

# Maroondah City Council Community Facilities

## Leases and Licences

### A Guide to tenant obligations



**Prepared: October 2021**



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## Introduction

Council subsidises the use of community facilities to encourage their use and to support community organisations. A lease or licence may be offered to community organisations to provide greater security of tenure over a fixed period, thus eliminating the need to apply annually for an allocation.

Lease agreements are only offered to a small proportion of Maroondah organisations occupying Council facilities and, with the exception of historical arrangements, would only be offered where there was a definitive need for exclusivity and/or where there has been a significant financial contribution made by the organisation to the construction or enhancement of Council's asset.

The standard agreements are intended to be fair documents that protect facilities owned by Council as custodian for the broader community, balanced by the recognition of the not for profit nature of the use. It is intended that all organisations occupying Council facilities on a lease or licenced agreement will, where possible, be on the same terms and conditions for use. This provides equity and fairness for the user groups.

The standard Community Facilities lease and licence agreement is only available to **Not for Profit** community organisations which provide a service to the Maroondah Community.

## Knowing your obligations

While it is important that the physical signed occupancy agreement is kept in a safe, known location, it is also essential that at a minimum the organisation's executive committee have access to a copy of the agreement and that it is regularly reviewed. The lease or licence agreement outlines the agreement length, rental, purpose of use, requisite insurance, rights and responsibilities of both the tenant and Council, expected conduct and required annual reporting obligations. It is important that committees have a process to ensure the transfer of knowledge and understanding of the agreement's essential terms and obligations if committee personnel change.

## Lease or Licence ... the difference explained

### Lease

A lease is a contract under which a tenant (or lessee) is granted exclusive possession of property for an agreed period, usually in return for rent. A lease should be granted where both parties intend the tenant to have exclusive possession and certainty of tenure during the term of the arrangement or a tenant is expected to make substantial contributions to the development or specialised maintenance of the site. eg Tennis clubs who must maintain their courts.

If a tenant defaults, meaning that they have not met an obligation of the lease agreement, it has certain statutory rights to maintain or reinstate the lease, despite termination by a landlord.

### Licence

A licence is a form of permission to enter and use land and/or facility for an agreed purpose for a stated period. The licensee does not have exclusive use of the land allowing Council to allocate other users groups or allow the general public to use the facilities at other times.

## Terminology

A brief layman's glossary of terms is provided below, relevant to the Community Facilities leasing processes at Maroondah City Council. Other terms are defined within the Lease.

<b>Clause</b>	An agreed rule and obligation of the agreement
<b>Essential Term</b>	A clause in the lease or licence agreement that contains a key requirement. If one party fails to perform an essential term of the lease, usually this will give the other party the right to terminate the agreement.
<b>Particulars</b>	The information within the agreement specific to the tenant organisation
<b>Renewal</b>	Lease and Licence generally have an agreed number of terms, eg 3 terms of three years. At the end of a term if there are additional terms then the agreement must undertake a renewal process.
<b>Option</b>	If a tenant has fulfilled their obligations under the lease or licence agreement and there is an additional term, the organisation has the <b>option</b> or choice as to whether to continue the lease for this further term.
<b>Endorsement/ Ratification</b>	The process of approving the draft lease agreement via a Council report tabled at an ordinary Council meeting
<b>Seal</b>	Council's seal is a heat stamp impression which is provided in addition to signatories to execute a lease. Limited community organisations still use a seal.
<b>Executed</b>	The Lease or Licence shall become effective when both parties have each signed and where applicable sealed both copies of the document and been delivered to each other party
<b>Deed of Surrender</b>	If an organisation becomes insolvent or no longer wants to occupy the facility a deed of surrender process must be undertaken via Council report to formally surrender the lease.
<b>Deed of Variation</b>	If an existing lease is required to be altered then a deed of variation process must be undertaken via Council report to formally adopt the agreed variation the existing lease agreement.

# Standard Lease/Licence Composition

## Part ONE

### **Standard document with Personalised Recitals**

- Detailing the tenants details, exact parcel of land, building assets and location

### **Execution Clause**

- Where Council and the tenant formally sign the agreement to confirm their mutual acceptance of the terms and conditions of the lease

## Part TWO

### **Particulars**

- Specific details of the agreement between Council and Tenant
- The specified community use outlining the activities normally associated with the tenant organisation's core business.
- The rental including GST for each year of the initial term
- Specified hours of use
- Special Conditions
- Amendments to the standard agreement proforma

### **Standard Clauses**

- Agreed terms of standard agreement applicable to all organisations occupying Council Facilities on a lease or licence.
- The essential terms of the standard lease agreement are listed in clause 19.3 of the lease.

### **Annexures**

Form part of the lease and include:

- Schedule of Changes / agreed deviations from the standard &/ or Special Conditions
- Plan of Premises - showing the agreed leased or licenced area and any shared areas
- Pro-forma letters for Options -These letters illustrate to the tenant the process for renewal.

### **Special Conditions**

This is part of lease agreement where any additional special conditions (which prevail over standard clauses) may be included.

## Attachments to the agreement

There are four attachments to the standard agreement which should be viewed from Council's Website to ensure the most up to date version. **The documents can be found via [LINK](#)**

1. Annual Requirements Form
2. Community Facilities Lease Alter Premises Process 2012
3. Key Policy
4. Community Facilities Maintenance Schedule

### 1. Annual Requirements Proforma

This form should be completed and returned to Council from 1 Nov - 28 Feb each year. In addition to the form the tenant will be required to attach the following:

- Copy of AGM report with financials and activities of the past year
- List of current committee executive/ office bearers
- Key holder list accounting for all keys/swipe cards
- WWC/Child Safe Policy and Working With Children record of all required employees, contractors and volunteers
- Copies of all required permits eg food registration permits, liquor licence
- Certificate of Currency of Insurance with Council is listed as an interested party

In addition to these annual requirements Council may request in writing the following additional reporting:

- any significant or cyclical maintenance of the Premises undertaken by the Tenant in accordance with the Maintenance Schedule or otherwise;
- annual reports of all OH&S incidents (including near misses and those causing injury) arising on, in or near the Premises or in connection with the Tenant's use of the Premises\*
- a report on the current number of active members of the Tenant and how many of the active members live within the municipality of Maroondah.

\* Notwithstanding Council requests for annual reporting, the Tenant shall report to Council all OH&S incidents (including near misses and those causing injury) arising on, in or near the Premises or in connection with the Tenant's use of the Premises immediately after such incident occurs.

### 2. Community Facilities Lease Alter Premises Process 2012

Tenants wishing to undertake works or alterations to facilities must firstly seek Council's written approval through submitting a RWICF (Request Works in Council Facility) Application.

This applies to both internal and external works within the demised red line on their plan of premises. In reviewing proposals, Council will ensure compliance with relevant legislative and regulatory requirements such as the Building Code, disability compliance, as well as whether the proposed works fit or compliment with the current purpose of use, justification of need, size and scale.

The following process has been developed as a guide to assist user groups in applying to undertake works at Council facilities.

**1. Initial Contact with Council** – Tenant to contact relevant Council Liaison Officer for advice and provide initial information on the proposed project.

**2. Contact with relevant Council Departments** – The applicant may be referred to other key Council Departments (ie. Building, Planning, Public Health, Engineering etc) to ensure compliance with relevant statutory codes and regulations.

**3. Submission of Request for Works (RFW)** – The tenant is required to submit to their relevant Council liaison, a RWICF which can be found on Council's website [LINK](#) along with a copy of all concept plans (including relevant structural plans, site maps and technical drawings where required) and the proposed scope of works for their project for Council consideration.

**4. Site meeting** – For more complex projects a site meeting with relevant Council Officers may be required to provide further detail and input into the project and to ensure it will not adversely impact on a building, reserve or surrounds, and residences or other reserve infrastructure.

**5. Approval Process** - Council, as the owner / manager of the land, will consider and formally approve or reject each project submission. This process may also include gaining statutory approvals, as some projects may require Building or Planning permits to be issued before they can commence. Written approval must be gained from Council prior to any project commencing.

**Clause 7.2.6 Improvement of premises** - This clause highlights that Council provides a building that should be fit for purpose for the intended Community Use. If a tenant wished to improve the building it should be at their expenses including the costs for planning.

### 3. Key Policy

The Key Policy outlines that the tenant is responsible for the cost of rekeying buildings where keys are lost or not returned.

Tenants are issued with (and require to sign-off for) an allocation of keys/swipe cards for which they are responsible throughout the period of tenancy. The tenant will be responsible for maintaining a register of keys/swipe cards distributed to members.

Should user groups request additional or replacement keys/swipe cards, the cost of additional and replacement keys/swipe cards will be charged to the user group/s requesting them.

Any loss of keys/swipe cards should be reported to Council immediately. The responsible tenant will be charged the full costs associated with re-keying the whole facility in the event of any keys being stolen, or other events that will compromise the security of the facility.

### 4. Community Facilities Maintenance Schedule

The Community Facilities Maintenance Schedule outlines the various maintenance responsibilities of Council and user groups. It is important that tenants understand and budget for their maintenance and where required renewal responsibilities. Certain assets require the tenant to undertake cyclical maintenance for safety eg (Gas heating, air conditioner) and/or to extend the life and efficiency of the asset. Council may request the tenant to provide evidence of this maintenance.

Note the term 'all damages' means any damages caused by the user group/s or any invitees using a Council facility.

Please refer to the website for the most up to date version as changes are made from time to time. Changes will mostly only benefit the tenant with Council continuing to take on greater maintenance responsibilities for the protection of the Asset and to minimise risk to the community.

## Steps to lease & licence renewal or new agreement

When the full agreement period is completed Council will be in contact with the tenant at least 3 months prior to discuss the opportunity to enter into a new occupancy arrangement however when it is time to renew a lease or licence for a further term the following process should be followed:

#### Step 1. Tenant to provide notice of intent to renew

The tenant is required to send through their notice of intent to exercise their option 3 - 6 months prior to the end of the term. The Notice proforma is an annexure of the agreement.

#### Step 2. Council to provide renewal agreement to the tenant for signing and return

The tenant will then be provided with two copies of the renewal agreement which will outline the rental for the further term. The tenant must sign and return Council's copy to finalise the renewal process and retain the tenant's copy of the renewal with their copy of the original agreement.

## Compliance with agreement obligations

Maroondah City Council shares the same values as our wider community. It is Council's desire and expectation that community organisations that are operating from properties that Council owns or operates share those same values of inclusiveness, diversity, engagement, transparency, ethics, accessibility and safety. When your organisation entered into a Lease or Licence with Council you agreed to comply with the obligations as specified under the Lease or Licence. This includes ensuring that the conduct of all participants involved in the organisation's activities is such that would not cause harm or be likely to bring Council or yourself into disrepute or damage the reputation or interests of Council.

If your organisation does not comply with all of its obligations under the Lease or Licence, including activities that may undermine these values, that failure of compliance is considered a **breach** or **default** by you of that Lease or Licence. Council will issue written notice under the terms of the Lease or Licence requesting that you resolve the breach within 14 days. If no remedy and/or good reason is provided for the default, the breach constitutes a strike against you. In accordance with the Community Facilities Occupancy Policy (2021), if you breach, and do not remedy, the terms of your Lease or Licence three times (**three strikes**) within a 24-month period, a decision to terminate your tenancy may be taken. These infringements may not be the same on each occasion.

If Council considers the breach to be substantial, Council may make a decision to terminate the Lease or Licence outside of the three strikes policy. Council prefers to work with the community to avoid termination of the Lease or Licence, but it is important that you familiarise yourself with all your obligations to avoid such a breach arising.

**Defaulting** - When a tenant breaches their obligations under the lease agreement Council should provide written notice of the default particularly where good reason cannot be offered.

**Persistent Default** is where a tenant does not respond to Council's written warning of default or has multiple different defaults within a lease term. Council has the right not to approve a tenant's option to renew if they are in persistent default if Council has provided notice of the defaults.

**Item 11 and Clause 9 Security Deposit** - The \$1000 plus GST security deposit is a bond which may, at the discretion of Council be asked to be paid prior to commencement of a lease with a new tenant or called upon at any time during the agreement term as a first recourse should an obligation not be met. The bond may be simply held or utilised to fund any unfilled repair obligations or to oncost any Council expenses incurred as a result of the breach. The tenant is required to replace the expended portion of the security deposit.



## Permitted Use and Facility Hire

The tenant is only allowed to utilise the facility for the permitted use stated in the particulars and during the hours stated in the particulars. The use must remain Not for Profit.

Lease or licence holders are only permitted to hire the facility during their allocated hours and only if they have undertaken a **Council certification process** administered by Sport and Recreation, to understand their hiring responsibilities. This is in accordance with Council's Community Facilities Hire Policy ("Policy"), which details the minimum processes and procedures for hiring Council owned facilities and includes a standard Hire Agreement Form and General Conditions of Hire.

Community Facilities Certification information, hire handbook and proformas are available on Council's website. [LINK](#)

## Demised Premises

The Plan of premises located at the end of the agreement identifies the area which has been leased or licenced to the tenant. Within the red line is the tenant's responsibility in accordance with the Community Facilities Maintenance Schedule and outside of the redline is Council's responsibility. The tenant cannot bring anything onto, alter or remove anything outside of the demised premises without the written permission of Council.

## Incorporation

All Community Facilities Lease and licence holders must be Incorporated under the Associations Incorporations Act, or come under the auspices of an incorporated organisation.

Incorporation creates a legal identity for user groups separate from that of their members (ie. protects individuals from legal liability). There are annual requirements which must be completed to maintain your incorporated status. Information on requirements is available via Consumer Affairs Victoria [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au).

## Insurances

### Property Insurance

Buildings owned by Council are fully insured by Council unless otherwise stated. Contents owned by Council are insured by Council.

Contents purchased or supplied by occupiers and not considered fixtures of the facility remain the property of the occupiers and are NOT insured by Council. Council DOES NOT insure property which is owned by others. Cash, consumable goods, electronic scoreboards and sporting equipment kept on premises by occupiers are also NOT insured by Council.

### Public Liability Insurance

Council holds its own Public Liability Insurance to cover its liability. The activities of independent bodies, publicly elected committees and sporting bodies etc. that occupy Council owned buildings are NOT protected by Council's Public Liability Insurance.

Your insurance policy must be listed in the name of the user group and to a value of \$20 million (minimum) in respect of any one single event (or such greater sum as the Council may reasonably require). A certificate of currency of insurance which evidences payment of the premium must be provided to Council not later than 14 days after the premium becomes due.

## **Glass Insurance**

It is a requirement under the lease or licence agreement that tenants hold a glass insurance policy to cover the tenant against accidental glass breakage. Council is responsible for the cost of glass replacement in the event of vandalism.

## **Rental**

The Community Facilities Pricing Policy provides an overarching framework containing principles that guide the pricing of Council owned and managed community facilities and ensures a consistent approach to the pricing of such facilities.

There are four rental categories which guide the pricing of Community Facilities leases and licences which are detailed in the Community Facilities Leases and Licence Pricing Schedule.

### **Groups Traditionally Supported by Council**

Subsidised rental for specified service organisations, preschools and seniors groups which reflects the cost to Council of administering the Lease or Licence.

### **Groups that are responsible for specialised maintenance**

There are a number of community groups in Maroondah that are responsible for the specialised maintenance of areas within their Leased or Licensed facility, i.e. tennis courts, bowling greens, and croquet rinks.

### **Other Community Groups Occupying Council-Owned Facilities**

For community groups that are not listed under the above categories, the rental will be determined based on the quality of the facility, capital contributions provided by Council and the community organisation, the type of organisation using the facility and whether the organisation has exclusive use of the facility. This category of pricing is also guided by the Seasonal and Casual Pricing Schedule.

### **Miscellaneous**

Community groups that occupy Council buildings and/or land that are unique, have needs that are significantly different or have provided significant resources towards the development of the facility need to negotiate the terms and conditions of their Lease with Council Officers.

## **Understanding your agreement**

It is acknowledged that many of the clauses within the agreement are 'legal speak'. If you would like assistance with deciphering the meaning or intention of any clause, please email your Council representative and a response will be provided. Council does not have an inhouse legal team and may need to seek external advice if required. Tenants are also welcome to obtain their own legal advice in relation to their lease. Council representatives are also willing to sit down with any committee to go through the agreement and explain the key obligations and processes.

## Further Information

For further information in relation to your lease or licence please contact your Council representative via [maroondah@maroondah.vic.gov.au](mailto:maroondah@maroondah.vic.gov.au) or their direct email.

For urgent issues

<b>Purpose</b>	<b>Organisation</b>	<b>Contact phone</b>
Emergency	Victoria Police	000
Fire	Metropolitan Fire Brigade	000
Accident / injury	Ambulance Victoria	000
Water supply	Yarra Valley Water	132 762
After hours' emergency assistance	Maroondah City Council	1300 88 22 33