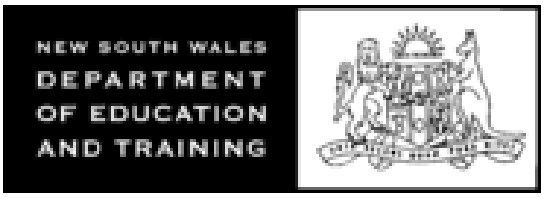

Community Use Of School Facilities

IMPLEMENTATION PROCEDURES

September 2009

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1 INTRODUCTION

Schools are valuable facilities, which belonging to the community. While their prime function is to serve as places of learning for young people, there are many times when the buildings and grounds are not in use.

The Department of Education and Training encourages members of the community and education groups to use school facilities for appropriate purposes, when they are available. This is a way of sharing a significant resource, and strengthening the partnership between schools and local communities.

These procedures outline fair and sensible arrangements for ensuring access to facilities. They should be read in conjunction with the Department's Community Use of School Facilities Policy.

2 RATIONALE

Schools provide an important educational and social focus for communities. Parents and community members are encouraged to participate in the life of their school through parent organisations, school councils and the many activities schools organise. The community can also access the facilities of schools, out of hours, for appropriate purposes.

Schools are a community resource. Community use of school facilities provides benefits to both schools and their communities through:

- enhanced co-operation and goodwill between the school and the community;
- the provision of additional extra-curricula learning opportunities;
- better access for communities and schools to state-of-the-art facilities;
- opportunities for the community to become better informed about and participate in the school's operation and activities;
- more effective use of valuable school facilities;
- opportunities for the community to play a positive part in school security through out-of-hours use of the facilities; and
- increased revenue for schools to use on improvements to premises and school resources

Schools are encouraged to make their facilities available to community groups and organisations.

In approving use of facilities, schools should ensure that the proposed use is consistent with the goals and values of Public Education.

Community use should not interfere with a school's provision of quality learning programs for its students. It should not be supported by Department of Education and Training funds (e.g. by incurring additional cleaning, maintenance or utilities cost) unless as otherwise noted in this document.

In the interests of the school and its community, and to protect the reputation of Public Education, care must be taken to avoid community use agreements with inappropriate organisations or for inappropriate purposes.

3 FORMAL AGREEMENTS

Community Use Agreements (see **Attachment 2**) may be negotiated between schools and community groups following consultation between the Principal, the School Council (if one exists), the Parents and Citizens Association, and, if necessary, the School Education Director.

These agreements should be for a maximum period of 12 months.

Where the agreement is for a period exceeding 12 months a more formal and comprehensive Lease, Licence Agreement or Joint Use and Development Agreement should be entered into. These agreements must be developed with the assistance of the regional Asset Management unit, and approved by Asset Management Directorate.

Parent and Citizens Associations, school councils, and their sub-committees are entitled to free use of school facilities and are not required to enter into a legal agreement. They may, however, require insurance coverage when conducting some activities (see Section 11.2)

Further information on Legal Agreements is provided in Section 10.

The Checklist at **Attachment 1** will assist schools in ensuring that they have undertaken the correct process and considered the full range of issues necessary in developing community use agreements.

4 OPPORTUNITIES FOR COMMUNITY USE OF SCHOOL FACILITIES

There are many opportunities for schools to make their facilities available to the community including:

- using school premises for community halls and meeting spaces;
- opening up school facilities for use as community recreational facilities;
- using spaces to support school aged holiday programs or Out of School Hours Care (OSHC) services;**
- sharing libraries or resource centres; or
- sharing sporting facilities**.

Schools can pursue these opportunities with a number of community partners, including:

- local councils;
- community organisations;
- other education and training providers;
- not-for-profit organisations; and
- commercial operators**

Note **

See supplementary procedures relating specifically to:

Community Partnerships for the Use of School Playing Fields;

Community use of school facilities for Children's Services: Implementation Procedures for Out of School Hours Care (OSHC), Occasional Care, Long Day Care Centres and Non-Government Preschools.

Schools funded for enhanced facilities under the Australian Government's *Building the Education Revolution (BER)* initiative will be aware that conditions of funding relate to community use of such facilities.

For example, under the BER Element 1 *Primary Schools for the 21st Century*, the school must agree to provide access at no, or low cost to the community to libraries and multipurpose halls funded under this element of BER. This must include reasonable access by any community or not-for-profit groups in the local community. Schools may charge a low fee for the use of the facility where the charge is to cover recurrent costs incurred by the school in providing the community access (e.g. electricity, cleaning, security).

Conditions under the Commonwealth program outlined above are consistent with the approach to community use of school facilities outlined in New South Wales Government policy and these procedures.

5 CHILD PROTECTION

The Department of Education and Training, including its schools, has an obligation to promote the safety and wellbeing of children and young people and to ensure that responsibilities for child protection and welfare are upheld. Principals are required to confirm that community users are aware of their responsibilities and are carefully assessed prior to an agreement being made for the use of school facilities where children and young people are involved or will be present.

To ensure the suitability of community users seeking approval to use school facilities for activities involving children or young people, principals must:

- direct community users to the DET policy website from which they will be able to access Departmental policies related to risk of harm to children and young people

- provide the main user with a *Community Use of School Facilities Child Protection Declaration* form (See **Attachment 4**). A signed copy of this form must be attached to every Community Use Agreement

- sight all documentation (e.g. *Prohibited Employment Declaration* and *Working with Children Check*) required of the main user via the *Community Use of School Facilities Child Protection Declaration* prior to signing the Community Use Agreement

A Community Use of School Facilities Child Protection Declaration form is provided at **Attachment 4**.It includes information to assist principals in advising community users of their child protection responsibilities

Further guidance is available to schools in the Department's Child Protection policies and procedures including:

- Protecting and Supporting Children and Young People: Revised Procedures;
- Working with Children Check Procedures for Principals; (intranet only) and
- Responding to Allegations against Employees in the Area of Child Protection (intranet only).

6 RISK ASSESSMENT

The Department has a responsibility to ensure that the facilities and equipment that are being made available to the community are safe and in good condition.

Principals must ensure a risk assessment is conducted prior to agreeing to the use of a departmental site by a community user. The risk assessment process must address issues of occupational health and safety and child protection.

This process is also to be undertaken before any agreement to use a site is renewed.

The risk assessment should consider issues such as:

- the proposed use of the site;
- whether the facilities are fit for this purpose;
- whether the proposed use is legal and in keeping with the school's purpose and goals;
- whether the applicant is a suitable person with whom to enter an agreement
- the roles and responsibilities of the organisers and volunteers;
- the supervision of children in the grounds (including play equipment areas and toilets), car parks and surrounding streets;
- condition of the school grounds and play equipment;
- emergency medical plans (including access to a phone and first aid qualifications).

It is the principal's responsibility to assess the risks associated with providing school facilities for the proposed purposes. In this context it is reasonable for the principal to expect that potential community users will assist by providing information necessary to the risk assessment process. In conducting an assessment the principal may also seek advice and support from other parts of the Department, including the regional Asset Management Unit (intranet only).

Managing the risks associated with the activity once an agreement has been signed rests with the community user.

7 PRIORITIES FOR COMMUNITY USE

School educational programs must have absolute priority in the use of school facilities and equipment during school hours. In cases where the principal has to determine priority amongst applicants for the use of school facilities, the following order is to be observed:

PRIORITY*	EXAMPLES
1 Board of Studies	Higher School Certificate and School Certificate Examinations
2 Parent body activities	Parents and Citizens Association meetings, School Council meetings
3 Departmental and associated groups	Aboriginal homework centres, Parent School Partnership Initiative (PSPI) and Schools in Partnership (SiP) committee meetings, Adult Migrant Education Service classes, Community Colleges recognised by the DET Adult and Community Education Unit , NSW Aboriginal Education Consultative Group (AECG), Community Language Schools registered with the NSW Community Languages Schools Program, DET Regional and State Office units, TAFE NSW, professional teachers associations, other government schools, Saturday School of Community Languages.
4 Other not-for –profit educational and Children's Services providers	Parents and Citizens' Association OSHC services and other incorporated school-based parent operated services
5 Other users	

Notes:

1. There is **no priority implied within the given examples**. If priority needs to be established between users in the same category group, this will be determined by the principal, who may consult, if necessary, with the School Education Director.

2. The **following take precedence over existing community use arrangements**:

- federal, state and local **elections** where schools are required as polling places; and
- **community disasters** where school facilities are needed to house students or operate as emergency relief centres (subject to the direction of the School Education Director).

8 PROHIBITED USE

Schools must not permit their facilities to be used for activities that interfere with student learning or which are considered by the principal to be inconsistent with the values of Public Education or the school's purpose and goals.

This includes activities that:

- infringe on the delivery of school programs;
- are likely to cause damage or risk to students, school buildings or property;
- create excessive noise or pose a nuisance to nearby residents;
- may involve the use of firearms;
- involve games of chance or gambling, unless a written authorisation or licence has been obtained from the appropriate regulatory authority; or
- are illegal

Organisations which are proscribed by the Commonwealth Government for national security purposes as terrorist organisations are not to be given access to school students or facilities. For a list of such organisations see the Australian National Security website.

Smoking is strictly prohibited on all school premises at all times.

Activities that involve the consumption of alcohol require a licence and must be approved by the school principal (see section 11.7 for further information).

9 CONSULTATION AND APPROVAL

In most cases the principal will determine the suitability of the proposed use of the school's facilities. If, on commencing consultation for the community use of school facilities, the proposed use appears potentially contentious, the principal should liaise with the School Education Director and/or the regional Asset Management Unit. (Intranet only) Additionally, the Asset Management Directorate Sites Branch should also be consulted to ensure that there is no title or legal impediment to the proposed community use.

Key groups will need to be involved in the planning of any agreement including:

- the community applicant;
- nearby neighbours that may be impacted;
- the Parents and Citizens Association
- local government where a development application or Place of Public Entertainment approval may be required (see Section 15 for further information).

When determining whether a community use arrangement should be approved consideration should be given to the availability of similar services by existing private providers. Where there is already an appropriate standard of facilities within the community the school may not wish to approve uses that may compete and impact on the long term profitability of these providers.

Where the proposed agreement is for a period of up to but not exceeding twelve months, the principal may approve the community use of school facilities after consultation with relevant stakeholders and the completion of a risk assessment (see Section 6). Agreements for a period of more than twelve months must be approved by Asset Management Directorate.

The use of school facilities as welfare assembly centres during community disasters will occur at the direction of the School Education Director.

The use of school facilities as polling places for Federal, State and Local Government elections will be consistent with formal agreements reached between the Department of Education and Training and the respective Electoral Commissions.

Schools should take reasonable steps to ensure that the person negotiating and signing the agreement on behalf of the community user has the authority to do so.

All user groups should be provided with a copy of the signed agreement including all conditions of use.

Schools should be aware that in coming to an agreement with a community user whose first language is not English, consideration should be given as to whether an interpreter is required.

In any case where a community use application is not approved, the principal must ensure that the community applicant is informed in writing of the reasons for declining the application.

10 AGREEMENTS

The sharing of facilities between a school and the community needs to be formalised in a legal agreement to ensure that all parties know their responsibilities and obligations.

School principals may negotiate Community Use Agreements provided they do not exceed 12 months in length. All agreements over twelve months must be made as a Licence/Lease Agreement and will be prepared by the regional Asset Management Unit working with Legal Services and in consultation with the Principal and the School Education Director, if appropriate.

Community Use Agreements must **not** be used for:

- agreements with a term exceeding 12 months
- agreements for Children's Services such as Out of School Hours Care (OSHC), Vacation Care, Child Care Centres, Long Day Care, Preschools
- agreements relating to establishment or renewal of Markets.
- agreements with commercial operators involving Canteens, School Uniform Shops, use of playing fields, or dedicated use of buildings including demountables.

10.1 Issues to Consider When Negotiating the Agreement

When setting up an arrangement for the community use of school facilities, schools and the community user will need to consider and reach agreement on a number of issues including:

- Management Structure: schools and community users need to agree on the role of each partner in managing the facility, addressing any impacts on school security and safety, maintaining records of the arrangements and taking responsibility for maintenance. The school and community users also need to manage regulatory issues such as determining if a planning permit is required, arranging insurance, and ensuring that occupational health and safety and general safety requirements are met. In this regard, regional and state office assistance should be sought, if required.
- Community users need to satisfy themselves prior to entering into any agreement with the school that access to and occupation of the school's premises and facilities meets their organisation's needs, including those of persons with disabilities.
- Protocols need to be established to ensure that the school is kept fully informed of changes to the key personnel who are community users. When dealing with a club or organisation, a list of office holders should be kept on file at the school with signatories to the agreement clearly identified. When personnel changes occur in respect of office holders, processes should be put in place to ensure that there are adequate formal mechanisms for the communication of this information to the school.
- Financial Issues: the partners need to determine who has financial responsibility for the facility, identify funding sources for construction and ongoing maintenance, and set hire fees.
- Building and Construction Issues: for arrangements where construction work is being carried out, issues that need to be addressed include determining the school's authority to approve construction contracts, meeting the cost of construction, planning and design, and meeting the NSW Government's requirements for the tender process.

These issues are discussed in greater detail later in this document.

The Department of Education and Training has developed a number of standard agreements to support the sharing of school facilities. Most agreements enable the joint use of a facility by both the community and the school. These include Community Use Agreements, Licence Agreements or Joint Use and Development Agreements depending on the circumstances of the arrangement.

On some occasions, a space within the school or its grounds may be surplus to requirements and can be made available to the community on an exclusive use basis. In such instances a formal lease may be appropriate. Legal Services can advise on whether a lease or licence would be more appropriate.

Where facilities are surplus to requirements, the Department may opt to enter into a lease arrangement with the community user. This will enable the

community to have exclusive use of the facilities for an agreed period of time. The school should liaise with the Asset Management Unit and Legal Services as soon as the community proposes a lease arrangement to ensure that there is no foreseeable Departmental need for the accommodation, that an appropriate lease fee is charged and that the user's responsibilities for outgoings and maintenance reflect the exclusive nature of their occupancy.

The standard agreements should be used as a guide only and the school should carefully consider the issues which need to be addressed for each and every community use arrangement being negotiated. When necessary, the advice and assistance of the regional Asset Management Unit (intranet only) and Legal Services (intranet only) should be sought.

10.2 Commercial Arrangements

Where the community use arrangement is with a commercial (for-profit) organisation there are special requirements with which the school must comply. Commercial arrangements include markets held in school grounds.

In broad terms a commercial venture is one in which goods and services are sold by the community operator for profit. Conversely, a not-for-profit operation does not generate a profit, or if a surplus is made, it is directed back into the operation and not distributed to owners / shareholders. Not-for-profit organisations are run by a voluntary committee.

In order to determine the profit status of an organisation the school should be provided with a copy of the Certificate of Incorporation, the Parents and Citizens Association equivalent under the *Education Act* 1990, or the organisation's constitution. The assistance of Legal Services (intranet only) should be sought whenever the profit status of the organisation is not clear. For further information on determining whether a company is genuinely a not-for-profit company see **Attachment 5**.

Any decision to enable the use of school facilities for commercial ventures must be supported by the School Education Director and the regional Asset Management Unit before extensive negotiations commence.

Schools should also only make facilities available for commercial purposes where there is an absence of existing private providers offering an appropriate standard of facilities within the community.

To ensure that probity concerns are addressed, it is essential that any commercial venture be the subject of a competitive tendering process and that the successful tenderer sign a commercial lease or licence prior to occupation.

Principals should be aware that the establishment of a commercial venture at their school will almost certainly require the lodgement of a development application with the local council. More detailed advice on the steps involved in establishing a commercial venture can be obtained from the Regional Asset Management Unit. (Intranet only)

10.3 Types of Agreements:

All Licence/ Lease agreements require the building, rooms and land use to be registered on the Department of Education and Training's Asset Management System (AMS). The principal is to provide this information in writing to the regional Asset Management Unit.

10.3.1 Community Use Agreements:

Community Use agreements are used when:

- a community wishes to use a school's facilities on a one-off basis. Examples include a sports association hiring the hall for its annual presentation night or a theatre group hiring a hall to stage a play; or
- a community wishes to use a school's facilities on a regular basis for a period not exceeding twelve months. An example would be a local craft group hiring a room every Tuesday night for a year.

A standard Community Use agreement is provided in **Attachment 2**.

10.3.2 Licence / Lease Agreements:

A Licence agreement should be used when:

- the length of the community use arrangement is for a period exceeding twelve months; or
- the community use arrangement is of a commercial nature (refer to Section 12 for more information)

Advice from the regional Asset Management Unit should be sought when negotiating and developing licence agreements. These agreements must be approved by Asset Management Directorate

10.3.3 Lease / Licence Agreements – Children's Services:

Children's Services including Out of School Hours Care (OSHC), Vacation Care, Child Care Centres, Long Day Care Centres, and Non-Government Preschools are a major commitment by both the school and the operator. The commitment to the number of children attending morning and afternoon OSHC services is critical to the success of a service. They present an administrative challenge.

All services relating to Children's Services whether they are not-for-profit or for-profit operators, must have a formal agreement. Schools must consult with their regional Asset Management Unit and seek a written approval to a new/ renewal agreement through Asset Management Directorate. Asset Management Directorate may engage the Department's Legal Services group to assist in the process. A standard licence template is available.

Discussion of plans for Children's Services provision with the School Education Director is recommended in order to access the experience of other schools and the support of regional and state office personnel.

Community Use Agreements are not appropriate mechanisms for regulating the provision of children's services in schools. Specific implementation

procedures have been developed and should be used for this purpose.

See Community Use of School Facilities for Children's Services: Implementation Procedures for Out of School Hours Care (OSHC), Occasional Care, Long Day Care Centres and Non-Government Preschools.

10.3.4 Joint Use and Development Agreements:

Joint Use and Development Agreements are more detailed agreements that apply when the community group wishes to use premises for a period of more than twelve months and is willing to contribute to the construction of a new facility such as a hall or the modernisation of an existing facility such as a playing field. Because of the complex legal and other issues that need to be negotiated (including ongoing management, construction and financing of the facility) the agreement may take significant time to set up. It is recommended that a minimum three to six months be allowed for this negotiation process. These agreements must be approved by Asset Management Directorate (Director of Works and Facilities Management) before this type of arrangement is entered into.

Where the agreement relates to a school playing field reference should be made to the Community Partnerships for the Use of School Playing Fields Implementation Procedures.

Each Joint Use agreement will be different as they need to reflect the actual responsibilities and contributions agreed to by the parties. The assistance of the Regional Asset Management Unit and Legal Services will be required in the development of Joint Use Deed of Agreement.

A lease of five years or more duration, including option periods, must be registered on the property title and must be accompanied by a plan which meets the requirements of the Land and Property Information Office. Variations can be proposed to Asset Management on a case by case basis.

10.3.5 Community Use of School Playing Fields

There are a number of ways that the Department can make its facilities, including playing fields, available to the community:

- a local organisation wants to use the facilities on a one off basis; or
- where an arrangement is made with a community group to use school facilities on an ongoing basis for a period of not greater than twelve months; or
- when the community wishes to have continuing use of the facilities for a period greater than twelve months and is willing to invest in the maintenance and/or upgrade of the facilities in order to obtain this use.

The first two scenarios are less formal arrangements and are covered by these *Implementation Procedures*.

The last scenario represents a community partnership arrangement and is discussed in detail in *Community Partnerships for the use of School Playing Fields: Implementation Procedures*.

10.4 Developing Agreements for Community Use of School Facilities

Legal agreements should be developed in full consultation with the community user, and with the Asset Management Unit, Legal Services and the School Education Director, as necessary.

Once an agreement is signed, details of the agreement relating to the use of the facility may be amended by putting them in writing and having them signed by both parties. If the agreement is complex, Legal Services Directorate should be consulted prior to signing the revised agreement to ensure that the amendments do not affect other clauses in the agreement.

10.5 Suspension or Termination of the Agreement

The school must be able to suspend or terminate the agreement in extenuating circumstances to ensure that emergent school, Departmental or public requirements are met including:

- in disasters where school facilities are needed to house students or operate as emergency relief centres;
- where the facilities become unsafe;
- where an unforeseen essential school need arises requiring exclusive use of the facilities;
- where the school is closed and the land is scheduled for disposal;
- in situations where the activity engaged in by the user is detrimental to the school and its students;
- where there has been a significant breach or repeated breaches of the agreed conditions.

10.6 Notice of Suspension or Termination

The school should review existing community use agreements at the beginning of Term 4 each year, to determine if the community user should be given the opportunity to renew the agreement for another period. The community user should be advised of this decision in writing.

When schools are being used as polling places for Federal, State or Local Government elections or in the case of a community disaster when areas used by the community group are urgently needed to house students or provide community accommodation or other emergency services, the principal may suspend or terminate the agreement but must refund any relevant fees paid by the community user.

The user must be notified in writing where breaches of the conditions of the agreement occur. Where a significant breach or repeated minor breaches of the conditions occur, the principal may terminate the agreement by giving two week's notice in writing. The notice terminating the agreement will explicitly identify in what ways the conditions of the agreement have been breached.

Community users may terminate the agreement at any time by giving one month’s notice in writing. Should there be no default by the community user at the date of termination, the principal shall refund any fees paid for a period

beyond the termination. However, where a Joint Use and Development Agreement exists, any capital investment made by the community will become the property of the Department of Education and Training and no compensation will be payable.

Where a Joint Use and Development agreement is terminated by the Department through no fault of the community, the Department of Education and Training may be required to compensate the community user for its capital investment. The level of compensation will be determined as a pro rata rate based on the level of capital investment and the outstanding period of the agreement. As the level of compensation payable as a result of termination may be considerable, all requests to terminate agreements must be approved by Asset Management Directorate.

10.7 Resolution of Difficulties

Every attempt should be made to resolve the matter at the local level.

However, if the matter cannot be resolved locally, and conciliation is required, the school or the user group may refer the issue to the School Education Director, who will convene or arrange for a conciliation / negotiation meeting with a representative of the user group, the principal and a support officer, if required, to be convened.

Where necessary an interpreter service will be utilised to facilitate effective communication. The School Education Director will also have access to relevant technical advice and support from State Office directorates.

Schools should maintain a file with documented concerns raised by the School or the Community or the Operator.

In exceptional circumstances, the School Education Director may refer the matter to the Regional Director for arbitration. The Regional Director may utilise the services of an independent arbitrator.

11 ADMINISTRATIVE ISSUES

11.1 Management of a Joint Use Facility

For Community Use agreements, responsibility for the management of the facility will normally lie with the school. However, for Joint Use and Development Agreements all partners must be committed to the ongoing management of the facility. In such cases, there are two major options for managing the facility:

Committee of Management

The School and the community partner agree to establish a committee of management with representation from both partners. The school principal would usually be the chairperson of the committee. The committee should meet at least twice a year or as required to discuss issues arising.

Responsible Partner Management

One partner (for example the school or the local council) takes sole

responsibility for the management of the facility.

Role of the Management Team

The role of the committee of management or the responsible partner managing the facility is to:

- determine who will use the facility and when;
- ensure long and short term maintenance requirements are met;
- ensure that the facility is safe and secure;
- employ staff to run the facility if required;
- hire out the facility and fix the terms and conditions for hire;
- collect fees for hiring out the facility and make all payments associated with the facility; and
- arrange the general operating, cleaning, maintenance, repair and security of the facility.

11.2 Insurance

Public liability insurance protects the Department of Education and Training in the event of a claim taken against it for any liability arising from injury to or death of a person or damage to or destruction of property as a result of the community using school facilities. The hirer of school facilities must produce evidence of the hirer's public liability insurance which provides appropriate coverage for the hirer of at least $10 million.

The school principal may exercise discretion to hire school facilities to a hirer under a Community Use agreement notwithstanding that the hirer does not have public liability insurance, if the use is of a non-commercial nature and the school principal is satisfied that the use is of a low risk nature.

It is important that the Parents and Citizens Association has adequate insurance to ensure that it is protected against possible litigation when running an event at the school e.g. a school fete. The Federation of Parents and Citizens' Associations can provide further advice on this matter.

Community partners under a Joint Use and Development Agreement, Lease or commercial arrangement must have the appropriate insurances.

11.3 Cleaning

School facilities should be made available to community users clean and in good condition. Community users taking possession of a school facility which has not been cleaned should note the condition of the facility and make a report to the school at the first opportunity. Schools should notify their cleaning staff when particular school facilities are to be used in the evening or on weekends to ensure cleaning arrangements can be coordinated.

Cleaning resulting from community use must not incur any extra expense to the school or the Department over that incurred by the school's normal cleaning routine. Where an extra expense is incurred as the result of community use, the cleaning must be arranged and paid for by the user. Where the community user has access to facilities on a cost recovery basis, a charge has been incorporated to cover cleaning costs (refer **Attachment 3**).

For arrangements covered by a Licence Agreement the cost of cleaning will generally be covered by the Licence Fee.

For arrangements covered by a Lease, the Operator should arrange, and pay for, their own cleaning.

11.4 Safety and Security

The school should ensure that all safety and security issues are included in the community use agreement including:

- entry and departure arrangements for the community's use of a school facility;
- ensuring that all doors and windows are secured and locked and all lights are turned off when the community user has finished using the facility;
- a suitable process for collecting and returning keys;
- activating the school's alarm system when the community has finished using the facility;
- supervision of community members who are using the facility (this will generally be the responsibility of the community user); and
- expected behaviour standards of users of the facilities.

The school principal is responsible for ensuring a safe school environment. The principal will therefore need to clearly identify any known hazards and inform community users of these dangers, and deny access to an area if appropriate. Community users should be briefed on school contact officers and the roles of the *School Security Unit (intranet only)* and the *School Safety and Response Unit (intranet only)* so that they may make appropriate contact in the case of an emergency or major incident while they are using school facilities.

Community users should immediately report to the principal any damage or accident occurring during the use of school facilities.

11.5 Damages

Malicious damage to property and equipment caused by any user group or its invitees must be paid for by the user group. All damages should be reported to the school and a formal statement recorded as to the circumstances as part of general Occupational Health and Safety procedures. Appropriate action should then be taken to rectify the damage and manage the risk.

Where the operator has exclusive use of a facility (e.g. has a lease agreement) a checklist of facilities included in the lease and their condition will be completed by both the school and the operator before occupancy is permitted.

11.6 Screening of Films and Videos

The screening of films and videos for entertainment purposes in schools by a community user is permitted where the user certifies that:

- there is no commercial theatre within a reasonable distance from the school which is prepared to screen the film or video;

- there is no public hall or other building in close proximity to the school suitable for the screening of the film or video; and
- the classifications of the Office of Film and Literature Classification are observed.
- The provisions of the Commonwealth Copyright Act 1968 are being observed.

11.7 Consumption of Alcohol

The Department's Drugs in Schools Policy stipulates that alcohol must not be consumed on or brought to school premises, under any circumstances, during school hours. In the case of cross-sectoral sites (e.g. joint School/TAFE sites) a decision regarding the extent of "school premises" will need to be made in the local context.

Community groups may be permitted to consume alcohol on school premises outside school hours, provided:

- they have the appropriate licence to serve liquor from the NSW Office of Liquor, Gaming and Racing.
- the principal, following consultation with the executive of the school's Parents and Citizens Association, agrees to such consumption and grants prior permission in writing;
- all children present are in the company of a parent or guardian; and
- the persons granted permission to consume the alcohol agree to act in a socially responsible manner that would set an example to children.

11.8 School Records

Schools must retain copies of all agreements, financial records, certificates of currency of insurance and other information regarding the negotiation and operation of community use agreements, including accident reports, for at least six years.

11.9 Night Lighting

The school and the community user should satisfy themselves that the existing lighting is adequate before community use agreements are finalised. If the lighting is inadequate, the community user could choose to upgrade the lighting at its own cost. Alternatively, the school and the community user may consider upgrading on a shared-cost basis. The agreed works would be arranged by the Department on a full cost recovery basis.

11.10 Community Use of School Equipment

In general terms, community users of school facilities can expect to take possession of a clean and safe facility, appropriately furnished for the intended purpose. The specific purpose will determine the furnishing; for example a school hall to be used by a dance group may be clear of furniture while a hall to be used for a community meeting may have tables and chairs provided. Classrooms made available for language classes, for example, would have desks and chairs available in addition to accessible black boards /white boards.

Community users seeking access to school equipment other than the basic provision should discuss their requirements with the school at the time they negotiate the agreement. School equipment such as sound systems, public address equipment, copiers and DVD or CD players may be available. They may also attract an additional hiring or usage fee. Any school equipment made available to community users should be recorded as an attachment to the agreement.

11.11 Access to Toilets

Access to appropriate toilet facilities for adults and children is a fundamental requirement when considering community use of school facilities. Discussions between the school and the prospective user prior to the completion of the agreement should clarify the user's needs and the capacity of the school to meet those needs. Particular attention should be paid to the needs of people with disabilities.

12 FINANCIAL ISSUES

12.1 Charges for Hire and Licence Agreements:

The following provides details of charges to be applied to various user groups.

12.1.1 Groups which receive free use

- School Parents and Citizens Association and its sub-committees
- Aboriginal Education Consultative Group (AECG), Parent School Partnership Initiative (PSPI), and Schools in Partnership (SiP) committees
- School council and its sub-committees
- Professional Teachers' associations
- Board of Studies for the conduct of examinations
- Department of Education and Training regional and state office directorates or units
- Saturday School of Community Languages (intranet only)*
- Community Language Schools registered under the Community Languages Schools Program. See also the Policy on Community Languages Schools Free Use of Government School Facilities for more information.
- TAFE NSW*
- Adult Migrant English Service classes*

* The Department of Education and Training provides funding to schools to cover utility and costs for the use the school facilities.

12.1.2 Groups which may be charged utility and other operational costs

- Adult and Community Education (ACE) is supported by the NSW Department of Education and Training through grants to community colleges across NSW. The Adult and Community Education Unit in the Department promotes community education, supports funded community colleges and provides information and advice on community education across the state. Adult and Community Education providers recognised and funded by the Adult and Community Education Unit may be charged for utility and other operational costs on a cost recovery basis. Principals should ask ACE applicants seeking fee consideration under this category for written evidence of their recognition by the ACE Unit.
- Aboriginal Homework Centres
- Non-profit regular users

Attachment 3 provides a scale of charges for lighting, heating, cooling, water, trade waste removal, maintenance and cleaning to assist principals to determine appropriate charges for recovering these costs.

Note: Where users have access to telephones, photocopiers and other equipment and services, schools may recover these costs as these costs are not included in the Hire Rates (**Attachment 3**).

Principals have the discretion to apply a lesser charge, or to exempt a community user from charges in particular circumstances. They should recognise, however, that in doing so they are effectively subsidising community users with school funds. Consequently they should be prepared to account to their school community for such decisions.

12.1.3 Groups which may be charged market rates

- Profit making organisations or casual users.

Note this category includes Adult and Community Education providers operating as profit making businesses (see **Attachment 5** for more information on identifying profit and not-for-profit organisations).

Note: In relation to all the above groups, schools may add the cost of insurance where the users do not have their own cover.

12.1.4 Electoral Authorities conducting Federal, State and Local Government elections

It is a matter of considerable pride to those involved in Public Education that, when the electors of this State exercise their right to vote in our democracy, more often than not they do so at a Public School.

The Department of Education and Training has negotiated Memoranda of Understanding with the New South Wales Electoral Commission and the Australian Electoral Commission with regard to the use of schools as polling places. These memoranda include agreements with regard to the schedule of fees to be charged by schools to defray the costs of using

school facilities as polling places. The fee includes hire, telephone usage, lighting, heating/cooling, toilets, water, tea making facilities, access to security alarms, tables and chairs, cleaning and trade waste removal and car parking.

For more information see Memorandum to Principals DN/08/00180: *Use of School Facilities as Polling Places for State and Local Government Elections* (intranet only)

Schools will be provided with an agreement for the use of premises by Electoral Commission officers which will confirm the details of specific local arrangements.

12.2 Charges for Joint Use and Development Agreements

Appropriate charges for Joint Use and Development Agreements should be determined after giving consideration to the capital injection and ongoing maintenance responsibilities of the community partner. In general any costs resulting from community use will be recovered, including electricity, gas, water, cleaning, garbage removal, security, insurance, administration, additional wear and tear, the use of specific items of equipment, and any other incidental costs arising. The school may recover these costs by a licence fee, by charging a percentage of actual bills based on the hours of usage, or by payment in kind such as community provision of capital infrastructure or maintenance of the facility.

12.3 Security Deposit

Schools should request a security deposit from the community user. A security deposit is an up-front payment made by the community user that is non-refundable if the conditions of the agreement are not met.

The aim of the security deposit is to:

- encourage compliance with the agreement;
- discourage careless use of equipment; and
- provide funds to cover replacement or repair of damage.

As a guide, the security deposit should represent 5% of the value of the agreement. For example, a 12 month agreement worth $10,000 would incur a security deposit of $500.

Security deposits should be receipted as Trust items and should also be recorded in the 'Register of Financial Items' (this also facilitates tracking over a number of years). For further advice please contact your School & Regional Financial Operations (intranet only) contact officer.

Large security deposits can be accepted by way of a Bank Guarantee made out to the school. All security deposits should be advised to the AMU and registered in the Department's Asset Management System (AMS)

12.4 Income

Income received by schools from the use of their facilities is public money and must be treated by the school in accordance with the procedures set out in the

School Manual on Financial Management (intranet only). The income should be used by the school to support the cost of the community use of the school facilities and to augment educational programs.

12.5 Probity and Ethical Behaviour

When dealing with the community it is important that schools act in an ethical manner. This includes, but is not limited to:

- Being aware of, and complying with, of the Department's Code of Conduct, Statement of Business Ethics and Corruption Prevention Procedures;
- Being aware of, and complying with, the NSW Government's Tendering Guidelines;
- Only dealing with reputable organisations;
- Being impartial in any assessment of applications or tenders;
- Not accepting gifts from community users or prospective tenderers;
- Declaring any conflict of interest that staff, their relatives or their close associates may have with potential community users;
- Ensuring any commercial information provided by community users is kept in confidence;
- Ensuring that all monies received from community use are declared and used in accordance with the School Manual on Financial Management. (Intranet only)

13 CAPITAL WORKS

Where the provision of new facilities or the upgrade of existing facilities is required the following steps should be followed:

- consult with the community user to develop the idea, being conscious of community needs and the long term viability of the proposal;
- ensure that the community user is aware that the facilities will become the property of DET at the expiry of the agreement period;
- obtain agreement in principle to the management structure, contributions and responsibilities of each party;
- notify the School Education Director of the proposal and seek advice;
- liaise with the Regional Asset Management Unit regarding the design of the works and the development of the Joint Use agreement;
- once preliminary plans and an initial cost estimate have been developed and agreed to by the parties the Asset Management Unit will organise for Ministerial approval for the project to be included on the DET Capital Program;
- determine whether the school or the community user will have responsibility for the design and construction of the facility or whether a partnership approach will be adopted. In either case, the approval of the Asset Management Unit to the design and proposed construction strategy is required;

- ensure that the works are designed and constructed in accordance with Commonwealth, State, Local and DET legal and other requirements, including adherence to School Facility Standards. The Asset Management Unit will assist in this process;
- ensure that tenders are not called for the building work until the community user's contribution has been received and the Joint Use and Development Agreement has been signed by a delegated Asset Management officer.

14 COUNCIL APPROVALS

14.1 Development Applications

The prospective user must lodge a development application with the local council if the proposed community use involves uses which are not normally permitted in council's planning instrument e.g. commercial uses such as a Sunday market or public car park. For clarification on whether a development application is required, the prospective user should seek written advice from council's environmental planning services department.

If a development application is required, the prospective user must complete a development application form issued by the relevant local council. The application must be signed by the Regional AMU Manager, as delegate of the Minister for Education and Training as owner of the land. The prospective user is responsible for all costs associated with the lodging of the development application e.g. cost of preparing plans, statements of environmental effects, traffic report, acoustic / noise report, Environmental Protection Authority (EPA) licences etc., and the appropriate application fees charged by council.

If development consent is granted by council, the prospective user must provide the school principal with a copy of the consent for the principal's information and record. The principal is not responsible for complying with the conditions of consent. Compliance with conditions of a development consent is the sole responsibility of the user.

14.2 Legislation Relating to School Assembly Halls

The use of school community halls, gymnasiums and performance spaces by the community for public entertainment may require approval under the Places of Public Entertainment (PoPE) provisions of the *Local Government Act 1993 and Regulations as amended*. PoPE venues must comply with reasonably stringent fire and safety requirements and must comply with *Building Code of Australia* specifications. Approval will be given based on the description of community use and the number of community users.

Before negotiating any community use arrangement, the school should consult the Department's Guidelines on Places of Public Entertainment Approval Procedures. If necessary, the school should liaise with the regional Asset Management Unit to determine whether PoPE approval is required for the proposed activity.

15 ACCOMMODATION SURPLUS TO THE DEPARTMENT'S REQUIREMENTS

Where a former school site is no longer required for Departmental purposes, the Department may negotiate to:

- sell the site to a Government Agency for community use, subject to the approval by the Treasurer and the Government Asset Management Committee, at market rates; or
- lease the site to a Government Agency for community use at market rates.

In such cases Treasury Regulations and the Government's Property Disposal Guidelines relating to the lease or sale of assets to another Government Agency would apply. Further information can be obtained from the Asset Management Unit.

16 RESPONSIBILITIES AND DELEGATIONS

16.1 School Principals

- Responsible for managing community use of school facilities to the mutual benefit of the school and the community.
- Responsible for receiving applications for community use, liaising with applicants, ensuring that the facilities are fit for the intended purpose, the proposed use is legal and appropriate, the applicant is suitable and that risk and child protection issues are addressed.
- Responsible for approving applications for community use, and signing community use agreements consistent with their delegation.
- Responsible for endorsing and referring to Asset Management Directorate community use agreements of greater than twelve months duration for approval by a delegated officer.
- Responsible for referring architectural plans for any upgrade of facilities to the Asset Management Unit for review.
- Responsible for referring any proposal to terminate a Joint Use and Development arrangement before the end of the agreement to the School Education Director and the Asset Management Unit to arrange the approval of Asset Management Directorate.
- Responsible for providing all Licence/ Lease agreements details including the building, rooms and land use to the Asset Management Unit for registering on the DET Asset Management System (AMS).

16.2 School Education Directors

- Responsible for liaising with the school and the community regarding proposals to make school facilities available for community use.

- Responsible for resolving any issues regarding the availability or management of school facilities in consultation with the school principal and community user / applicant.
- Responsible for monitoring the effective implementation of policy and procedures relating to community use of school facilities

16.3 Regional Directors

- Responsible for promoting the mutually beneficial community use of school facilities.
- Responsible for leading the effective planning of community use of school facilities within the region

16.4 Regional Asset Management Units

- Providing schools and School Education Directors with support and advice on proposals to enter into community use arrangements;
- Assisting the school and the School Education Director in the development of Hire, Licence or Joint Use and Development Agreements for the community use arrangement;
- Reviewing architectural plans for the upgrade of facilities required by the community user to ensure they meet school and legal requirements;
- Ensuring there are appropriate Council and Places of Public Entertainment approvals for the proposed use / enhancement
- Preparing submissions to the Minister, through the Asset Management Directorate, for any upgrading works to be included in the DET Capital Program;
- Arranging for a review of all Joint Use and Development Agreements, and any non standard Hire or Licence Agreements by Legal Services
- Arranging for the approval of all Joint Use and Development Agreements by the appropriately delegated officer within the Asset Management Directorate;
- Obtaining the formal approval of Asset Management Directorate to terminate a Joint Use and Development arrangement before the end of the agreement.
- Registering on the DET Asset Management System (AMS) all Licence/ Lease agreements including the building, rooms and land use advised by schools
- Arranging a submission to Asset Management Directorate to proceed to tender or renew agreements referred to the AMU by schools.
- Arranging tenders on behalf of schools for use of school facilities where approved by Asset Management Directorate. The AMU will advertise the tenders, chair any tender evaluation process

and obtain written approval from Asset Management Directorate to execute any Licence/ Lease.

16.5 Asset Management Directorate

- The Director, Works and Facilities Management; and Director, Strategic Asset Planning and Procurement have authority to approve Joint Use and Development Agreements.
- The Asset Management Directorate must approve all proposals by schools or community partners to terminate Joint Use and Development arrangements before the end of the agreement.
- The Manager, Sites and Accommodation will note details of all approved Joint Use and Development Agreements on the Asset Management System.
- The Manager, Strategic Asset Planning will assess all Leases and Licences for the terms sought by the school and will make recommendations based on the Asset Planning principles of the Department
- The Director, Works and Facilities Management will review and approve all requests to establish a Licence or Lease and be responsible for the execution of the final Licence or Lease documents (the Director, Strategic Asset Planning and Procurement may also sign).

16.6 Legal Services Directorate

- Legal Services Directorate officers will provide schools and regional staff with support and advice relating to the legal implications of particular community use arrangements and assist with the drafting of complex agreements, licences and leases relating to community use of school facilities.

16.7 Director, School and Regional Policy, Office of Schools

- Responsible for developing and maintaining policies, procedures and associated documentation relating to community use of school facilities.

17 IMPLEMENTATION OF THESE PROCEDURES

These procedures will come into effect immediately for all new community use arrangements, including arrangements which are currently being negotiated but are yet to be formally signed by the parties.

Where an informal community use arrangement exists (i.e. where there is no legal agreement) a formal agreement, which reflects the requirements of these procedures, should be negotiated as soon as possible. Where the arrangement is for a period of one year or less a Community Use agreement should be implemented by the end of Term 4 2009.

Schools should advise their Asset Management Unit (intranet only) where assistance is required to establish a Licence /Lease. Every attempt should also be made to implement longer term Licence, Joint Use and Development or Lease agreements by the end of Term 3 2009. However, the Asset Management Unit may consider an extension of time in instances where the arrangement is complex and / or requires significant negotiation and consultation.

18 MORE INFORMATION

Policy issues relating to community use of school facilities should be directed to the Director, School and Regional Policy on (02) 9561 8514.

Operational and implementation issues should be directed to the Regional Asset Management Unit on 132 779.

See also

- Community Partnerships for the Use of School Playing Fields;
- Community use of school facilities for Children's Services: Implementation Procedures for Out of School Hours Care (OSHC), Occasional Care, Long Day Care Centres and Non-Government Preschools

ATTACHMENT 1

CHECKLIST FOR COMMUNITY USE PROPOSALS

Please note that this is an attempt at a comprehensive list and not all issues are appropriate in all circumstances. Long term arrangements will require more detailed consideration. Use where appropriate.

ISSUE	REF	CHECK
Initial Consultation and Review		
Have you discussed the proposed community use and obtained support (if necessary) from the: • School Education Director? • Regional Asset Management Unit?	S. 9	
Have you consulted with other stakeholders including: • Neighbours? • The P&C Association and School Council? • Local Government?	S. 9	
Have you undertaken a risk assessment to ensure that the community use is appropriate and that the facilities are in good condition?	S. 6	
Have you ensured that the proposed community user has priority over any other applicants?	S.7	
Is the proposed use legal and in keeping with the school's values?	S. 8	
Is development consent required from Council?	S. 15.1	
Is Places of Public Entertainment (PoPE) approval required for the proposed use?	S. 15.2	
Development of a Legal Agreement		
Has a legal agreement been developed for the community use?	S.10	
In negotiating and developing community use, are you referring to the right procedures for: • Out of School Hours Care? • School Playing Fields?	See Relevant Documents	
Have you considered and agreed on the following administrative issues?		
• How the facility will be managed	S. 12.1	
• Insurance	S. 12.2	
• Cleaning	S. 12.3	
• Safety and Security	S. 12.4	
• Damages	S. 12.5	
• Consumption of Alcohol	S. 12.6	
• Screening of Films and Videos	S. 12.7	
• Copyright	S. 12.8	
• School Records	S. 12.9	

ISSUE	REF	CHECK
• Night Lighting	S. 12.10	
Have you considered and agreed on the following financial issues?		
• Charges and Cost Recovery	S. 13.1	
• Security Deposit	S. 13.3	
• Income	S. 13.4	
• Probity and Ethical Behaviour	S. 13.5	
Have you ensured the *Community Use of School Facilities Child Protection Declaration* has been signed by the community user, with the appropriate documentation sighted by the principal?	S. 5	
Review and Approval of the Legal Agreement		
Has the agreement been referred to the AMU and Legal Services prior to being signed by the parties (if necessary)?	S. 10.5	
Does the School Principal have the Authority to approve and sign the community use arrangement or does the matter need to be referred to Asset Management Directorate?	S.9	
Does the community member who signs the agreement have the appropriate authority to do so?	S.9	
Has the community user been given a copy of the signed agreement?	S.9	
Capital Enhancements		
Where the community use requires some capital enhancement which will be wholly or partially funded by the user, have you:	S. 14	
• Advised the community partner that the facilities will become the property of DET?		
• Discussed the management structure and contributions?		
• Determined who will be responsible for the construction process?		
• Liaised with the AMU regarding the placement and design of the works?		
• Received confirmation from the AMU that the works have been approved by the Minister?		
• Ensured that the Joint Use and Development Agreement has been signed and the community contribution received before calling tenders for the work?		

ATTACHMENT 2

NEW SOUTH WALES
DEPARTMENT
OF EDUCATION
AND TRAINING

COMMUNITY USE AGREEMENT

An agreement (consisting of the following Schedule, Standard Terms and Signature Page) between the State of New South Wales and a Community User for the use by the Community User of facilities at the named NSW government school

SCHEDULE

Date of Agreement	*(insert above the date that this agreement is signed)*
School	*(insert above the name of the School concerned)*
	(insert above the address and contact details for the School)
	ABN
	(insert above the Australian Business Number of the School)
Community User	*(insert above the name of the Community User concerned)*
	(insert above the address and contact details for the Community User)
	ABN
	(insert above the Australian Business Number, if any, of the Community User)
Commencement Date	*(insert above the date that this agreement is to commence)*
Termination Date	*(insert above the date that this agreement is to terminate (unless earlier terminated in accordance with this agreement) – the date inserted must <u>not</u> be more than 12 months after the Commencement Date)*

Purposes

(insert above the purposes for which the Premises and the Equipment may be used)

Premises

Unless otherwise stated below, the Premises are the Building and Room Number(s) set out in the Table below.

(for example, the Premises may be defined above by reference to a plan attached to this agreement)

Table

Day of Week	Frequency	Starting Date	Finishing Date	From (time)	To (time)	Building	Room Number(s)

Equipment

(insert above details of equipment being property of the State or the School which the Community User may use under this agreement)

Fees *(see clause 4)*	The Community User shall pay to the School $..... per • week • fortnight • month • school term • year *(delete all but one of the above options)* <u>in advance</u>, for use of the Premises and the Equipment in accordance with this agreement by: • cash in person at the School Office during school hours (with a receipt being issued immediately) • cheque payable to the School in person or by post • electronic transfer to: …… …… *(add account details or delete this option)*
Public Liability Insurance *(see clause 5)*	Name of Insurer: Policy Number: Date of Expiry: *(If the use is of a non-commercial nature and the Principal is satisfied that the use is of a low-risk nature, the Principal may delete clause 5 and write "not applicable" in the above space.)*
Additional conditions *(see clause 8(w))*	*(insert above details of any conditions not otherwise stated in clause 8)*

STANDARD TERMS

THIS AGREEMENT is made on the dated referred to in the Schedule **BETWEEN** the School referred to in the Schedule for and on behalf of the State of New South Wales through its Department of Education & Training (ABN 40 300 173 822) **AND** the Community User identified in the Schedule.

IT IS AGREED THAT:

1. DEFINITIONS

In this agreement:

"Premises" refers to the space being used at the School and set out in the Schedule.

"Equipment" refers to the equipment, if any, needed by the Community User and provided by the School as set out in the Schedule.

"School" refers to the NSW government school identified in the Schedule.

"Principal" refers to the person occupying the position of, or acting as, principal of the School.

2. AUTHORITY TO USE

The State grants to the Community User, authority to use the Premises and the Equipment for the purpose described in the Schedule and for no other purpose. The Community User agrees to abide by the Conditions of Use set out in clause 8 below. This authority is not transferable.

3. DURATION OF USE

This agreement shall commence and terminate on the dates set out in the Schedule. During that period, the Community User, subject to this agreement, has authority to use the Premises and the Equipment at the times set out in the Schedule.

4 FEES

The Community User shall pay to the School the fees set out in the Schedule at the times and manner set out in the Schedule.

5 PUBLIC LIABILITY INSURANCE

The Community User has taken out and shall maintain a broad form contractual third party liability insurance (also known as public liability insurance and legal liability insurance) providing coverage for the Community User of at least $10 million per occurrence. That insurance policy must be with a body corporate authorised to carry on insurance business under the *Insurance Act 1973.* Details of the insurance policy are set out in the Schedule.

6 WORKERS COMPENSATION INSURANCE

The Community User has taken out and shall maintain workers compensation insurance coverage with a licensed insurer under the *Workers Compensation Act 1987* in respect of any employees of the community user who are employed in connection with the use of the premises and equipment.
(Clause 6 doesn't apply if the Community User does not have any employees)

7 PROOF OF INSURANCE

The Community User shall, on the reasonable request of the Principal made from time to time, provide a certificate of currency in respect of the insurance policies referred to in clauses 5 and 6.

8 CONDITIONS OF USE

The Community User shall:

a) not use premises or equipment other than stated in Clause 2 and schedule B (where applicable);

b) not use the premises at any other time and day other than stated in Clause 3 and schedule A unless agreed in writing between the community user and the principal and noted hereunder;

c) not use the premises on any public holiday or during school vacations without the written consent of the principal;

d) ensure that all users who enter and exit the school grounds under this agreement do so as directed by the principal;

e) not interfere in any way with the operation of the school or with records, materials or equipment of the school, staff or pupils and in particular not to use any machinery or equipment other than any equipment specified in Clause 2 and Tab A and will not remove any equipment from the school premises;

f) not make any structural alterations to the school premises including the attachment of nails, screws or any other fastenings to walls or fittings without the permission of the principal;

g) ensure that after each use all furniture is replaced in its original position unless otherwise specified by the principal;

h) ensure that all persons allowed on the premises or permitted by the community user to use equipment shall properly conduct themselves and ensure that any person unauthorised by the principal to use the premises or equipment does not do so;

i) ensure that any children allowed to enter under this agreement are properly supervised at all times and only use the premises specified in Clause 2 and schedule A;

j) ensure that it complies with the requirements of the *Commission for Children and Young People Act 1998* in respect of any person working in child related employment.;

k) ensure that any person working on the departmental site whether paid or in an unpaid capacity, including as a volunteer:

- completes a Prohibited Employment Declaration
- does not work on the departmental site if a relevant criminal offence is disclosed.

l) ensure that smoking does not occur;

m) ensure that no game of chance or gambling is carried out on the premises unless an appropriate authority or licence has been obtained from the NSW Office of Liquor, Gaming and Racing or other regulatory body;

n) not engage in any activity which breaches the *Copyright Act 1968* (Commonwealth);

o) notify the principal immediately in writing of any accident to any person while on the school premises under this agreement and provide such statements from witnesses and the person/s injured as the principal or the Department of Education and Training's Legal Services Directorate may require;

p) leave the premises and any toilets or other parts of the school buildings and all entrance and exit routes in a clean and tidy condition after each use or arrange and pay for the cleaning of the premises;

q) make full restitution for any damages to equipment or premises as may in the principal's opinion be necessary.

r) allow the principal or the principal's nominee to enter the premises at any time for the purpose of inspecting the premises or equipment;

s) vacate the premises on or before the authorised time each day of use and ensure that the premises are locked and secured at the end of each use. Power, heating and cooling are to be switched off after use;

t) not continue to use the premises beyond the expiration of the term of this agreement and reapply if continued use is required. Return any keys to the premises to the principal upon expiration of the agreement;

u) comply with any reasonable request by the principal concerning the use of the premises and equipment;

v) comply with or obey any reasonable request, command or order by emergency services personnel if and when necessary; and

w) any other additional conditions, if any, set out in the Schedule.

9 INDEMNITIES AND RELEASES

9.1 The State does not warrant that the Premises and the Equipment are now or will remain suitable for all or any of the purposes of the Community User.

9.2 The Community User agrees to occupy and use the Premises and the Equipment at its own risk and to the full extent permitted by law releases the State from all claims and demands resulting from any accident, damage or injury occurring at the Premises and the State shall have no responsibility or liability for any loss of or damage to the equipment of the Community User at the Premises or on the School grounds.

9.3 The Community User indemnifies the State from and against all actions, claims, damages and expenses arising from or in consequence of the following:

9.3.1 the negligent use by the Community User of any utility or other services and facilities of the Premises;

9.3.2 overflow or leakage of water including rainwater in or from the Premises;

9.3.3 loss, damage or injury from any cause to property or person caused or contributed to by the use of the Premises by the Community User; or

9.3.4 loss damage or injury from any cause to the property or person within or without the Premises occasioned or contributed to by any act, omission, neglect, breach or default by the Community User.

9.4 The State shall incur no liability for any failure of any part of the equipment or machinery for the time being at the Premises. The Community User undertakes to notify the Principal as soon as practicable of any failure of or issue with equipment.

10 KEYS

The Principal will make available to the Community User keys to open any gates or doors to the School to access the Premises for each day of use under this agreement. The Community User must at the conclusion of the Access Hours on each day of use lock such gates or doors. Lost keys will be replaced at the expense of the Community User and if the principal acting reasonably believes that locks need to be replaced after the Community User has lost keys the Community User must pay for the cost of new locks**.**

11 TERMINATION

11.1 At any time the State has the right to immediately suspend or terminate this Agreement in the event of:

- an emergency where the Premises are urgently needed to house students or provide accommodation during disaster periods;
- a federal, state or local election or a referendum.

Should there be no default by the community user at the date of suspension or termination, any fees paid for the period of the suspension or for a period beyond the termination will be refunded.

11.2 At any time the State has the right to terminate this Agreement or refuse future use if there has been a significant breach or repeated breaches of it by the Community User. In the event of such termination the principal must give one week's notice in writing.

11.3 Either party may terminate this Agreement at any time by giving the other two week's notice in writing.

11.4 Should there be no default by the Community User at the date of termination, any fees paid for a period beyond the termination will be refunded.

SIGNATURE PAGE

Signed for and on behalf of
THE STATE OF NEW SOUTH WALES by

……..……..
……..……..
print the name and title of person signing (signature of authorised person)

in the presence of

……..……..

……..……..
……..……..
print the name and address of witness (signature of witness)

Signed for and on behalf of
the Community User by

……..……..
……..……..
print the name and title of person signing (signature of authorised person)

in the presence of

……..……..

……..……..
……..……..
print the name and address of witness (signature of witness)

Note:

In addition to authorised persons and witnesses signing and completing this page, the authorised persons must initial every page of this document (in the bottom right hand corner)

ATTACHMENT 3

HIRE RATES FOR COMMUNITY USE OF FACILITIES

2009 School Facility Hire Rates

Rate per hour	Rate per hire	Facility hired	Rate per hour	Rate per hire
Not for Profit	**Not for Profit**		**For Profit**	**For Profit**
$4.00	$12.00	Classroom	$7.00	$21.00
$6.00	$18.00	Demountable	$10.00	$30.00
$15.00	$45.00	Small Hall < 300 sq mtrs	$25.00	$75.00
$26.00	$78.00	Large Hall > 300 sq mtrs or Multi Purpose Centre	$43.50	$130.00
$8.00	$24.00	Office / Meeting Rooms	$13.50	$40.00
$17.00	$50.00	Library	$30.00	$90.00
$5.00	$15.00	Toilet block	$10.00	$30.00
$5.00	$15.00	Canteen	$9.00	$27.00
$6.00	$18.00	Multi Purpose Courts	$10.00	$30.00
$10.00	$30.00	Playing field	$17.00	$50.00
$10.00	$30.00	Staff Common Room	$17.00	$50.00

Notes:

A. For arrangements involving 50 hires or more per year to the same community user, schools may consider offering a 10% discount on these rates.

B. Schools should contact their Asset Management Unit Project Officer for advice on the hire of other facilities or multiple facility hires.

C. These rates will be reviewed annually and this table will be adjusted as necessary.

ATTACHMENT 4

CHILD PROTECTION DECLARATION

The Department of Education and Training encourages members of the community and education groups to use school facilities when they are available.

Information for Community Users

The community expects that the Department of Education and Training will exercise the highest levels of responsibility in its protection of children and young people from harm related to abuse and neglect while they are in its care. In turn, there is an expectation that when children and young people are present in activities conducted by community members in school facilities they will be safe from abuse and neglect.

In order to meet this obligation in our schools, principals are required to ensure community users seeking to use school facilities are aware of their responsibilities in the area of child protection and welfare. Community users must declare and demonstrate compliance with these legislative requirements prior to a Community Use Agreement being approved.

The NSW Department of Education and Training has developed policies related to risk of harm to children and young people. These policies can be accessed on the DET policy website.

By completing this Declaration the community user is confirming that he/she has read and clearly understands the child protection responsibilities and legislative requirements associated with working in child-related employment.

Recognising and Reporting Risk of Harm

If any person, in the course of their work, has current concerns that a student under 18 years of is at risk of harm, they must report the matter to the Department of Community Services Helpline at the earliest opportunity. This includes concerns of a child protection nature that relate to the actions of a staff member.

General information for community members about recognising and reporting risk of harm to children and young people published by the Department of Community Services is available on the Department of Community Services website:

All persons involved in activities conducted in school facilities are to ensure that they do not engage in inappropriate conduct of a child protection nature. This includes sexual misconduct, ill-treatment, assault against a child or young person, neglect and behaviour that causes psychological harm.

The Working with Children Check

Children and young people have a right to be safe in their places of learning, work and play. The *Working with Children Check* makes these places safer for children and young people by helping to prevent unsuitable people from working there.

Information and resources needed to conduct the *Working with Children Check* can be found at the Commission for Children and Young People's website.

The *Working with Children Check* prohibits people convicted of sex offences, or other serious criminal acts against children from working in child-related employment.

People working in, or seeking to work in child-related employment must complete a *Prohibited Employment Declaration* to confirm that they are not a prohibited person. Where a person is unwilling or unable to complete a *Prohibited Employment Declaration*, such a person cannot be engaged / approved as a community user of school facilities.

The *Working with Children Check* applies to all people seeking to work in child-related employment. Child-related employment is any work (paid or unpaid) that involves direct and unsupervised contact with children.

Although the screening of volunteers is not mandatory under the Commission for Children and Young People Act 1998, the Department of Education and Training's policy is that volunteers are also required to complete a *Prohibited Employment Declaration*.

COMMUNITY USE OF SCHOOL FACILITIES CHILD PROTECTION DECLARATION

1. I am seeking approval to use the facilities at

_____School for activities in which

☐ **A.** children and young people **are** involved or will be present

OR

☐ **B.** children and young people **are not** involved nor will be present

Please tick one

2. For child-related activities only:

I declare that I will comply with all legislative requirements relating to the protection of children and young people from abuse and neglect, including the requirements for a *Prohibited Employment Declaration* and *Working with Children Check* for people in child-related employment.

I declare that I have obtained appropriate screening of all my staff involved through an Approved Screening Agency.

*****The principal of _____School has sighted the results of the *Working with Children Check* for all staff.

(* **This must take place prior to approving the user and their staff)**

Principal's signature:

Date:

I declare that each of my employees and volunteers is a fit and proper person to be on a Departmental site working with children and young people.

I declare that all people who have volunteered to participate in the programs involving children and young people have completed a *Prohibited Employment Declaration.*

Name (Please print) _____

Signature: _____ Date: _____

ATTACHMENT 5

ADVICE ON NOT-FOR-PROFIT ORGANISATIONS

To determine whether a company is genuinely a not-for-profit company the following should be considered

A Company Structure

Under a company structure, charitable or not-for-profit organisations will generally be registered as public companies that are limited by guarantee under the *Corporations Act 2001* (Commonwealth).

Limited By Guarantee Company (Not-For-Profit Company)

A company limited by guarantee is a not-for-profit entity and does not have a share capital. It is normally incorporated for people wishing their company to acquire a corporate status but will have non-profit making functions. This type of company may be used for people wishing to gain charitable status, for trusts, clubs, churches, schools, or professional and trade associations ie. a not-for-profit organisation.

As the “limited by guarantee” company operates without the aim of making a profit, there are no shares issued. This type of guarantee limited company has members instead of shareholders. Instead of buying shares, anyone who wants to be a member signs a form agreeing to pay a sum of money (for example $10). The members will have limited liability - the member’s liability is limited to the amount each member agrees to contribute to the assets of the company in the event of its being wound up. This form is called the ‘guarantee’ and is legally binding.

The members agree to contribute a membership fee or subscription, normally have equal voting rights and elect a board of directors. Any profits are not distributed as dividends, but are put towards the company activities.

Unlike unincorporated associations and trusts, the guarantee company has a separate legal existence from its members. This means that, in its own right, it can employ people, own property, enter into contracts and sue or be sued in the courts.

The directors, who are also defined in law as charity trustees if it is a charitable company, conduct the daily running of the business. The directors may call themselves a management committee, an executive committee, board of trustees or board of directors.

A company limited by guarantee may also be registered without the word "Limited" in its name. This is only possible if its constitution:

- requires the company to pursue charitable purposes only and to apply its income promoting those purposes; and

- prohibits the company making distributions to its members and paying fees to its directors; and
- requires the directors to approve all other payments the company makes to directors.

Incorporated Association

Associations are incorporated under State and Territory Associations Incorporation legislation, which is administered by the various state authorities. An incorporated association is also a legal entity separate from its individual members that can hold property, sue and be sued.

Incorporating an association in a State or Territory restricts the organisation to operating in its home jurisdiction. For example, an association incorporated under the Associations Incorporation Act 1984 of NSW, may only carry on business in NSW.

The Associations Incorporation Acts provide a simple and more affordable means of creating a separate legal entity for small, community based groups with limited resources. It imposes less onerous conditions than the Corporations Act 2001 that governs the activities of companies.

Companies

Companies are registered under the Corporations Act 2001 and are regulated by ASIC and are subject to the requirements of the Act. A company is a registered legal entity with the right to do business in its own right: the proprietors are the shareholders (and usually also its directors and employees).