anniversary thereof including during the Further Terms.
13.	Rent Review	4% per annum on each anniversary of the lease commencement date
14.	Security	Not applicable
15.	Permitted Use	Sport, recreation and associated ancillary uses
16.	Construction Obligations	<p>16.1 Cost of Works – Council and the Tenant will agree a minimum price for the cost of the proposed works within 3 months of the Lease Commencement Date, failing which, either party may terminate the Lease.</p> <p>The Tenant will be solely responsible for all design and construction costs of the proposed works.</p> <p>16.2 Design of Works – The Tenant is responsible for developing the plans and specifications for the proposed works in accordance with the endorsed plans attached to the Planning Approval obtained by the Tenant.</p> <p>16.3 Carrying out of Works – The Tenant must:</p> <p>16.3.1 Obtain all necessary approvals to carry out the works;</p> <p>16.3.2 Enter into a building contract with a reputable builder approved by Council;</p> <p>16.3.3 Ensure that the works are substantially commenced within 12 months of the Commencement Date of the Lease;</p> <p>16.3.4 Ensure that the works are practically completed (as defined in paragraph 13.6) no later than 18 months from substantial commencement; and</p> <p>16.3.5 Ensure that the builder has effected all insurances in respect of the works required by Council and indemnity Council in respect of any loss or damage incurred by Council in respect of the proposed works.</p>

		<p>16.4 Project Control Group – Council and the Tenant will establish a Project Control Group comprising at least one representative of each party and chaired by a Council representative to oversee the works on behalf of both parties.</p> <p>16.5 Delay in Works – If the Tenant notified Council that it has been subject to a Delay Event outside the reasonable control of the Tenant, Council may consider extending the periods for substantial commencement of practical completion respectively (as described in paragraph 13.3.3 and 13.3.4 in this Agreement) by a period commensurate with the extent of the Delay Event.</p> <p>16.6 Practical Completion – the works shall be practically complete upon:</p> <p>16.6.1 The issue of any required occupancy permit or certificate of final inspection pursuant to the <i>Building Act 1993</i>; and</p> <p>16.6.2 The parties agreeing in writing that the works have been completed subject to minor defects and omissions.</p>
17.	Payments by the Tenant	As per the existing Lease, except that clause 4.2 shall be deleted.
18.	Outgoings and services	<p>The Tenant must pay all outgoing including (but not limited to) rates, taxes and duties levied or assessed in respect of the Premises.</p> <p>The Tenant must pay for all services supplied to the Premises.</p>
19.	Insurances	<p>During the term the Tenant must maintain public liability insurance for a sum not less than \$20 million per single event with an insurer reasonably acceptable to the Council and which notes the interest of Council as landlord.</p> <p>Council is responsible for insuring the Premises.</p>
20.	Maintenance and repair	The parties agree that their respective maintenance and repair obligations are to be set out in a Schedule agreed between the parties.
21.	Alterations	The Tenant must not make any alterations to the Premises without Council's consent, which may be withheld at Council's absolute discretion.
22.	General obligations concerning the Premises	As per existing Lease
23.	Release and Indemnity	As per existing Lease

24.	Assignment, subletting etc	The Tenant must not assign or sublease its interest in the Lease, either in whole or in part, without the prior written consent of Council, which may be withheld at Council's absolute discretion or granted upon conditions prescribed by Council.
25.	Obligations at expiry of lease	At the end of the Term the Tenant must: 25.1 provide vacant possession of the Premises in a condition consistent with the Tenant having complied with its obligations under the Lease; and 25.2 if required by Council, remove the Tenant's Property from the Premises and make good any damage.
26.	Gaming	The Tenant must not apply for or hold any licence under the <i>Gambling Regulation Act 2003</i> (Vic).
27.	Retail Leases Act 2003	The <i>Retail Leases Act 2003</i> (Vic) (RLA) does not apply to the Lease under the Determination made by the Minister for Small Business under s 5(1)(e) of the RLA and published in the Victorian Government Gazette No.S184 on 23 August 2004.
28.	Termination	As per existing Lease
29.	Destruction or Damage of Premises	As per existing Lease
30.	Asbestos	As per existing Lease
31.	Chelsworth Park Reference Group	The parties agree to participate in a review of the role, purpose and membership of the Chelsworth Park Reference Group with a view to Council establishing this group as an advisory committee to Council.
32.	Public access to Chelsworth Park	The Tenant acknowledges and agrees that public access to Chelsworth Park (other than the new pavilions to be constructed by IGS) must be maintained at all times during the Term and Further Terms and that IGS will not erect any fences or other obstructions on or around the Premises to prevent such public access.
33.	Dispute Resolution	As per existing Lease
34.	General/ Interpretation	As per existing Lease
35.	Attachment A - Special Conditions	As per existing Lease, except: <ul style="list-style-type: none"> Special Condition 1.8.2 (Payment to Council of 50% of money received from users of premise and annual contribution to "sinking fund") will be deleted
36.	Attachment B – Reporting Structures and KPI's	As per existing Lease

37.	Attachment C – Capital Works and Improvements Schedule	To be replaced by a schedule to be agreed between the parties, provided that:- <ul style="list-style-type: none"> IGS's obligation to install a fourth tennis court and multi-court shall be deleted; the 'Tennis Courts' table shall be deleted; the 'Signage' table shall be deleted; and the 'Pavillions' table shall be amended to reflect the works described in the planning permit
38.	Attachment D – Premises Plan	As per Existing Lease.
39.	Attachment E – Maintenance Schedule	To be replaced by a schedule to be agreed between the parties.
40.	Attachment F – Horticulture and Technical Services	As per Existing Lease
41.	Attachment G – Storm Water Use Guide	As per Existing Lease
42.	Attachment H – Storm Water Maintenance Schedule	As per Existing Lease
43.	Attachment I – Ground Allocations	As per Existing Lease (TBC)

Attachment 1 Concept Plans

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Chelsworth Park Pavilions - Draft Plans 2023/2024

Irvine Road, Ivanhoe



Development of two accessible & inclusive all-purpose sports pavilions to support club, community, and school use for future generations.



Title Page & Sheet List

		MSildowie Partners <small>11-111 & 11-112 (2023) 11-113 & 11-114 (2023)</small>	<small>Client:</small> Ivanhoe Grammar School <small>Project Name:</small> Chelsworth Park <small>Project Location:</small> Irvine Road, Ivanhoe	<small>Document Code:</small> TP000
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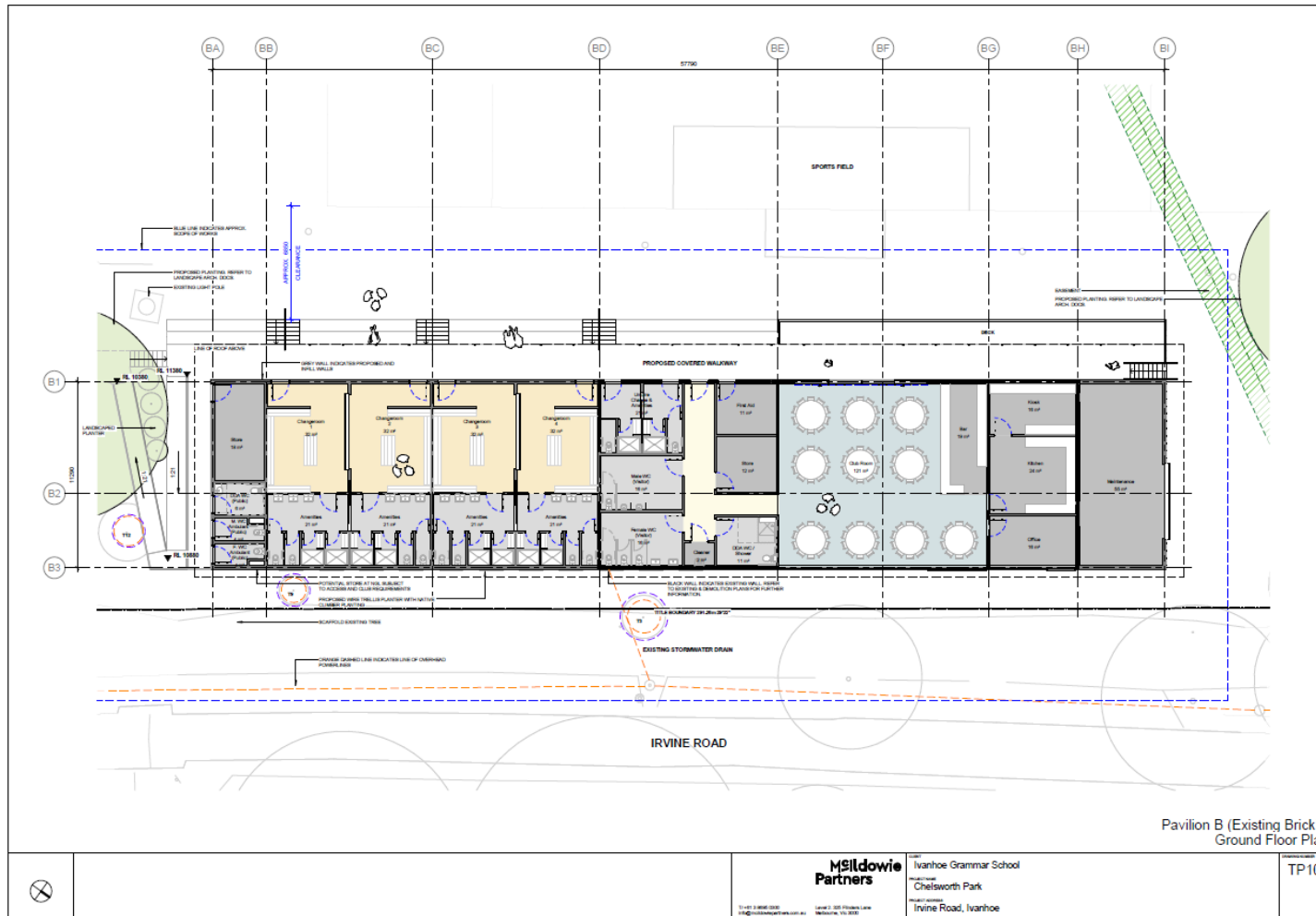
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Chelsworth Park Pavilion Project

Community Engagement Plan Project background and Key Information

- Chelsworth Park in Ivanhoe is owned by Council and includes seven (7) sports ovals, three (3) tennis courts and two (2) pavilions that are leased to Ivanhoe Grammar School (IGS).
- Seven (7) Banyule sporting clubs currently use the sports fields and sports facilities, for football, soccer, athletics and cricket training and competition purposes and this use accounts for over 80% of total programmed use of the site. IGS use the ovals for school sports and this use accounts for less than 10% of total hours available.
- Passive use of the site includes walking, jogging, dog walking, casual sport practice (individuals or small groups), socialising, picnics and is available like other sportsground outside programmed times – usually between 6am and 4pm weekdays and various times on weekends depending on competition.
- IGS is responsible for ground and facility servicing and maintenance at a current cost of \$400,000 per annum, along with some capital improvements as defined in their lease.
- The current lease with IGS is for 30 years (initial 20year term Nov 2014 – Nov 2034 with a further 2 x 5year options). The terms of the lease included IGS investing \$1 million upfront for capital improvements towards a storm water harvesting project over the first 2 years at the start of the lease (2014) and adding two changerooms to the existing brick pavilion (support female change facilities) and modest internal improvements to the existing timber pavilion.
- While the storm water harvesting project was completed as planned, the basic renovation of both pavilions has not occurred as initial investigations revealed that the basic renovations proposed would not be viable as both pavilions are no longer fit for purpose, do not meet contemporary facility standards or the growing needs and expectations from our clubs and community for accessible, inclusive facilities that support participation for everyone.
- Preliminary work has included exploring feasibility options for one or two pavilions and building envelopes, assessing the condition of existing structures, conducting access assessments, reviewing planning controls, seeking heritage and arborist advice, and reviewing concept designs for optimal functionality were subsequently undertaken. The sporting clubs and associations were consulted on the functional requirements for two (2) new pavilions that would provide future proof, accessible and inclusive facilities for future generations.
- Draft concept plans for two new sports pavilions to replace the existing facilities have now been developed by IGS at an estimated cost of between \$12M and \$14M.
- IGS has advised Council that they are seeking a new lease term of 40 years in return for this investment.
- Given the significant increase from the capital projects stipulated in the current lease with IGS, if agreed, the proposed works requires a new lease and, therefore, Council must conduct a community engagement process to comply with Section 115 of the *Local Government Act 2020*.
- A Heads of Agreement (HOA) will serve as a mutually agreed roadmap for Council and IGS and detail the statutory processes required for the granting of a new lease and obtaining planning approval for the proposed development of two pavilions. It also sets out the key terms of an IGS Agreement for Lease (AFL).
- This project is in line with Banyule's Council Plan strategy to "Actively seek partnerships and collaborate with other organisations to build and utilise community infrastructure" and presents a unique opportunity to deliver significant community sports infrastructure for generations to benefit from at no cost to Council.

Engagement objectives

Table 1: Engagement objectives

Objective 1	<i>Communicate the need for Chelsworth Park pavilions redevelopment and its benefits for community access and participation</i>
Objective 2	<i>Communicate that this project presents a unique opportunity to deliver significant community sports infrastructure for generations to benefit from at no cost to Council. It aligns strongly with several of Council's key strategies and organizational priorities.</i>
Objective 3	<i>Demonstrate the value and benefits of collaborating and working with Ivanhoe Grammar to achieve outstanding community facility outcomes</i>
Objective 4	<i>Myth-busting - Always presenting the facts and addressing concerns or perceptions around community access and use of the pavilions and park</i>
Objective 5	<i>Listen to and understand community feedback on the project and ensure that it is collated, analysed and considered in the decision making.</i>

Negotiables and non-negotiables

Table 2: Negotiables and non-negotiables

Non-negotiables: What are the elements that community cannot change and therefore are not able to be influenced by engagement?	Negotiables: What are the elements that community can change and will be influenced by engagement?	Information needed: What information can be collected through the engagement process?
Council has a current lease with Ivanhoe Grammar until 2034	The proposed terms of the new lease	Statutory - Formal submissions in line with (s115 LGA 2020) on the proposed new lease agreement and feedback on the proposed terms Broader Consultation and feedback regarding whole project
Extension of the Brick Pavilion Redevelopment of the Timber Pavilion	Design elements of the pavilion Aesthetics Landscaping Building Footprint	Statutory - Formal consultation process - Banyule Planning Scheme and the Planning and Environment Act 1987. Broader Consultation and feedback regarding whole project

Key messages

Table 3: Key messages

1

The redevelopment of the pavilions will provide accessible, functional, fit-for-purpose facilities for our local sporting clubs, IGS and community groups. There are currently 9 Banyule Sporting Clubs who use the grounds and pavilions and this use accounts for over 80% of total programmed use of the site. IGS use the ovals for school sports and this use accounts for less than 10% of total hours available.

2

IGS will fund this redevelopment on Council land where they have a current lease till 2034. In exchange for this investment IGS seeks a 20-year lease extension as well as some other smaller changes. However, these changes require a new lease and compliance with Section 115 of the *Local Government Act 2020*, which involves a community engagement process.

3

Chelsworth Park is a much-loved community asset in a unique and highly valued natural environment that supports both active and passive sports and recreation. The intention of the development will be to have as minimal impact as possible to the surrounds whilst providing functional fit-for purpose facilities for the future.

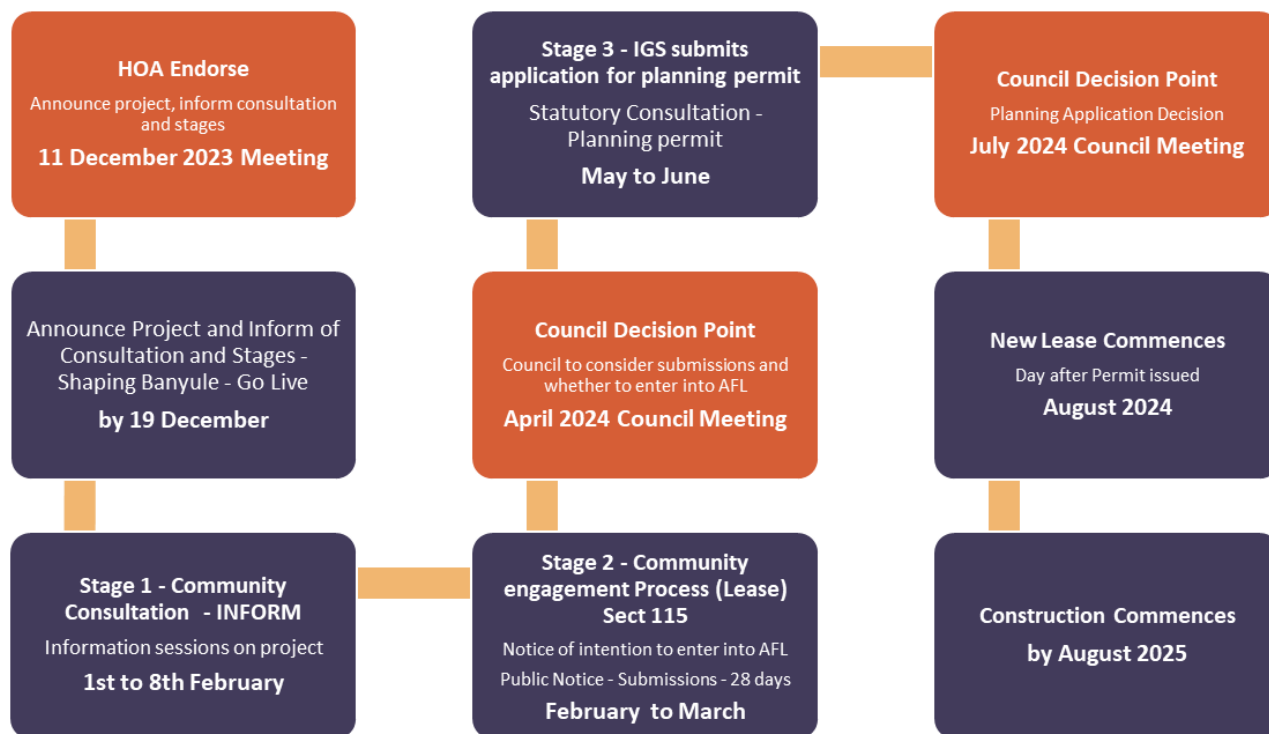
4

Community voice is important in this project and there will be both formal (statutory) and informal separate opportunities for community to share their thoughts, concerns and suggestions on both the new lease and design of the pavilions. A new lease cannot commence without IGS obtaining an approved planning application.

5

This project is in line with Banyule's Council Plan strategy to "Actively seek partnerships and collaborate with other organisations to build and utilise community infrastructure".

Key DRAFT timelines



Engagement Activity Plan

Consultation and Engagement Activities

Stage 1 – Inform – December 2023 to February 2024

Purpose – This stage is focused on sharing and communicating information about the whole project. Including: Background, purpose benefits, process, consultation stages, statutory engagement, timelines and FAQ's

Outcomes

- Awareness of the project and when and how community can engage and provide feedback.
- High sign-up rate for project updates on Shaping Banyule where all information above will be provided
- Community is well informed about project proposal, the process and the consultation opportunities.

Date	Activity	Target audience
11 December 2023	Council Meeting – Announce Project and endorse signing of HOA and Community Engagement Plan	Whole of population
15 December 2023	Shaping Banyule Go Live <ul style="list-style-type: none"> • Whole of Project Info and info session details • Submit Questions and sign up for Project updates FAQ on process • Engagement opportunities and timelines for stages • Dates of Feb Information sessions 	Whole of population
18 December	Letterbox drop 1 (Chelsworth Park and Surrounds) <ul style="list-style-type: none"> • Advising of Project and above & Shaping Banyule Live • Providing Key dates and booking details. • Booking for Feb Forums 	Chelsworth Park neighbours and surrounds
19 December	Chelsworth Park posters on site - QR code – scan for Project updates and to register for information sessions * This will remain through each stage of project with updates and links to Shaping Banyule	Local Community
22 Jan 2024	News from our neighbourhood – Article- Chelsworth Project Deadline for Information – 8 Jan	Chelsworth Ward
22 Jan to Feb 2	Banyule Banner – Project Information Shaping Banyule Register for Updates and info on consultation	Whole Banyule
2 – 8 February 2024	3 x Information Sessions on Project- scope, process, consultation opportunities (stage 2 and 3) and timelines. Advise of Dates for Lease Engagement in March <ul style="list-style-type: none"> • Friday 2 February – Chelsworth Park – 10.30am to 11.15 	Broad community

	<ul style="list-style-type: none"> •Tuesday 6 February – ILCH 4.30 to 5.15 •Thursday 8 February – Online 7pm to 7.45 	
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Stage 2 – Community Engagement Process (Lease) Section 115 of the Local Government Act 2020 – February and March 2024

Purpose – This stage is focused on the formal statutory engagement process for the Lease and providing the community with the opportunity to submit this feedback via the formal submission process.

It will also provide the community with opportunity to ask questions or provide comments and feedback on the draft pavilion design that forms part of The Heads of Agreement and Agreement for Lease. Noting that there will also be a formal public notice period where the community will be able to submit comments on detailed plans and documentation. (Subject to Council first resolving the Agreement for Lease)

Outcomes –

- Community understanding of the formal statutory process for submissions regard to agreement for lease and effective execution of requirements in regard to consultation and submissions
- Good engagement at workshops and through Shaping Banyule with all feedback being effectively collected and collated

Date	Activity	Target audience
26 Feb	Council Meeting – Commence statutory procedures under section 115 of the <i>Local Government Act 2020</i> giving public notice of the proposed AFL Friday 9th Feb – deadline sign off (week before to KB)	
27 February 28 Day submission process	Advertise and promote AFL key terms, concept plans and area - Public Notice Shaping Banyule <ul style="list-style-type: none"> • Public Notice • Key terms of proposed lease • Advise of Submission process and decision process • FAQ updates • Engagement opportunities and time-lines for stage 2 – March dates • Online Survey 	Whole of population
27 Feb	Letterbox drop 2 (Chelsworth Park and Surrounds) <ul style="list-style-type: none"> • Informing of Notice of Intention for AFL • Copy of Public Notice • Dates for lease engagement consultation and booking process 	Local Chelsworth

18- 22 March	3 x Engagement Workshop Sessions <ul style="list-style-type: none"> • 1 x in person at Chelsworth Park • 1 x in person at ILCH • 1 x Online • 23 March Sat session 	Broad community
18-22 March	Banyule Banner – Project Update – Consultation Opportunities	Broad Community
27 March	Formal submission period closes on AFL	Broad Community
April	Council hears/reviews submissions	Formal Submitters
29 April	Council Meeting – Receive written submissions and hear requests to be heard	
20 May	Council Meeting - Council decision	
29 April to 10 May	Banyule Banner Article – Update Deadline 5 March)	Broad community

Stage 3 – Community Engagement Process

- (Planning) subject to resolving Agreement for Lease. Stage 3 consultation will be presented for Council endorsement at 29 April Meeting (proposed draft date)
- Stage 3 will involve a formal public notice period and statutory process and broad consultation similar to what is presented in stage 2 consultation.

NOTICE OF PROPOSED LEASE

Banyule City Council (**Council**) acting under section 115 of the *Local Government Act 2020*, gives notice of its proposal to enter into an Agreement for Lease (**AFL**) and Lease with Ivanhoe Grammar School (**IGS**) in respect of the land and buildings located at 18-28 Irvine Road, Ivanhoe, being the land comprised in certificates of title volume 5883 folio 571 and volume 7926 folio 113 known as Chelsworth Park Ivanhoe (**Land**).

The key terms and conditions of the proposed AFL and Lease are as follows:

- Condition precedent: the Lease is conditional on IGS obtaining a planning permit for its proposed redevelopment of the pavilions on the Land at estimated cost of \$14 million.
- Tenure: 30 years plus 2 x 5-year options (total 40 years) commencing on the day following IGS obtaining a planning permit for its proposed redevelopment of the pavilions on the Land.
- Rental: \$12,000 per year (plus annual increase of 4%)
- Repairs and maintenance remain the responsibility of IGS, currently \$400,000 pa.
- In consideration of the significant capital expenditure proposed by IGS and the payment of increased annual rental, various minor financial obligations on IGS in the existing lease will be removed.
- The reference to the role, purpose, and membership of Chelsworth Park Reference Group will be deleted from the lease and the Group will be established as an advisory committee to Council.
- Public access to Chelsworth Park (other than the new pavilions to be constructed by IGS) must be maintained at all times during the Term and Further Terms and IGS is not permitted to erect any fences or other obstructions on or around Chelsworth Park to prevent such public access.

Further information on the proposal to enter into an AFL and draft Lease can be viewed on Council's website <https://shaping.banyule.vic.gov.au/ChelsworthPark>

A person may make a written submission on the proposed Lease.

Any person proposing to make a submission in accordance with Council's Community Engagement Policy under section 55 of the Act and the Property Services Community Engagement Plan must do so within 28 days of the publication of this Notice.

All submissions will be considered in accordance with Council's Community Engagement Policy, procedures and plans.

Written submissions to Council quoting (**Ref: F2013/1243**) must be received by **5pm on Wednesday 27 March 2024**. Submissions can be made online at: <https://www.banyule.vic.gov.au/Direct-use/Respond-to-a-public-notice>

You can also write to Council addressing your submission to the Chief Executive Officer, Banyule City Council and delivered to any of the following locations:

- Council Offices, Level 3, 1 Flintoff Street, Greensborough
- Ivanhoe Library & Cultural Hub, Ground Floor, 275 Upper Heidelberg Road, Ivanhoe

Submissions may also be posted to PO Box 94 Greensborough 3088.

Any person requesting to be heard in support of his or her submission is entitled to be heard before Council or be represented by a person acting on his or her behalf.

Submissions will be considered at the Ordinary Meeting of Council on **Monday 29 April 2024** beginning at 7pm at the Council Chambers, Ivanhoe Library & Cultural Hub, 275 Upper Heidelberg Road, Ivanhoe. Council will consider the proposed AFL and Lease at its meeting on **Monday 20 May 2024**. If no submissions are received, Council may consider whether or not to proceed with negotiating an AFL and Lease with IGS at its ordinary meeting on **Monday 29 April 2024**.

Any person making a written submission is advised that all submissions and personal information in the submission will be handled by Council in accordance with the provisions of the *Privacy and Data Protection Act 2014*.

For further information, contact Gary Mills, Senior Property & Projects Officer on 9457 9807 or Daniel Fantin Coordinator Strategic Properties and Projects on 8673 4393.

Public Notice to be published on Tuesday 27 February 2024.

