

Recreation Sports Reserves - Conditions of use

1. Application

An application to hire a recreation facility ("**Facility**") is made using the supplied application form ("**Application**"). An Application must be submitted online using the application form on the Shire's website (www.mornpen.vic.gov.au) or by mail to the Recreation Reserve Bookings ("**Booking Officer**"), Mornington Peninsula Shire Council ("**Shire**"), Private Bag 1000, Rosebud 3939, or by fax to 5986 7440.

When an Application is made by a person on behalf of an organisation, club or group of people, the person making the Application warrants that he or she is authorised by the organisation, club or group of people to submit and sign the Application on its or their behalf and to bind it or them to comply with these Conditions of Use on its or their behalf. Proof of authorisation must be provided when requested by the Booking Officer.

These Conditions of Use apply the term "**Hirer**" to refer to:

1.1 if an Application is submitted by a person on his or her own behalf, that person; or

1.2 if an Application is submitted on behalf of an organisation, club or group of people, the person submitting the Application and that organisation, club or group of people.

If the Hirer comprises two or more persons or entities, the Agreement for Use will bind each of them severally and jointly.

2. Agreement for Use

2.1 The submission of an Application is an offer by the Hirer to use the Facility and to enter into an agreement for use on the terms set out in these Conditions of Use. The Shire reserves the right to refuse an Application for any reason. In response to an Application by the Hirer, the Shire may send a written acceptance of the Hirer's offer ("**Confirmation Letter**") to the Hirer to enter into an agreement with the Hirer. Subject to clause 2.2, an "**Agreement for Use**" will come into existence between the Shire and the Hirer on the date of the Confirmation Letter. The Agreement for Use will be evidenced by the Confirmation Letter, these Conditions of Use, and the Application. In the event of any inconsistency between the documents, they shall take precedence in the order stated in the previous sentence.

2.2 In the event that the Shire is only prepared to accept an Application subject to conditions, the Shire will specify such conditions to the Hirer with the Confirmation Letter. In such circumstances, an Agreement for Use will be deemed to come into existence on the Shire's receipt of payment of the Hire Fees by the Hirer.

3. Hire Fees

The "**Hire Fees**" will be set out in the Confirmation Letter, and will be charged at the Council approved rates.

4. Security Bond

A “**Security Bond**” of the amount nominated in the Confirmation Letter must be paid in full 4 weeks before the use or by any other date stated in the Confirmation Letter. Failure to pay the Security Bond by the due date may result in the termination of the Agreement for Use.

The Security Bond will be held as security for any damage to the Facility (including the surrounds of the Facility and any equipment or items at the Facility), for any cleaning arranged by the Shire if the Facility is left in an unclean condition or for any other breach of the Agreement for Use. The cost to the Shire of any damage, cleaning, repair or replacement, or incurred by the Shire as a consequence of any breach of the Agreement for Use by the Hirer, will be deducted from the Security Bond. Unless the Shire has had recourse, or proposes to have recourse, to the Security Bond, the Security Bond will be returned by Eftpos or cheque within 14 business days after the use of the Facility.

Where any provision of these Conditions of Use permits the Shire to retain all or part of the Security Bond in particular circumstances, but the cost of rectifying the circumstances for which the Security Bond may be retained, including, without limitation, making repairs, replacing items or performing cleaning, exceeds the amount of the Security Bond, the difference will be a debt immediately due and payable by the Hirer to the Shire on issue of a tax invoice by the Shire to the Hirer.

5. Condition of Facility

The Hirer acknowledges and agrees that, unless the Hirer demonstrates otherwise to the satisfaction of the Shire, the Facility, and all fixtures, fittings, equipment or items at the Facility, are deemed to be in a good and clean condition and working order at the start of use.

6. Insurance

The Hirer must have public liability insurance with a minimum of \$10 million cover for any one event. A Hirer which holds its public liability insurance which will provide cover with respect to any personal injury, death or property damage must provide the Booking Officer with a ‘certificate of currency’ for the policy, and a copy of the policy. The policy must be valid for the date(s) of use and provide cover to the satisfaction of the Shire.

7. Indemnity

The Hirer agrees to indemnify, keep indemnified and hold harmless the Shire, its servants and agents, and each of them, from and against all claims, actions, costs (including legal costs, on a full indemnity basis), charges, losses, expenses and damages suffered by the Shire directly or indirectly as a result of or in relation or in connection with the Hirer’s use of the Facility.

8. Setting Up/Packing Up

The Hirer is responsible for setting up and clearing away all equipment and furniture to its original location. The set-up and pack-up time must be included in the times of use indicated on the Application. All equipment, goods and other items brought to the Facility by the Hirer must be removed from the Facility at the end of the use.

9. Noise Levels/Amplification

Noise levels from any music, amplification and/or public address systems **must not exceed 65dBA**. Noise emitted from the Facility must not be louder than that of a normal conversation when heard at any adjoining buildings, businesses or residences. The Hirer must ensure that his/her/its use of the Facility does not cause any disturbance to the peace and quiet of the neighbourhood.

10. Access to the Facility and Exiting the Facility

The Hirer must not access or use any part of the Facility prior to or beyond the hire period. The booking time stated in the Application must include the time at which the first person will arrive at the Facility to set up and the time that the last person will leave the Facility. Any unauthorised access is prohibited. The Hirer must ensure that, all persons attending the Facility must leave in a quiet and orderly manner at the end of the hire;

If the Facility is accessed outside of the hire period, or if the Facility or the surrounding area is not vacated by the end time of the hire, this will be a breach of the Agreement for Hire and the Shire will retain the Security Bond.

11. Cleaning

The Facility must be kept in good order the hirer must leave the Facility in a clean and tidy state, and must place all waste material (rubbish and recycling) in the appropriate bin or receptacle. Any cost incurred by the Shire in cleaning the Facility or removing waste material will be deducted from the Security Bond and/or be recharged to the hirer.

12. Cancellation by Hirer

Where cancellation is received by the Booking Officer less than 14 days prior to the date of use, a cancellation fee of \$50 will apply. Where cancellation is received by the Booking Officer less than 7 days prior to the hire date, a cancellation fee equal to the Hire Fees will apply. All cancellations or requests to change the bookings must be made in writing, by mail or email, to the Booking Officer.

13. Cancellation by Shire

The Shire may cancel the booking and terminate the Agreement for Use if the Hirer breaches the Agreement for Use. The Shire reserves the right to cancel any booking if the Facility is required for use by the Shire or if the Facility is required for an election or referendum by the Commonwealth Government or the State Government. Where possible, the Shire will endeavour to relocate the hire to another suitable recreation facility, and, if this is not possible, the Shire will refund the Hire Fees, Security Bond and any other charges to the Hirer. The Shire shall not be liable to pay any other compensation to the Hirer.

14. No transfer of booking or assignment of Agreement for Use

A Hirer cannot assign the right to use the Facility to any other person, without the Shire's prior written consent, which may be given subject to such conditions as the Shire considers appropriate or may be withheld at the Shire's absolute discretion.

15. Responsibility and supervision

The Hirer must remain at the Facility at all times during the hire period and must ensure that all children (under the age of 18) are supervised by parents or guardians at all times.

The Hirer must comply with all regulatory signage (along boundaries and within the reserve), laws (local & other) relevant to the area and abide by any reasonable requests made by Mornington Peninsula Shire.

16. Food and Beverages

Alcohol

The consumption of alcohol is not permitted at recreation facilities under any circumstances.

Food

No food or refreshment of any kind shall be sold at the Facility without the prior written consent of the Shire. The Shire may withhold its consent, for any reason, and any consent given can be on any terms the Shire considers appropriate, at its absolute discretion. No consent will be given unless the Hirer demonstrates that it has obtained any necessary permits for the preparation and sale of food. The Hirer must ensure that, where any catering is provided by a person or company that person or company is registered under the *Food Act 1984* (Vic).

17. Events in Recreation Facilities

The Booking Officer may nominate either at the time of the application for use or in the Confirmation Letter that a booking is an "Event" where the function/event is or will be advertised to the public and/or the Hirer is selling entry tickets to the public. If the Booking Officer nominates that the booking is an "Event" in the Confirmation Letter, such nomination will constitute an

acceptance of the Application subject to conditions for the purposes of clause 2.2. If the Hirer's booking is classed as an "Event", the Hirer will be referred to the Shire's Special Events Team to complete the Events Information & Approval Kit. A minimum of 6 weeks (prior to the date of use) is needed to complete the Events Information & Approval Kit process and the necessary applications. The Shire may require, as a condition of use, the Hirer to obtain additional insurance if the size, type or risk of the event, in the opinion of the Shire, requires additional insurance cover. The Hirer must obtain the additional insurance cover at its cost.

18. Smoke machines, candles, flames and pyrotechnics

The Hirer must ensure that no smoke machines, lit candles, naked flames of any kind, or any form of pyrotechnics, are used at the Facility or on the surrounding land. The Hirer is liable for:

- 18.1 the cost of any attendance by any emergency services at the Facility in relation to any incident or alarm arising out of or connected to the use of an item prohibited by this condition; and
- 18.2 any damage to any part of the Facility or surrounding property that is caused directly or indirectly by the use of any item prohibited by this condition.

19. Damage to building, equipment or any item at the Facility

The Hirer is responsible for any damage to the Facility, including the area surrounding the Facility, fences, fittings, furniture, equipment, and other property at the Facility, that occurs during the hire period or as a result of, or in connection with, the Hirer's use of the Facility.

20. Theft / Loss / Damage

The Hirer releases, to the fullest extent possible at law, the Shire from any liability for any loss of, damage to or theft of any property or equipment owned by the Hirer or any third party at the Facility.

21. Signage

Any signage displayed at the Facility or anywhere else in relation to the Hirer's use of the Facility, must comply with the Shire's Signage Policy.

22. Indemnity for infringement of copyright and other intellectual property rights

The Hirer agrees to indemnify, keep indemnified and hold harmless, the Shire against any action, claim, loss, damage, costs (including legal costs, on a full indemnity basis) or any other liability howsoever arising in relation to a breach of any copyright, performance right or any other industrial or intellectual or other protected right, by the Hirer, its invitees or any members of the public in any way in connection with:

- 22.1 the Hirer's use of the Facility;
- 22.2 any replication or publication of any work or material in any way connected to the Hirer's use of the Facility or any event or performance held during the hire period of use.

23. Severance

If a provision, or part of a provision, in these Conditions of Use is held to be illegal, invalid, void, voidable or unenforceable, that provision, or part of a provision, must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision, or part of a provision, as required in this clause, that provision, or part of a provision, is severable without affecting the validity or enforceability of the remainder of these Conditions of Hire.

24. Governing Law

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

25. No Restriction of Shire's Powers

The Agreement for Use does not fetter or restrict the powers or discretions of the Shire in relation to any powers or obligations it has under any Act, regulation or local law that may apply to the Facility, the use, the Hirer or the Shire's municipal district.