



MAROONDAH CITY COUNCIL

**Enjoying Planned Retirement
Incorporated**

COMMUNITY FACILITY LEASE 2021

This lease package is a controlled document and is one of a suite of documents used by Council when granting third parties the use of Council premises. Permission for the use of this document by Council staff must be obtained from Council's Manager Leisure.

Maroondah City Council 2018 standard community facility lease package

This lease has been developed for use in the lease of community facilities by Maroondah City Council (**Council**). It is based on a standard document prepared by Maddocks lawyers, modified for Council's own purposes.

The Council documents used to leases or licence the use of Council premises include:

- This standard community facility lease;
- A standard community facility licence;
- Standard documents to vary, surrender and renew community facility leases and community facility licences;
- A suite of documents relating to the seasonal allocation of Council premises (through a form of licence); and
- Overarching policy documents, including –
 - Community Facilities Occupancy policy (2015); and
 - Community Facilities Pricing policy (2015).

This community facility lease consists of two parts:

Part One – Recitals and Execution Page

The Recitals set out the factual circumstances in which the lease was entered into. They do not form an operative part of the lease (i.e. grant rights or create obligations) but Council can rely and may be able to take action based on any representations made by the tenant (usually in Recital I).

The execution page is where Council and the tenant formally sign (or execute) the lease to confirm their mutual acceptance of the terms and conditions of the lease.

Part Two – Particulars, Standard Clauses and Annexures

The Particulars are the specific details of each lease: the parties to the lease, the land being leased, the period of the lease, the rent etc. There are then 23 standard clauses which set out Council's community facility lease terms. These Particulars must be completed for the standard terms to be able to have effect.

There are four Annexures to each Council lease:

- Annexure A records any amendments to the standard clauses and includes any additional special conditions (which prevail over standard clauses).
- Annexure B inserts a plan of the premises. It is this plan that shows the specific land and buildings being leased to the tenant.
- Annexure C inserts a copy of the Ministerial Determination dated 24 July 2008¹.
- Annexure D are Council's standard documents to exercise any option to extend the term of the Lease.

¹ This Determination exempts certain Local Government leases from retail tenancy lease laws.

Part One – Recitals

- A. Maroondah City Council owns the land known as –
- a. Norwood Reserve, Warrandyte Road, Ringwood North, 3134
 - b. Volume 8127 Folio 900
(Council’s Land)
- B. Enjoying Planned Retirement Incorporated (ABN 25 614 181 055) is a not for profit incorporated association that is registered in Victoria and operates within the municipality of Maroondah (**Tenant**).
- C. The Tenant wishes to lease part or all of the Council Land from Council.
- D. Council has granted the Tenant a lease of the part of Council’s Land bounded in red on the aerial photograph or other plan shown in Annexure B of Part Two of this lease package on the terms and conditions set out in this lease (**Premises**).
- E. Located on the Premises are the following Council assets –
1. Senior Citizens centre
 2. Annex utilised by Early Planned Retirement
 3. Historical Society room
 4. Kindergarten Building
- F. Located on the Premises are the following assets not owned by Council: the Tenant’s property.
- G. Subject to the terms of this lease, the Tenant has the exclusive use of the Premises and all Council assets located on the Premises.
- H. The purpose of Council granting this lease to the Tenant is to enable the Tenant to carry on of activities normally associated with a senior citizens club (leisure and recreational activities, social inclusion programs and events which support older residents of Maroondah)
- I. In granting this lease to the Tenant, the Tenant acknowledges it has made and Council has relied upon the following representations –
- a. The Premises will only be used for not for profit purposes and not for any commercial purposes;
 - b. The Tenant will only use the Premises in a manner that complies with the terms and conditions of this lease;
 - c. The Tenant is financially sound and will be able to pay its rent and all other of its debts as and when they fall due; and
 - d. The Tenant has disclosed to Council all matters about the Tenant and about this lease known by the Tenant which may materially affect either Council’s decision to grant this lease to the Tenant or the terms of this lease.

Part One – Execution Page

The Council leases the Premises to the Tenant subject to the terms contained in this Lease.

This Lease is executed as a deed on the _____ day of _____ 20

The Common Seal of Maroondah)
City Council was affixed in the)
presence of:)

..... Councillor

..... Chief Executive Officer

Dated this day of 2021

Executed for and on behalf of [insert)
name of Tenant] in accordance with its)
Constitution by:)

(Signed)

..... PRINT name and position held

(Signed)

..... PRINT name and position held

Dated this day of 2021

Part Two – Standard terms of Maroondah City Council community facility lease

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Annexure D Pro-forma letters for Options.....

Particulars

Item 1.	Council: (Clause 1)	Maroondah City Council of Braeside Avenue, Ringwood 3134
Item 2.	Tenant: (Clause 1)	Enjoying Planned Retirement Incorporated 25 614 181 055 Norwood Reserve, Annex, 125A Warrandyte Road, Ringwood North, 3134
Item 3.	Land: (Clause 1)	The land contained in certificate of title volume 8127 folio 900 and known as Norwood Reserve, Warrandyte Road, Ringwood North, 3134
Item 4.	Premises: (Clause 1)	That part of the Land shown bounded in red on the plan in Annexure B
Item 5.	Commencement Date: (Clause 1)	1 July 2021
Item 6.	Term: (Clause 1)	Three (3) years
Item 7.	Further Term(s): (Clause 1 & 3.2)	Two (2) further term(s) of Three (3) year(s)
Item 8.	First and Last dates for exercising the Option for the Further Term: (Clause 3.2.1)	First date 1 January 2024 Last date 1 April 2024
Item 9.	Rent : (Clause 1 & 3)	Year 1: \$835.25 incl GST Year 2: \$856.01 incl GST Year 3: \$877.41 incl GST Year 4: \$899.35 incl GST Year 5: \$921.83 incl GST Year 6: \$944.88 incl GST Year 7: \$968.50 incl GST Year 8: \$992.71 incl GST Year 9: \$1,017.53 incl GST The Rent is payable annually in advance, within 28 days of Council issuing an invoice for the Rent, commencing on the Commencement Date, and then on each anniversary of the Commencement Date during the Term and any Further Term. Council will generally issue its tax invoice for the Rent in March or April preceding the next anniversary of the Lease. This payment obligation also applies to the payment of Rent during any Further Term.
Item 10.	Rent During Further Term: (Clause 1 and 5)	To be determined by Council if the option is exercised

Particulars (continued)

Item 11. Security Deposit: (Clause 1 & 8.1)	\$1,000 plus GST
Item 12. Community Use: (Clause 1 & 14.1)	The carrying on of activities normally associated with supporting older residents with social inclusion, leisure, recreation and social support related activities.
Item 13. Hours of Use (Clause 14.4)	Not applicable
Item 14. Special Conditions: (Clause 1 & 22.6)	The Special Conditions in section two of Annexure A form part of this Lease.
Item 15. Changes to Council's standard terms: (Clause 22.6)	The following standard clauses have been amended (as set out in section one of Annexure A): 14.4 clause deleted - unrestricted use of facility ▪ 2.1 Shared use spaces

1. Definitions

In this Lease unless expressed or implied to the contrary²:

Commencement Date means the date specified in Item 5.

Community Use means the use specified in Item 12 which falls within the uses specified in the Determination.

Council means Maroondah City Council as stated in Item 1 and includes the Council's successors and assigns and where it is consistent with the context includes the Council's employees and agents.

Council's Fixtures means all fittings, fixtures, and chattels contained in the Premises at the Commencement Date or installed by the Council during the Term.

CPI means the Consumer Prices Index – All Groups (Melbourne) or agreed equivalent

Determination means the Ministerial Determination dated 24 July 2008, a copy of which is attached at Annexure C.

Disaster Recovery Plan means the recovery plan prepared by Council (and other agencies) to be applied in the event of a disaster.

Further Term means the further term(s) specified in Item 7.

Hours of Use means the hours specified in Item 13.

Item means an item in the Particulars to the Lease.

Land means the land specified in Item 3.

Lease means this Lease.

Lettable Area(s) means the lettable area of the Land assessed for Rates and Taxes as determined by a surveyor engaged by the Council.

Maintenance Schedule means the schedule published on Council's internet website³ which sets out the repair and maintenance responsibilities of the parties to the Lease.

Municipal Emergency Management Plan means the management plan prepared by Council and other agencies that is applied in the event of an emergency.

Part means one of the two (2) parts to this Lease, which collectively constitute and form the terms of this Lease.

Premises means the premises specified in Item 4 and includes the Council's Fixtures.

Rates and Taxes means the rates, taxes, charges and levies specified in clause 6.1.

² Note: clause, Particular and annexure are defined in clause 23.5.1.

³ Subject to Council complying with the requirements of clause 23.10 which require notice to the Tenant and an explanation of any changes made compared to the preceding version (if any).

Rent means the amount specified in Item 9 as reviewed, adjusted or increased under this Lease.

Security Deposit means a Security Deposit for the amount specified in Item 11.

Services refers to utilities including electricity, gas, water, telephone and internet connection.

Special Conditions means the conditions referred to in Item 14.

Tenant means the Tenant specified in Item 2 and includes the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, contractors, agents, invitees and persons the Tenant allows in the Premises.

Tenant's Property means all property in the Premises including all fixtures and fittings owned or leased by the Tenant but excluding the Council's Fixtures.

Term means the term specified in Item 6 and includes any period of overholding.

2. Compliance with *Local Government Act 2020*

Where applicable, the grant of this Lease is subject to the Council giving notice of its intention to grant this Lease and resolving to grant this Lease pursuant to the requirements of the *Local Government Act 2020* (Vic).

3. Duration of the Lease

3.1 Term

This Lease is for the Term starting on the Commencement Date.

3.2 Option for a Further Term

The Council will agree to the Lease being extended for the Further Term if the Tenant:

- 3.2.1 gives the Council written notice in a form similar to the relevant letter in Annexure D asking to exercise the option to extend the term of the Lease, provided such notice is given not earlier than 6 months nor later than 3 months before the end of the Term (the first and last dates for exercising the option for the Further Term are specified in Item 8);
- 3.2.2 has remedied any breach of this Lease of which the Tenant has received written notice from the Council;
- 3.2.3 has not persistently defaulted under this Lease where the Council has given written notice of the defaults; and
- 3.2.4 complies with all reasonable requirements of the Council.

3.3 Process to exercise an option for a Further Term

The process to exercise an option for a Further Term once Council has received the written request from the Tenant's pursuant to clause 3.2.1 above is –

- 3.3.1 Council will advise the Tenant in writing whether Council agrees to the option for the Further Term being exercised⁴;
- 3.3.2 If Council agrees to the option being exercised then Council will send the Tenant an exercise of option agreement in a form similar to the relevant letter in Annexure D; and
- 3.3.3 The Tenant must then execute the exercise of option agreement and return it to the Council within 28 days of receipt failing which the option lapses at Council's discretion. If an option for a Further Term lapses then Council will confirm same to the Tenant in writing⁵.

3.4 Commencement and terms of the Further Term

Where an option for a Further Term has been exercised then the Further Term will commence on the day after the initial Term ends and operates on the same terms and conditions as the initial Term save that

- 3.4.1 there will be with no option for a Further Term where the last option for a Further Term has been exercised; and
- 3.4.2 the Rent for the Further Term will be the Rent stated in Item 10.

3.5 Overholding

If the Tenant continues in occupation of the Premises after the end of the Term, without objection by the Council:

- 3.5.1 the Tenant occupies the Premises subject to the same terms and conditions contained in this Lease;
- 3.5.2 the Council or the Tenant may end this Lease during any period of overholding by giving 30 days written notice to the other party expiring at any time; and
- 3.5.3 the Council may increase the Rent and the amount of any Security Deposit by giving the Tenant one months' written notice and those increases will apply from the end of the notice, even where the Tenant has already paid Rent further in advance.

4. Payment of Rent

The Tenant must pay the Rent to the Council in the manner specified by the Council in Item 9.

5. Rent for any Further Term

The Rent for any Further Term will be set for each year of the Further Term by Council prior to the Further Term commencing. The Rent will be determined by the application of any relevant policy adopted by Council or by reference to the historical and expected future movement in the CPI rounded up or down to the nearest \$50 or \$100 as Council reasonably determines.

⁴ If the Tenant has complied with the four requirements of clause 3.2 then Council is required to agree to the option being exercised. The option is the Tenant's, not Council's.

⁵ This signed letter of agreement is the formal documentation confirming the lease has been extended for the Further Term. It should be added to both parties copy of the Lease. Council does not execute a new lease when an option is exercised.

6. Outgoings

6.1 Rates and Taxes

The Tenant must pay to the Council, or the relevant authority:

- 6.1.1 water rates and charges, including water usage charges;
- 6.1.2 sewerage and drainage rates and charges;
- 6.1.3 land tax (assessed on a single holding basis); and
- 6.1.4 all other rates, taxes, charges and levies assessed in connection with the Premises save that the Tenant will not be required to pay for the waste collection services set out in clause 18.7 that Council will provide.

6.2 Proportion of Rates and Taxes

If any Rates and Taxes are not separately assessed in connection with the Premises, the Tenant must pay to the Council within 30 days of demand the proportion of the Rates and Taxes that the area of the Premises bears to the total Lettable Area assessed.

6.3 Receipt for Payment

The Tenant must provide to the Council receipts for any Rates and Taxes paid by the Tenant within 30 days of request by the Council.

7. Other expenses

7.1 Services

The Tenant must, by the due date on the demand, pay for all services in connection with the Premises, including electricity, gas, water, telephone, internet and cable communications or entertainment services and where any service is not separately metered, the Tenant must pay for a reasonable proportion of those services as determined by Council, acting reasonably.

7.2 Costs and Duty

The Tenant must pay to the Council within 30 days of demand:

- 7.2.1 Council's reasonable costs of preparing, negotiating and finalising this Lease;
- 7.2.2 the stamp duty payable on this Lease (including penalties and fees);
- 7.2.3 the Council's reasonable costs in considering the granting of any consent or approval under this Lease (regardless of whether the Council actually gives such consent or approval);
- 7.2.4 the Council's architects or contractor's fees payable pursuant to clause 11.3; and
- 7.2.5 the Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Lease by the Tenant.

8. GST

8.1 Definitions

In this clause:

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

8.2 GST Exclusive

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

8.3 Increase in Consideration

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

8.4 Payment of GST

Subject to clause 8.3 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 Lease.

8.5 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 8.4.

8.6 Reimbursements

If this Lease 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:

- 8.6.1 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
- 8.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

8.7 Adjustment events

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

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

9. Security Deposit

9.1 Council's Right to Use Security Deposit

The Council may call up payment of the Security Deposit required by clause 9.2 if the Tenant does not comply with any of its obligations under this Lease.

9.2 Delivery of Security Deposit

The Tenant must:

- 9.2.1 pay to the Council the Security Deposit by way of bank cheque together with the Tenant's tax file number on or before the Commencement Date; or
- 9.2.2 if the Council requires, deliver to the Council a bank guarantee for an amount equal to the Security Deposit (the bank guarantee must be on terms acceptable to the Council acting reasonably) on or before the Commencement Date; and
- 9.2.3 pay any additional amount towards the Security Deposit within 14 days of demand to maintain the Security Deposit at the required level.

9.3 Tenant to replace Security Deposit

The Tenant must, within 14 days of demand, replace any amount of the Security Deposit used by the Council (including providing a replacement or additional bank guarantee).

9.4 Return of Security Deposit

The Council must, if the Tenant has complied with all of its obligations under this Lease, return the Security Deposit to the Tenant within 60 days of the end of this Lease.

9.5 Sale of the Land

The Tenant must provide the Security Deposit to any future owner of the Land if this Lease continues beyond the sale of the Land.

10. Payment requirements

10.1 No Deduction or Right of Set-off

The Tenant must pay all amounts due under this Lease to the Council (including the Rent and Rates and Taxes) without deduction or right of set-off.

10.2 Interest on Late Payments

The Tenant must pay to the Council on demand interest at the rate per annum equal to the current rate fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)* on any money payable by the Tenant under this Lease and remaining unpaid after the due date. Interest will be computed from the date on which such payment became due.

10.3 Payment after Termination

The Tenant must:

- 10.3.1 make all payments due under this Lease; and
- 10.3.2 provide all information to the Council under this Lease to calculate any such payments,
even if this Lease has ended.

10.4 Method of payment

The Tenant must make all payments under this Lease in such manner as the Council reasonably requires, which may include by electronic funds transfer or direct debit.

11. Repairs, Refurbishment and Alterations

11.1 Repairs and Maintenance

- 11.1.1 The Tenant must maintain⁶ and repair the Premises in accordance with Maintenance Schedule.
- 11.1.2 Without limiting clause 11.1.1, the Tenant must:
 - (a) keep the Premises and the Tenant's Property clean and free from rubbish, store all rubbish in proper containers and have it regularly removed;
 - (b) keep the Premises in the same condition as it was in at the date the Tenant first entered occupation of the Premises (fair wear and tear excepted);
 - (c) pay to Council any costs incurred by Council in maintaining, repairing or replacing items in the Premises that are damaged, worn or destroyed with items of at least the same quality which are:
 - (i) the Tenant's responsibility under the Maintenance Schedule; or
 - (ii) not listed on the Maintenance Schedule,and which are not maintained, repaired or replaced by the Tenant as required under this Lease⁷;
 - (d) make good any damage caused to any adjacent property by the Tenant;
 - (e) take all reasonable measures to ensure that any fair wear and tear to the Premises does not cause any loss or damage to the Premises or to any person;
 - (f) give the Council prompt written notice of any material damage to the Premises or anything likely to be a risk to the Premises or any person or property in or near the Premises; and

⁶ Maintenance includes the regular servicing of specific items such as automatic doors, air conditioners, heaters, dishwashers and the like.

⁷ As the failure to repair or replace is a breach of this Lease then Council can immediately access the Tenant's Security Deposit, if there is one, rather than making demand for payment from the Tenant. Refer to clause 9.2.

- (g) generally comply with the procedures for maintenance and repairs set out in Council's Community Facilities Occupancy Policy (provided a copy is given to the Tenant) to the extent that Policy is not inconsistent with this Lease.

11.2 Electrical Equipment

The Tenant must ensure that all electrical equipment and appliances are inspected, tested and tagged in accordance with, and as often as required by, the standards contained in the Standard Inspection and Testing AS/NZS 3760.

11.3 Alterations to Premises

The Tenant must ensure any alterations or works to the Premises, any services to the Premises or the Tenant's Property are carried out strictly in accordance with the process set out in Council's policy for alterations to premises under a community facilities lease published on Council's internet website⁸.

The Tenant is not required to seek the Council's consent to making any alterations to the display of the Tenant's property in the Premises.

11.4 Not Interfere with Services

The Tenant must not interfere, misuse or overload any services to the Premises, including electricity, gas and water.

11.5 Defacing Premises

The Tenant must not deface or damage the Premises (including drilling holes in the Premises) except where approved by the Council in accordance with clause 11.3.

11.6 Failure to Repair and Maintain

If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 14 days of receiving written notice from the Council to do so, then the Council may enter the Premises to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant further reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Tenant to the Council on demand⁹.

11.7 Repairs to Council's Fixtures

The Tenant must reimburse the Council for the cost of any repairs to the Council's Fixtures within 14 days of demand¹⁰.

⁸ Subject to Council complying with the requirements of clause 23.10 which require notice to the Tenant and an explanation of any changes made compared to the preceding version. A policy titled 'Process for a tenant carrying out any alterations or works to the Premises' was published in 2013.

⁹ As the failure to repair or maintain is a breach of this Lease then Council can immediately access the Tenant's Security Deposit, if there is one, rather than making demand for payment from the Tenant. Refer to clause 9.2.

¹⁰ A failure to reimburse entitles Council to access the Tenant's Security Deposit, if there is one. Refer to clause 9.2.

12. Insurance¹¹

12.1 Public Liability, Consequential Loss and Glass Insurance

12.1.1 The Tenant must throughout this Lease maintain insurance, in the name of the Tenant and with Council named as principal or as an interested party, with an insurer approved by the Council, for:

- (a) public liability for the amount of \$20 million for each single event (or such greater sum as reasonably required by the Council); and
- (b) any windows and any other glass in the Premises for their full replacement value.

12.1.2 The Tenant acknowledges that the insurance set out in clause 12.1.1(a) must extend to the whole of the Premises and all activities of the Tenant including the activities of any volunteers and invitees of the Tenant.

12.2 Tenant's Property

The Tenant must insure the Tenant's Property for loss and damage from risks including fire and water damage for its full replacement value.

12.3 Payment and Production of Policies

The Tenant must pay all insurance premiums on or 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.

12.4 Not Invalidate Policies

The Tenant must:

12.4.1 not do anything which may make any insurance effected by the Council or the Tenant invalid, capable of being cancelled (by the insurer) or rendered ineffective, or which may increase any insurance premium payable by the Council; and

12.4.2 pay any increase in any insurance premium payable by the Council where such increase has been caused by the Tenant's act, default or use of the Premises.

12.5 Requirements by Insurer

The Tenant must comply with all reasonable requirements of the Council's insurer in connection with the Premises.

12.6 Other Insurance

The Tenant must, at its cost, effect and maintain:

12.6.1 workers' compensation insurance for its employees; and

12.6.2 if required by Council, professional indemnity, and directors and officers liability, insurance,

¹¹ Insurance of Council buildings and improvements (e.g. tennis courts, baseball fields, soccer fields etc) and Council's fixtures (generally anything fixed to the building or improvement) are Council's responsibility. Tenants are not required to insure these.

to the reasonable satisfaction of Council.

13. Release, Indemnity, Compensation and Liability

13.1 Release

The Tenant uses and occupies the Premises at its own risk and releases the Council from all claims resulting from any damage, loss, death or injury in connection with the Premises except to the extent that such claims arise out of the Council's negligence.

13.2 Indemnity

The Tenant must indemnify and hold harmless the Council against all claims resulting from any damage, loss, death or injury in connection with the Premises and the use and occupation of the Premises by the Tenant. The Tenant's liability to indemnify the Council will be reduced proportionally to the extent that the Council's negligence contributed to the loss or liability.

13.3 No Compensation

The Council is not liable to the Tenant for any loss or damage incurred by the Tenant due to:

- 13.3.1 any damage to the Premises;
- 13.3.2 the failure of the Council's Fixtures or any plant and equipment (including air conditioning and water or other heaters) to operate properly;
- 13.3.3 the interruption or damage to any services (including electricity, gas or water) to the Premises; and
- 13.3.4 the overflow or leakage of water in the Premises.

13.4 No Liability

The Tenant acknowledges and agrees that the Council will not be liable to the Tenant under this Lease (including but not limited to a breach of the covenant of quiet enjoyment or a derogation of the grant of this Lease) for any acts or omissions of the Council undertaken in any capacity including (but not limited to) in exercising any powers under the *Local Government Act 1989 (Vic)* or the *Planning and Environment Act 1987 (Vic)* except nothing in this clause releases Council from any obligations it owes to the Tenant under this Lease in its capacity as the owner of the Premises.

14. Community Use

14.1 Permitted Use

The Tenant must use the Premises for the Community Use and not use the Premises for any other purpose, with the intention being that the Tenant will maximise community use of the Premises within the Permitted Use. This means the Tenant is under a positive obligation to maximise the use of the Premises. If there are times where the Tenant is not using the Premises, then subject to clause 16 and special condition 2, Council may permit the Tenant to make the Premises available for use or hire by other community groups or individuals provided those other groups or individuals use the Premises in a manner that complies with the Permitted Use and the other terms of this Lease.

14.2 No Warranty

The Tenant:

- 14.2.1 acknowledges that the Council does not represent that the Premises are suitable for the Community Use; and
- 14.2.2 must make its own enquiries as to the suitability of the Premises for the Community Use.

14.3 Illegal Purpose

The Tenant must not use the Premises for any illegal purpose or carry on a noxious or offensive activity on the Premises.

15. Other obligations concerning the Premises

15.1 Compliance with Laws

The Tenant must comply with all laws and any requirements of any authority in connection with the Premises and the Tenant's use and occupation of the Premises including but not limited to, any requirements of the *Equal Opportunity Act 1995 (Vic)*, *Occupational Health and Safety Act 1958 (Vic)*, *Accident Compensation Act 1985* and the *Workers Compensation Act 1958 (Vic)* if applicable, except the Tenant will not be required to carry out any structural works unless the need for such works arises from:

- (a) the negligent act or omission of the Tenant;
- (b) the failure by the Tenant to comply with its obligations under this Lease; or
- (c) the Tenant's use of the Premises.

15.2 Licences and Permits

The Tenant must maintain all licences and permits required for the Tenant's use of the Premises and obtain the prior written consent¹² of the Council before varying any licence or permit or applying for any new licence or permit.

15.3 Nuisance

The Tenant must not do anything in connection with the Premises which may:

- 15.3.1 cause a nuisance or interfere with any other person; or
- 15.3.2 be dangerous or offensive in the Council's reasonable opinion.

15.4 Security

The Tenant must:

- 15.4.1 keep the Premises secure at all times when the Premises are not being used by the Tenant;
- 15.4.2 comply with any building security policy or procedure, key policy or procedure or similar policy or procedure published by Council on its internet website¹³;

¹² Clause 22.8 provides how Council can exercise this consent right.

- 15.4.3 not have additional keys cut or install any security system without the prior written consent¹⁴ of Council. The Tenant acknowledges that the Council may (in granting such consent) require the Tenant to provide Council with any access codes, cards or key servicing the Premises. If the Tenant fails to comply with any such condition Council may remove or temporarily or permanently disable the security system servicing the Premises at the Tenant's cost;
- 15.4.4 be able, at all times, to identify the person in possession of any key issued to the Tenant by Council. If the Tenant is not able to identify such persons to Council's reasonable satisfaction then, in addition to any other rights or remedies under this Lease, Council reserves the right to change the locks and re-key the Premises and issue new keys, the costs of which becomes a debt due and payable to Council by the Tenant upon the written demand of Council;
- 15.4.5 pay the cost of all security attendance at the Premises unless a police report is produced or panel fault is identified;
- 15.4.6 ensure all alarm codes are kept secure and that all alarms are in good working order¹⁵ and are properly de-armed during the Tenant's use of the Premises and re-armed after the Tenant's use of the Premises. If any Council officer, contractor or an emergency service, including, but not limited to a fire brigade, attends the Premises in response to an alarm that is triggered other than in an emergency situation, then the Tenant will be responsible for paying directly or reimbursing Council in respect of any cost or payment that must be made to the Council officer, contractor and/or emergency service as a result.

15.5 Signs

The Tenant must seek the prior written consent¹⁶ of the Council before displaying or affixing any signs, advertisements or notices to any part of the Premises where such signs, advertisements or notices are visible from outside the Premises.

15.6 No Smoking

The Tenant must:

- 15.6.1 not permit any smoking in the Premises; and
- 15.6.2 display 'no smoking' signs in the Premises if requested by the Council.

15.7 Vacation of Premises

The Tenant must not leave the Premises vacant for more than 45 continuous days without the prior written consent¹⁷ of Council.

15.8 Emergency Procedures

The Tenant must:

- 15.8.1 keep a fully stocked first aid kit at the Premises and replenish it when required;

¹³ Subject to Council complying with the requirements of clause 23.10 which require notice to the Tenant and an explanation of any changes made compared to the preceding version. A policy titled 'Maroondah Key Policy 2012' was published in 2013.

¹⁴ Clause 22.8 provides how Council can exercise this consent right.

¹⁵ Council, at its cost, will undertake regular inspection and maintenance of Council provided security systems. If there is any fault in a security system the Tenant is to promptly inform Council so an inspection can be undertaken.

¹⁶ Clause 22.8 provides how Council can exercise this consent right.

¹⁷ As above.

- 15.8.2 establish and display an emergency evacuation plan, and test the utility of any such evacuation plan, at regular intervals during each year of the Term; and
- 15.8.3 only use emergency equipment at the Premises for genuine emergencies and must promptly inform Council if emergency equipment is utilised by the Tenant and the reasons for such utilisation. If Council is of the view that the emergency equipment has been properly and reasonably used then Council will replenish the emergency equipment at Council's cost. However, if Council is not satisfied that the emergency equipment has been properly and reasonably used for an emergency, then the Tenant will be responsible for replenishing the emergency equipment at the Tenant's cost.

15.9 Heavy Objects and Flammable Substances

The Tenant must not:

- 15.9.1 store any flammable or explosive substances in the Premises unless they are required for the Community Use; or
- 15.9.2 store any unreasonably heavy objects in the Premises or store anything likely to damage the Premises.

Where flammable or explosive substances are stored in the Premises not in breach of this Lease, then the Tenant must give Council written notice of same including details of the substances, their volume, storage container and location.¹⁸

15.10 Television and Radio

The Tenant must not install any televisions, radios, music systems or other equipment in the Premises which can be heard outside the Premises without obtaining the prior written consent¹⁹ of the Council.

15.11 Endanger Premises

The Tenant must not do or permit anything to be done in connection with the Premises which in the opinion of the Council may endanger the Premises or be a risk to any person or property.

15.12 Tenant's Employees

The Tenant must use all reasonable endeavours to ensure that the Tenant's employees, agents, contractors and invitees observe and comply with the Tenant's obligations under this Lease, where appropriate.

15.13 Animals

The Tenant must not allow any animals other than assistance dogs to enter the Premises, unless the animals are required for or part of the Community Use of the Premises.

15.14 Auction Sales

The Tenant must not conduct or allow to be conducted any auctions, garage sales, car boot sales, fetes or similar activities without the prior written consent²⁰ of Council.

¹⁸ This notification enables Council to determine whether additional safety measures, such as emergency services warning signs, are required for the Premises. If there are any questions or concerns about chemicals in the Premises then Tenants are encouraged to contact Council so Council's corporate occupational health and safety adviser can review the circumstances and situation.

¹⁹ Clause 22.8 provides how Council can exercise this consent right.

²⁰ As above.

15.15 Liquor Licence

The Tenant must:

- 15.15.1 seek the prior written consent²¹ of the Council before applying for any licence or permit under the *Liquor Control Reform Act 1998 (Vic)* (licence or permit), or applying for any variation, removal, transfer, surrender or release of the licence or permit or nominating any person to be a licensee or permittee;
- 15.15.2 produce the licence or permit to the Council for inspection upon demand;
- 15.15.3 comply with any conditions of the licence or permit imposed by the Council;
- 15.15.4 comply with all conditions of the licence or permit and all laws relating to the licence or permit;
- 15.15.5 not allow the licence or permit to be cancelled or suspended;
- 15.15.6 renew the licence or permit and notify the Council in writing within 14 days of the renewal;
- 15.15.7 promptly notify the Council in writing if the licence or permit is cancelled or suspended or if the Tenant receives any notice, summons or fine in relation to the licence or permit;
- 15.15.8 indemnify the Council for any damages or costs incurred in relation to the licence or permit or a breach of this clause by the Tenant; and
- 15.15.9 surrender the licence or permit within 21 days of receiving a written notice from the Council, which the Council may give to the Tenant if the Tenant's use of the Premises is causing or likely to cause a nuisance to local residents.

15.16 Gambling

- 15.16.1 The Tenant must not conduct any form of gambling on or associated with the Premises, whether such gambling requires a permit or licence or not, without the prior written consent²² of Council.
- 15.16.2 The Tenant must not apply for a licence or permit pursuant to the *Gambling Regulation Act 2003 (Vic)* (**GRA**) without the prior written consent of Council.
- 15.16.3 The Tenant must provide a copy of any licence or permit issued pursuant to the GRA to Council.

15.17 Gaming Licence

The Tenant must seek the prior written consent²³ of the Council before applying for any licence under the *Gaming Machine Control Act 1991 (Vic)*.

15.18 Tenant Membership

The Tenant will:

²¹ As above.

²² As above.

²³ As above.

- 15.18.1 permit residents and ratepayers of the municipality of Maroondah to become members of the Tenant upon satisfying the Tenant's reasonable requirements for membership;
- 15.18.2 upon demand, inform the Council of the overall number of members of the Tenant and the number of Maroondah residents that are members of the Tenant; and
- 15.18.3 within 7 days of demand, provide the Council with access to all necessary documents to enable the Council to verify the membership of the Tenant. For the sake of clarity, Council will not copy or record the personal details of any member of the Tenant during any verification inspection.

15.19 Tenant Reporting Obligations

The Tenant must give Council:

- 15.19.1 within 5 months of the end of each financial year, an audited financial report or review (as per Incorporations Act requirements) including a statement of assets and liabilities and profit and loss statement for the Tenant for the just completed (preceding) financial year;
- 15.19.2 within 28 days of the Tenant's annual general meeting, a written report in a format similar to the template report for Tenants that Council makes available on its internet website²⁴ and, as a minimum, detailing:
 - (a) the activities conducted by the Tenant during the preceding year and, where applicable, a list of the groups which have used the Premises;
 - (b) the elected office bearers of the Tenant for the next year;
 - (c) any significant or cyclical maintenance of the Premises undertaken by the Tenant in accordance with the Maintenance Schedule or otherwise;
 - (d) a current list of each person who holds a key to the Premises including a reference to the key number (if any) allocated to the key by Council;
 - (e) 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;
 - (f) the activities that the Tenant is proposing to conduct at the Premises in the next Lease year including a list of any groups that will use the Premises; and
 - (g) 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.

15.20 Determination Warranty and Obligations

- 15.20.1 The Tenant acknowledges that the Council has entered into this Lease on the basis that the Tenant warrants that:
 - (a) the Tenant is a body corporate that exists for the purposes of providing community or similar facilities or promoting community objectives and that it applies its profits in promoting its objects and prohibits payment of any dividend or amount to its members; and

²⁴ Subject to Council complying with the requirements of clause 23.10 which require notice to the Tenant and an explanation of any changes made compared to the preceding version. A template report was published in 2012.

- (b) accordingly, pursuant to the Determination, the *Retail Leases Act 2003* does not apply to this Lease.

15.20.2 The Tenant warrants that its constitution or rules of association prohibit payment of any dividend, benefit or other amount to its members.

15.20.3 The Tenant agrees and acknowledges that during the Term and any further term:

- (a) it must apply any profits that it receives in promoting its objects;
- (b) it must not amend its rules or its constitution without the prior written consent²⁵ of Council; and
- (c) it must provide a copy of its constitution or rules to Council within 7 days of the Commencement Date and otherwise upon demand by Council.

15.21 Tax Exempt

The Tenant must not undertake any activity or permit anything to be done which may cause it to cease being exempt from Commonwealth income tax under the *Income Tax Assessment Act 1997*.

16. Dealing with Interest in the Premises

16.1 No Parting with Possession

The Tenant must not give up possession of the Premises including assigning this Lease, subleasing the Premises or granting to any person a licence or concession in respect of the Premises, without the prior written consent²⁶ of Council. Where hiring of the Premises to third parties is permitted by Council then Special Condition 2 applies. Council will generally allow such hiring to maximise community use of the Premises, noting the positive obligation of the Tenant under clause 14.1, provided such hiring is to groups and on terms acceptable to Council.

16.2 Change in Shareholding

If the Tenant is a corporation (other than a corporation listed on any stock exchange in Australia) a change in the control of the corporation as such control existed at the Commencement Date (whether occurring at the one time or through a series or succession of issues or transfers) or a change in the holding of more than one-half of the issued share capital, either beneficially or otherwise, will be deemed to be a novation or assignment of this Lease. Before any such novation or assignment of this Lease can be effective and binding upon the Council the Tenant must seek the Council's prior written consent²⁷.

16.3 Mortgage of Lease

The Tenant must not create any security over this Lease or the Tenant's Property.

²⁵ Clause 22.8 provides how Council can exercise this consent right.

²⁶ As above.

²⁷ As above.

17. Tenant's obligations at the end of this Lease

17.1 Tenant's Obligations

At the end of this Lease, the Tenant must:

- 17.1.1 vacate the Premises and give the Premises back to the Council in a condition consistent with the Tenant having complied with its obligations under this Lease;
- 17.1.2 remove the Tenant's Property (including all signs and lettering) and reinstate the Premises in the condition the Premises were in prior to the installation of the Tenant's Property including making good any damage caused by the removal of the Tenant's Property; and
- 17.1.3 give to the Council all keys and other security devices for the purposes of obtaining access to and securing the Premises.

17.2 Tenant's Property Left in Premises

Anything left in the Premises after 7 days of the end of this Lease will be deemed to be abandoned by the Tenant and will become the property of the Council and may be kept or removed or disposed of (including being sold by private sale) by the Council at the Tenant's cost and at the Tenant's risk.

18. Council's rights and obligations

18.1 Quiet Enjoyment

As long as the Tenant does not breach this Lease, the Council must not interfere with the Tenant's use and occupation of the Premises except as provided by this Lease.

18.2 Alterations to the Premises

The Council may carry out any works, alterations, renovation or refurbishment of the Premises which may include extending or reducing any buildings on the Premises at any reasonable time after giving the Tenant reasonable notice of any work proposed pursuant to this clause.

18.3 Dealing with the Land

The Council may:

- 18.3.1 subdivide the Land or grant easements or other rights over the Land or the Premises except where it will unreasonably interfere with the Tenant's use and occupation of the Premises;
- 18.3.2 install, repair and replace pipes, cables and conduits in the Premises; and
- 18.3.3 use the roof and external walls of the Premises for any purposes the Council determines.

18.4 Entry by Council

The Council may enter the Premises at any reasonable time after giving the Tenant reasonable notice to:

- 18.4.1 inspect the condition of the Premises;
- 18.4.2 rectify any default by the Tenant under this Lease;
- 18.4.3 carry out any inspection, repairs, maintenance, works or alterations in the Premises which the Council decides to or is required to carry out by any law or authority.

For the purposes of this clause, where the Tenant has previously lodged a maintenance request and Council is entering the Premises to action that request, then prior notice of entry from Council to the Tenant is not required.

The Council must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the Premises in exercising the Council's rights under this clause.

18.5 Emergency Entry, Municipal Emergencies and Disasters

- 18.5.1 The Council may enter the Premises at any time without giving notice to the Tenant in an emergency.
- 18.5.2 If the Council's Municipal Emergency Management Plan or Business Continuity Plan (or equivalent plans however titled) is activated then, notwithstanding any other provision of this Lease, Council reserves the right to enter and assume control of part or all of the Premises for emergency management or business continuity purposes for as long as is reasonably needed.
- 18.5.3 If Council assumes control of the Premises pursuant to clause 18.5.2 then Council must:
 - (a) use reasonable efforts to secure and protect the Tenant's Property, including data and confidential/personal information;
 - (b) return the Premises to the Tenant in the same condition that the Premises were in when Council assumed control of the Premises;
 - (c) acting in good faith, pay a reasonable proportion of any Rates and Taxes or Services assessed to the Premises during the period of the Council's occupation of the Premises; and
 - (d) reduce the Rent on a proportionate basis during the Council's occupation of the Premises.
- 18.5.4 The Tenant acknowledges and agrees that under no circumstance will the Tenant hinder the Council's use of the Premises or the Council's ability to respond to or deal with a municipal emergency or business continuity situation.

18.6 Reletting and Sale

The Council may:

- 18.6.1 once the Tenant has indicated that they will not exercise the option for a further term, affix a 'For Lease' sign on the Premises and show the Premises to intending tenants at any reasonable time upon reasonable notice to the Tenant during the 6 months prior to the end of the Term (except where the Tenant has validly exercised an option for a Further Term); and

- 18.6.2 affix a 'For Sale' sign on the Premises and show the Premises to intending purchasers of the Premises at any reasonable time upon reasonable notice to the Tenant during the Term.

Any sign erected by the Council must not unreasonably interfere with the Tenant's use and occupation of the Premises.

18.7 Waste services

Council will provide, without charge to the Tenant, two (2) two hundred and forty (240) litre waste bins and two (2) two hundred and forty (240) litre recyclables bins for the use of the Tenant in accordance with Council's waste collection practices current at the time. Any additional waste collection services that Council agrees to provide will be provided at the Tenant's cost.

19. Termination of Lease

19.1 Re-entry

The Council may re-enter the Premises and terminate this Lease if:

- 19.1.1 any part of the Rent is in arrears for 30 days (whether or not the Council has demanded payment);
- 19.1.2 the Tenant breaches this Lease and does not remedy the breach within 14 days of receipt of written notice from the Council; or
- 19.1.3 any funding or service agreement between Council and the Tenant ends.

19.2 Damages following Determination

If this Lease is terminated by the Council, the Tenant agrees to compensate the Council for any loss or damage the Council suffers arising in connection with the Tenant's breach of this Lease including the loss of the benefit of the Tenant performing its obligations under this Lease up to the expiration of the Term.

19.3 Essential Terms

The essential terms of this Lease are clauses 3, 6.1, 7.1, 7.2, 8, 9, 11.1, 11.3, 12, 14.1, 15.1, 15.15, 15.17, 15.18, 15.19, 16.1, 18.5 and any special condition that is expressed to be an essential term of this Lease. The breach of an essential term is a repudiation of this Lease.

19.4 No Deemed Termination

If the Tenant vacates the Premises, the Council will not be deemed to have terminated this Lease merely by the acceptance of keys from the Tenant, entry into the Premises for any purpose, or the showing of the Premises to prospective tenants or purchasers. This Lease will be deemed to continue until such time as the Council gives notice to the Tenant terminating this Lease, or otherwise agrees with the Tenant that this Lease is terminated.

20. Insolvency Event

20.1 If:

- 20.1.1 the Tenant is insolvent or admits or is presumed to be so;

- 20.1.2 an application or order is made for the winding up or dissolution of the Tenant, or a resolution is passed or any steps are taken to pass a resolution for a winding up or dissolution of the Tenant;
- 20.1.3 an administrator, provisional liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the Tenant, or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within fourteen days; or
- 20.1.4 the Tenant enters into, or takes any action to enter into, an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or an assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them,

then an act of insolvency has occurred, and the Council may then terminate this Lease at any time by giving the Tenant 14 days written notice.

21. Destruction or Damage of Premises

21.1 Reduction in Rent

If the Premises, or any part of the Premises, are destroyed or damaged to the extent that the Tenant cannot use or have access to the Premises (except if the Tenant causes or contributes to the destruction or damage, or the Council's insurer is not legally required to reinstate the Premises because the Tenant caused or contributed to the destruction or damage) then the Council will reduce the Rent and any outgoings by a reasonable amount depending upon the nature and extent of destruction or damage until the Tenant can use or have access to the Premises.

21.2 Reinstatement of Premises

If the Premises or any part of the Premises are destroyed or damaged, the Council may, within 6 months from the date of such damage or destruction, give notice to the Tenant:

- 21.2.1 terminating this Lease, where the Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
- 21.2.2 that the Council will commence reinstatement of the Premises to a condition where the Tenant can use or have access to the Premises.

The Council does not have to reinstate the Premises.

21.3 Tenant's Right of Termination

Where the Tenant has not caused or contributed to the damage or destruction of the Premises and the payment of the insurance for the Premises is not refused due to the act or default of the Tenant, the Tenant may give written notice to the Council terminating this Lease where the Council does not:

- 21.3.1 give notice to the Tenant pursuant to clause 21.2; or
- 21.3.2 commence reinstatement within 12 months of the date of damage or destruction.

Upon termination of this Lease, each party is released from all further obligations under this Lease except nothing in this clauses releases either party from any breach of this Lease arising prior to the date of termination.

21.4 No Compensation

The Tenant acknowledges that if the Premises are destroyed or damaged, the Tenant is not entitled to receive any compensation from the Council. If however, the damage is at Council's fault then any insurance excess will be compensated.

22. General

22.1 Notices

Any notice required to be served under this Lease must be in writing and must be served by post, facsimile transmission, or hand delivered to:

- 22.1.1 the Tenant at its address set out in this Lease, the Tenant's registered office address, the Premises, or the last known address of the Tenant; and
- 22.1.2 the Council at its address set out in this Lease or any other address notified in writing to the Tenant by the Council.

22.2 Time of Service

A notice or other communication is deemed served:

- 22.2.1 if served personally or left at the person's address, upon service;
- 22.2.2 if posted, 2 business days after posted;
- 22.2.3 if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and
- 22.2.4 if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

22.3 Entire Understanding

This Lease contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

22.4 Variation of this Lease²⁸

This Lease may only be varied by agreement recorded in a written document headed 'Variation of Lease' or similar and signed or executed by both parties.

22.5 Waiver

If the Council accepts the Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of the Council's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of the Council's rights under this Lease.

²⁸ A renewal of this lease (by the exercise of an option, if any, to extend its term) is not a variation. Similarly, an exercise of an option is on the same terms and conditions. If the parties wish to change any terms and conditions when exercising an option then they must execute a formal variation (which can be done at the same time that the options is exercised).

22.6 Special Conditions

This Lease is subject to the Special Conditions set out in section two of Annexure A. The Special Conditions override any inconsistent provisions in this Lease.

22.7 Standard terms

The twenty-three (23) clauses contained in this Part Two constitute Council's standard terms for a community facilities lease. Changes to those clauses noted in section one of Annexure A are deemed to be made to the relevant clauses in this Lease.

22.8 Council's Consent

If Council's consent is required under this Lease, Council may withhold or give its consent in its absolute discretion and, if it gives its consent, it may give its consent subject to such conditions as, in its absolute discretion, it requires.

22.9 Relationship of parties

This Lease does not create any relationship between the parties other than as landlord and tenant in respect of the Lease of the Premises. The Tenant must not hold itself out, or allow anyone associated with the Tenant to hold themselves out, as being an agent of Council or being in any other way entitled to make any contract or representation for or on behalf of Council or to bind Council to the performance, variation, release or discharge of any obligation.

23. Interpretation

23.1 Governing Law and Jurisdiction

This Lease is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

23.2 Persons

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

23.3 Joint and Several

If a party consists of more than 1 person, this Lease binds them jointly and each of them severally.

23.4 Legislation

In this Lease, a reference to a statute, determination, standard, guideline, policy or similar document includes regulations under the statute and any consolidations, amendments, re-enactments, replacements or updates of any of them.

23.5 Clauses and Headings

In this Lease:

- 23.5.1 a reference to a clause, Particulars or Annexure is a reference to a clause, Particulars or Annexure in or to this Lease; and

23.5.2 headings and sub-headings are inserted for ease of reference only and do not effect the interpretation of this Lease.

23.6 Severance

In this Lease:

23.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

23.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

23.7 Number and Gender

In this Lease, a reference to:

23.7.1 the singular includes the plural and vice versa; and

23.7.2 a gender includes the other genders.

23.8 Exclusion of Statutory Provisions

The following statutory provisions are excluded from this Lease:

23.8.1 Section 144 of the *Property Law Act 1958 (Vic)*; and

23.8.2 Division 7 of Part IV of the *Transfer of Land Act 1958 (Vic)*.

23.9 No restriction of Council's powers, duties or discretions

Nothing in this Lease fetters or restricts the powers, duties or discretions of Council in the exercise of its statutory or other functions, powers, duties and authority.

23.10 Council documents relevant to this Lease published on Council's internet website

23.10.1 Where this Lease requires the Tenant to comply with a document, policy, procedure or form (Documents) published on Council's internet website then Council must give written notice to the Tenant of the publishing of the Document and the Document's general intent and effect before the Tenant is bound by that Document.

23.10.2 If Council makes any changes to a Documents published pursuant to clause 23.10.1 then those changes only apply to the Tenant once the Tenant is given written notice (including by electronic mail) by Council of the change to the relevant Document and the intent and effect of any changes.

23.10.3 For clarity, it is not intended by Council that Documents published by Council pursuant to this clause 23.10 will impose additional financial burden on the Tenant or shift liabilities or responsibilities of Council under this Lease to the Tenant. The Documents are intended to be policy and procedural documents.

23.11 General

To the extent permitted by law, no rule of interpretation must be applied in the interpretation of this Lease to the disadvantage of one party on the basis that it prepared or put forward any document comprising part of this Lease.

Annexure A

Section One – Changes to Council’s standard community lease terms

The following standard clauses from Part Two of this Lease are amended as noted below:

Clause	How amended (changes tracked)	Final form of amendment (untracked)
14.4	Clause deleted - unrestricted use of facility	
2	Clause inserted - Shared Use Spaces	

Section Two - Special Conditions

1. Hire Agreement

1.1 For the purposes of this Special Condition:

Hire Agreement means a hire agreement between the Tenant and a third party to temporarily use the Premises on the terms and conditions set out in this Lease.

Hire Fee means the fee payable by the third party to the Tenant under the Hire Agreement for the use of the Premises.

1.2 The Tenant may only enter into a Hire Agreement if it obtains the prior written consent²⁹ of the Council including in relation to whom the Premises is being hired to and on what terms. Council may provide a Council approved form of hire agreement on its internet website for use by the Tenant.

1.3 The Council and the Tenant acknowledge and agree that the Hire Agreement may provide for the Tenant to charge a Hire Fee provided that the Tenant applies the Hire Fee towards maintaining the Premises or promoting its objects in accordance with clause 15.20 of this Lease.

This Special Condition is an essential term of this Lease.

2. Shared Use Spaces

2.1 The Tenant does not have the exclusive use of the whole facility. At the time this Lease was entered into the North Ringwood Senior Citizen’s Club and Ringwood Historical Society (**Other Tenants**) both have the exclusive use of the parts of the facility. It is the responsibility of both the Tenant and the Other Tenants to arrange and pay for the cleaning and maintenance of any shared areas of the facility and to ensure these areas are kept in a clean and safe condition. In the event of a dispute between the Tenant and any of the Other Tenants in relation to the shared areas they must first attempt to resolve the dispute themselves failing which they accept Council can resolve the dispute by making a decision that is binding on both or all three parties to the dispute following whatever process Council deems reasonable in the circumstances, provided the process Council chooses is fair to all parties involved in the dispute.

²⁹ Clause 22.8 provides how Council can exercise this consent right.

3. Relocation

3.1 Relocation

If the Council wants to redevelop the Land and/or the Premises, subdivide the Land, grant easements or other rights over the Land or carry out any works on the Land and/or the Premises, which the Council cannot adequately carry out due to the Tenant's occupation of the Premises under this Lease, the Council may give written notice to the Tenant:

- 3.1.1 requiring the Tenant to surrender this Lease by executing a deed of surrender in a form prepared by the Council (**Deed**) on a date being not earlier than 6 months after receipt of the notice by the Tenant; and
- 3.1.2 offering the Tenant a new lease of alternative premises on suitable land (**Alternative Premises**) which must, as far as practicable, be suitable for the Community Use.

The Council must also provide to the Tenant at the time of giving the Tenant the notice specified above, reasonable details of the Council's proposal for any redevelopment, works or other use determined by Council.

3.2 Terms of New Lease on the Land

The new lease of the Alternative Premises offered to the Tenant under Special Condition 3.1 must be on the same terms as this Lease except:

- 3.2.1 the term of the new lease will be equal to the remainder of the Term as at the date that this Lease is to be surrendered by the Tenant; and
- 3.2.2 the Alternative Premises will be in a location selected by the Council taking into account any reasonable requirements of the Tenant.

3.3 Surrender of Lease and New Lease

- 3.3.1 If the Council gives the Tenant a notice under Special Condition 3.1, the Tenant must:
 - (a) execute and return the Deed to the Council within 30 days of receipt by the Tenant;
 - (b) give notice within 30 days of receipt of the notice under Special Condition 3.1 to the Council either accepting or rejecting the offer of a new lease of the Alternative Premises; and
 - (c) where the Tenant accepts the new lease of the Alternative Premises, execute and return to the Council the new lease within 30 days of receipt of the new lease by the Tenant.
- 3.3.2 If the Tenant does not give the Council any notice under Special Condition 3.3.1(b), the Tenant will be deemed to have rejected the offer of the new lease of the Alternative Premises.
- 3.3.3 If the Tenant gives the Council a notice rejecting the offer of the new lease of the Alternative Premises, or is deemed to have rejected such offer under Special Condition 3.3.2, the Tenant must vacate the Premises in accordance with the terms of the this Lease and the Deed on the date specified in the notice under Special Condition 3.1.

3.4 No Compensation

The Tenant acknowledges that it is not entitled to receive any compensation from the Council where the Council requires the Tenant to surrender this Lease in accordance with this Special Condition and, on and from the date of the surrender of this Lease, (irrespective of whether the Deed is executed by the Tenant), the Tenant releases the Council from all further obligations under this Lease.

3.5 Limit on Relocation

The Council must not serve a notice on the Tenant pursuant to Special Condition 3.1 more than once during the Term.

3.6 Relocation Period

If requested by the Tenant in the notice given by the Tenant to the Council pursuant to Special Condition 3.1, the Council will provide that the new lease of the Alternative Premises will commence 30 days prior to the expiration of this Lease, during which time the Tenant may complete the relocation of the Tenant's Property, so long as the Tenant has complied with its obligations under this Special Condition.

4. Demolition

4.1 Notice to the Tenant

The Council may give a notice to the Tenant, which provides for the termination of the Lease on the grounds of a proposed demolition, on a date not being earlier than 6 months after receipt of the notice by the Tenant.

4.2 Surrender of Lease

If the Council gives the Tenant a notice under Special Condition 4.1, the Tenant must execute and return to the Council a deed of surrender of this Lease within 14 days of receipt by the Tenant.

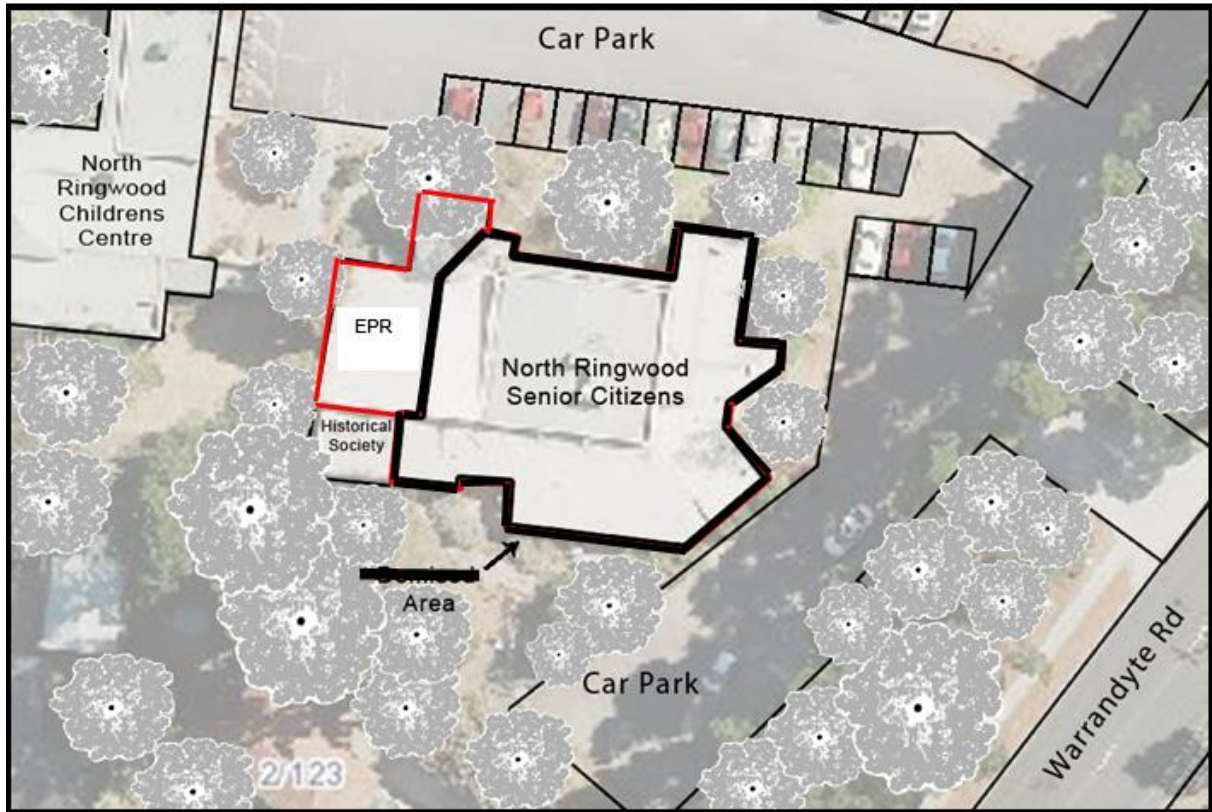
4.3 Compensation

The Tenant acknowledges that it is not entitled to receive any compensation from the Council where the Council requires the Tenant to surrender this Lease in accordance with this Special Condition and, on and from the date of surrender of this Lease (irrespective of whether a deed of surrender of lease is executed by the Tenant), the Tenant releases the Council from all further obligations under this Lease.

Annexure B

Plan of Premises

Enjoying Planned Retirement (EPR) - Annex



Annexure C

Determination



Victoria Government Gazette

No. S 209 Thursday 24 July 2008
By Authority. Victorian Government Printer

Retail Leases Act 2003

PREMISES NOT CONSTITUTING RETAIL PREMISES

This Determination is made under Section 5(1) (e) of the **Retail Leases Act 2003**.

- A. I determine that each of the following kinds of leases is a lease to which section 4(2)(h) of that Act applies:
- (a) a lease of premises by a Council within the meaning of the **Local Government Act 1989** under which the premises may be used wholly or predominantly for any one or more of the following purposes:
 - i. public or municipal purposes;
 - ii. charitable purposes;
 - iii. as a residence of a practising minister of religion;
 - iv. for the education and training of persons to be ministers of religion;
 - v. as a club for or a memorial to persons who served in the First or Second World War or in any other war, hostilities or special assignment referred to in the **Patriotic Funds Act 1958**;
 - vi. for the purposes of the Returned Services League of Australia;
 - vii. for the purposes of the Air Force Association (Victoria Division);
 - viii. for the purposes of the Australian Legion of Ex-Servicemen and Women (Victorian Branch);
 - (b) a lease of premises by a Council within the meaning of the **Local Government Act 1989** (including in its capacity as a committee of management within the meaning of the **Crown Land (Reserves) Act 1978**) under which the premises are used wholly or predominantly by a body, corporate or unincorporate, that exists for the purposes of providing or promoting community, cultural, sporting, recreational or similar facilities or activities or objectives and that applies its profits in promoting its objects and prohibits the payment of any dividend or amount to its members;
whether or not the premises are occupied by the tenant, held by the tenant in trust for the occupant or sub-leased by the tenant to another person.
- B. A certificate signed by the Small Business Commissioner shall be sufficient evidence that a lease is a kind of lease to which paragraph A of this Determination applies.
- C. This Determination is in addition to and does not replace any other Determination and, particularly but without limitation, is to be read subject to the Ministerial Determination dated 20 August 2004 made by the Minister for Small Business and notified in the Victoria Government Gazette No. S184 Monday 23 August 2004 to the extent that any premises, tenant or lease is subject to that Determination.
- D. Nothing in this Determination is to be taken to prevent its application to any sub-lease of any lease in respect of which this Determination applies in any way, in addition to its application to any such lease.
- E. Further, nothing in this Determination is to be taken as limiting the powers of the Small Business Commissioner under Part 10 of the **Retail Leases Act 2003**.

This determination comes into effect on 1 August 2008.

Dated 22 July 2008

JOE HELPER MP
Minister for Small Business

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Annexure D

Pro-forma letter from the Tenant to Council providing notice pursuant to clause 3.2.1

[Date]

[Council officer name and title]
Maroondah City Council
P.O. Box 156
Ringwood Vic 3134

Dear [salutation],

Lease of [insert premises details] by [insert tenant details] (Tenant)
Notice of desire to exercise the option to renew the lease

Please accept this letter as formal notice pursuant to clause 3.2.1 of the above lease that the Tenant wishes to exercise the option to renew the lease for a further term of [insert number of years].

To my knowledge the Tenant is not currently in breach of any provision of the lease nor has the Tenant persistently defaulted under the lease. The Tenant also agrees to comply with all reasonable requirements of Council in renewing the lease.

Under the lease I understand the next step is Council will respond in writing to this notice.

I look forward to hearing from you.

Yours sincerely,

[Insert name]

[Insert position held at the Tenant e.g. public officer and the Tenant's name]

Annexure D (continued)

Pro-forma Letter from Council granting the Tenant a new lease for a Further Term pursuant to clause 3.3.2

[Date]

[Tenant officer name and title]

[Tenant name and address]

... Vic 31..

Dear [salutation],

Lease of [insert premises details] by [insert tenant details] (Tenant) Confirmation of the exercise of an option to renew the lease

Council confirms receipt of the Tenant's notice dated [insert date] indicating the Tenant's wishes to exercise the option to renew the lease for a **Further Term** of [insert number of years].

Please accept this letter as formal notice pursuant to clause 3.3.2 of the above lease that Council agrees to the option for a Further Term being exercised. Please sign the enclosed duplicate of this letter and return it to Council. These exchanges of letters constitute the exercise of the option for to extend this lease for the Further Term.

This means the key details of the option term of the lease will be:

1. Commencement date of the **Further Term**: [insert time and date]
2. End date of the **Further Term**: [insert time and date]
3. Rent for each year of the Further Term:
 - a. **Further Term** year one – \$ [insert amount]
 - b. **Further Term** year two – \$ [insert amount]
 - c. **Further Term** year three – \$ [insert amount]
 - d. **Further Term** year four – \$ [insert amount]
 - e. **Further Term** year five – \$ [insert amount]
 - f. **Further Term** year six - \$ [insert amount]
4. **Additional Further Terms**: [insert, if none write 'nil']

All other terms of the Lease remain as the same terms and conditions for the initial term of the Lease.

Council looks forward to receiving the return of the enclosed duplicate of this letter, executed by [insert name of the Tenant] and to your continued occupation and use of the Premises.

Yours sincerely,

[Insert Council officer name]

[Insert Council officer title]

Then create a duplicate of the letter with the following execution clause for the Tenant at the end –

The Tenant agrees to extend the term of the above Lease of the above Premises for the Further Term on the terms and conditions contained in the letter from Council dated [insert date] of one page of which this is a reformatted duplicate:

.....

Signed for and on behalf of [insert Tenant's name] in accordance with its constitution by –

PRINT name:

Position held:

Date: