

A GUIDE TO

UNDERSTANDING AND

DEVELOPING COMMUNITY

JOINT USE AGREEMENTS

Managing risk, creating certainty

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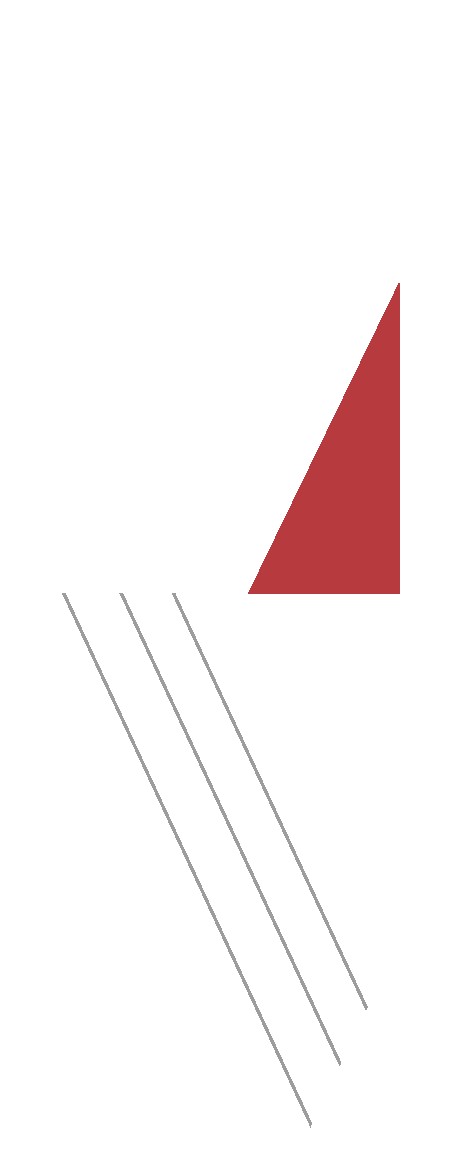
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What does this guide cover?

This document is designed to explain to School Councils and proposed Community Partners who are City or Shire Councils, or not for profit entities, what Community Joint Use Agreements are, what the parties need to consider when discussing such arrangements and the process for creating them.

This Guide will assist the parties to understand their obligations when considering entering into a Community Joint Use Agreement.

This Guide is part of a suite of documents that have been created as a practical resource to assist the parties on the journey from an initial joint use concept through to a legally binding Community Joint Use Agreement, which must be signed by all parties before construction can commence.

The complete suite of documents is described below.

|  |  |  |
| --- | --- | --- |
| Document Name | Description | Relevant because... |
| Guide to Understanding and  Developing Community Joint Use Agreements | This is an overview of Community Joint Use Agreements, their key concepts and the processes to be followed to create them. | This document is an initial reference for School Councils and Community Partners to read prior to entering into discussions about a proposed Community Joint Use Facility. |
| Community Joint Use Proposal | Template document which captures essential information to enable the Community Joint Use Agreement to be drafted. | Form to be completed by parties to the proposed Agreement and endorsed by the Regional office. Refer to the Guidelines and the Instructions. |
| Instructions and Explanatory  Notes for Completing a  Community Joint Use Proposal | Instructions that provide supporting information to enable parties to complete the  Community Joint Use Proposal. | The instructions assist the parties to understand the concepts and options available to them for the operation and upkeep of the Community Joint Use Facility. |
| Community Joint Use Agreement comprising:     * Core Clauses; and      * Options Clauses | The Community Joint Use Agreement is the formal legal agreement setting out the rights and responsibilities of the parties which is prepared by the Department. The Core Clauses form the standard terms and conditions for all Community Joint Use Agreements and are not negotiable. The Options Clauses allow the parties to select the approach that best suits their joint use arrangements. | A formal legal document is necessary to minimise risk and create certainty for the parties. This is important due to the significant investment of time and resources contributed by all parties to the agreement. The use of Core Clauses ensures key rights and obligations are clearly described, the agreement is binding and streamlines the process. The Options Clauses provide flexibility for key operational requirements. |
| Explanatory Table of Clauses | This document provides an explanation of the Core and Option Clauses. | This document assists the parties to understand the content of and reason for the Core and Option Clauses. |

Where appropriate, this Guide will refer to other policies and resources to assist School Councils and Community Partners in developing and documenting their Community Joint Use Agreement.

The Guide has been divided into a number of parts, as listed below:

## Part A: Community Joint Use Agreements in Context

This part explains what a Community Joint Use Agreement is and also the policy underpinning their use. It gives a brief description of different types of Community Use Agreements and explains the reasons why we need a formal written agreement.

## Part B: Key Concepts

Here we address the key concepts that the parties to a Community Joint Use Agreement need to understand prior to entering into discussions. These include:

* Understanding a School's Facility Area Allocation and implications for Community Joint Use Arrangements
* The Role of Councils in delivering Community Services and the parties to a Community Joint Use Agreement.
* The Department’s role in facilitating Community Joint Use Agreements, and identifying the parties responsible for paying the legal costs for drafting the Community Joint Use Agreement

## Part C: Process for Creating a Community Joint Use Agreement

This Part summarises the stepped process by which a Community Joint Use Agreement is created for the construction or refurbishment of a Facility located on School land, or on land owned or managed by a Community Partner and the shared use of that Facility following completion of those works.

## Part D: Content of the Community Joint Use Agreement

The formal written Community Joint Use Agreement is comprised of two parts:

The Core Clauses that remain essentially the same across all community joint use projects; although there is some variation depending on which party owns or manages the land on which the Facility is located. These can be seen as the basic terms and conditions for entering into a Community Joint Use Agreement.

The Options Clauses that cover the key operational issues, including hours of access, maintenance and upkeep of the facility. These are designed to allow the parties the flexibility to choose the approach which best suits their situation.

## Part E: Resolving Differences

To ensure that Community Joint Use Agreements are developed in a timely manner, this part details the Department's protocol for the resolution of any disputes arising between the School Council and Community Partner both during the negotiation and operational phases.

## Part F: Department's Contact Details

This Part lists the persons to contact at the Department for more information and assistance, if required.

# Part A: Community Joint Use Agreements in Context

What is the Policy Underpinning Community Joint Use Agreements?

Victorian students have access to the best learning environments. We want to ensure that communities can also benefit from these significant investments. Innovative partnerships exist where schools and communities work together to build and share new facilities. Local councils have a major role in community development and can become key partners with schools. Local Councils play a range of roles in developing the community, including service delivery for community precincts and activities.

Before entering into discussions with a Community Partner about a proposed community joint use arrangement, the School Council should be familiar with the policy behind shared use of School facilities and the related concept of co-locating school and other community facilities on either School or local government authority land.

What is a Community Joint Use Agreement?

A Community Joint Use Agreement is:

* a formal written agreement,
* between the Minister for Education, a School Council and a Community Partner,
* with the Community Partner being a local government authority (LGA) or a not for profit community based entity
* about the construction and long term shared use of buildings or facilities
* located on School land or on land owned or managed by the Community Partner

The initial term of a Community Joint Use Agreement is generally between 20 and 30 years. A Community Joint Use Agreement is made up of two parts:

* Core Clauses which apply to all community joint use arrangements and are not subject to discussion or negotiation.
* Options Clauses which are to be discussed and agreed between the School Council and the Community Partner. These clauses relate to the arrangements for the:

o sharing of the facility o recurrent maintenance o capital works o cost of utilities o hire o governance of the Facility.

These two types of clauses are explained in more detail later in this Guide.

Does this Form of Community Joint Use Agreement Apply to all Community Use Arrangements?

The answer is no. There are different types of Community Use Agreements to suit a variety of circumstances.

## Short Term Arrangements

Short term use arrangements, usually less than five years, which do not involve any construction do not require this form of a Community Joint Use Agreement. These can be documented using a simpler form of Licence Agreement or Hire Agreement, both of which are available on the Department’s website, www.education.vic.gov.au. An example of a licence agreement is the use of the school hall for regular weekly dance lessons. A hire agreement is used for a more ad hoc arrangement, for example a local theatre group putting on a performance for a few nights at the school auditorium.

## Commercial arrangements

Arrangements for the construction and use of facilities on School or local government authority land by commercial entities are different and have different requirements for approval and documentation.

If a School Council is considering a shared use proposal involving a commercial partner, it must notify and discuss the proposal with the Department before entering into any discussions with the commercial partner.

In particular, a peppercorn licence fee for the use of school land is not applicable to commercial entities. The Department has developed a policy to calculate the appropriate licence fee for a commercial entity.

## Lease Agreements

Sometimes there are arrangements where there is no shared use, but the building or other type of facility is located on school land. In such cases, the Community Partner may be granted exclusive use of a pre-existing building, or they may construct a facility on school land that is to be used solely by the Community Partner. Kindergartens or community hubs are examples of this type of arrangement. In such a situation, a Lease is the appropriate form of agreement. You will need to contact the Department for further assistance. Department contacts can be found at the end of this document.

Why do we need a Formal Document?

Why is a formal document, a Community Joint Use Agreement, required at all?

The answer is that a formal written agreement helps to manage risk and create certainty for all parties by:

* Ensuring the parties' rights and obligations are legally enforceable. An example is the right by the owner of the land (be it the Minister or the Community Partner) to take over and complete the construction works if they are not being properly progressed.
* Allocating risk and responsibility to the appropriate party.
* Drafting clearly to avoid ambiguity or misunderstanding.
* Providing agreed processes for change, which is important for an agreement potentially spanning 20 to 50 years. An example of this is the mechanism for extending the term of the Agreement, and considering any adjustments at the time of renewal.
* Including agreed processes for resolving disputes; and
* Providing for what happens if one of the parties wants to terminate the agreement.

For these reasons, a formal agreement is in the interests of all parties.

# Part B: Key Concepts

## School Facilities Area Allocation

It is vital that the parties have realistic expectations about what it will cost to operate the community joint use facility in the long term.

School Councils are provided with an annual budget, known as the Student Resource Package (SRP) to cover all expenses including staff salaries.

There is also an allowance paid quarterly for the cleaning and maintenance of buildings. The amount of money each school receives is based on a formula that takes into account the facilities area allocation for each school. The facilities area allocation is the number and size of the buildings that the school should have based on current and projected enrolments and a number of other factors, including location. Additionally, schools receive a small amount of funding for grounds allowance and maintenance.

Generally, Community Joint Use buildings constructed on school land that are classified as outside area allocation, will not receive an allowance for cleaning and maintenance. This means that the School Council receives no funding from the Department for cleaning, maintenance or future expenses to upgrade or refurbish the buildings.

It is important that all parties recognise the requirement to be able to fund the costs of operating the facility. The School Council and Community Partner need to agree how they will fund these costs prior to a CJUA being drafted. Funds may be generated by hiring the Facility or be contributed by the Community Partner, School Council or an agreed mix between the parties. Most facilities are not entirely self-funding, so the parties will usually need to contribute to a portion of these costs.

## Parties to the Community Joint Use Agreement

The State supports local government through the development and maintenance of community infrastructure and facilities. Local councils deliver vital services to their communities including supporting recreational, sporting and cultural activities. In addition they may plan, provide and facilitate kindergarten and child care programs.

A Community Joint Use Agreement is a legal document. The parties to a Community Joint Use Agreement are usually the Minister, a School Council and a local council. Sometimes a community organisation, or other not for profit entity may be a party in addition to the local council. In exceptional circumstances the community organisation, or not for profit entity may be a party to the Agreement in lieu of the local council. Such a situation must be assessed on a case by case basis to ensure the ongoing financial viability of the shared use arrangement.

The responsibility for the Facility is allocated between the parties to the Community Joint Agreement. There is no separate committee overseeing management and operation of the

Facility.

## Local Council Delivers Community Activities

The usual approach is that the School will use the Facility during designated school hours and that community groups and not for profit sporting organisations will use the Facility outside school hours with such use to be co-ordinated by the local council. Where it is proposed that a single community organisation (such as a basketball club) use the Facility outside school hours, it is still preferable that this be arranged through the local council rather than directly between the School Council and the community organisation.

The Department does not endorse a Committee of Management model as a governance structure due to potential issues with the liability and powers of the committee and concerns over the committee's ability to manage day to day operational matters. Advisory Committees can be established, where appropriate, and tasked with making recommendations about operational issues but the legal relationship and decision making authority must remain with the School Council and Local Council.

The reasons include:

* The School Council and Local Council are legal entities enabling them to enter into a legally binding agreement.
* The Local Council is responsible for community service delivery.
* The Local Council can provide equity of access to community groups and sporting groups that would like to access the facilities.
* Local Councils are equipped to deal with community groups in relation to bookings, planning permits, and insurance.
* Risk is minimised with two partners responsible for the operation and maintenance of the

Facility.

* Sporting clubs have equity of access ensuring no club retains a sense of 'ownership' of the

Facility.

## Management of Community Use of the Facility

Usually Schools manage the use of the Facility that occurs during the designated school hours. This can include use by other schools or even some community use if the School does not need to use the Facility at that particular time. As a general rule however, most Schools will use the Facility entirely for their own purposes during the agreed school hours.

The Facility is then available for community use outside the agreed School Hours. This is usually managed by the Community Partner. A typical example of community use is a sporting team using the Facility for regular practice sessions one evening a week.

A number of different sporting or community groups may use the Facility. The parties to the Community Joint Use Agreement must encourage community use of the Facility outside school hours as this is fundamental principle underpinning such arrangements.

An outdoor sporting precinct in particular may be home to a number of sporting clubs, each allocated regular use of the Facility on a specific evening for practice. Likewise an indoor stadium may host both basketball and netball on different evenings, or at different times.

A local council usually has a number of venues at its disposal to ensure it provides equity of access to facilities across the community. Available options to manage this access are listed below:

* Local Council manages access to the Facility during the hours allocated for community use. This includes both regular and ad hoc access. The local council is responsible for all logistics associated with the use of the Facility.
* A Facility Manager can be appointed to manage the Facility on behalf of the local council. By this model, the local council outsources the management and/or maintenance of the Facility to a third party, although the local council still remains the responsible partner working with the School Council.
* A local council may select a preferred provider, for example a Community or Leisure Centre to manage a facility, with the endorsement of the School Council. Such an entity may also be a party to the Community Joint Use Agreement in addition to the local council. An example would be a local community centre or leisure centre operated by an incorporated association that is best placed to facilitate community access to the Facility. The overall objective is always to optimise use of a community resource.

## The Department’s Role in Facilitating Community Joint Use Agreements

Policy Framework and Practical Support

The Department has created a suite of documents as a practical resource to assist School Councils and Community Partners to move from their initial concept to delivering a legally binding Community Joint Use Agreement. These documents also include a standard template Community Joint Use Agreement.

Practical advice and guidance from Departmental staff will also be available to support the parties in relation to creating Community Joint Use Agreements. Departmental staff will also instruct the law firms to draft the Community Joint Use Agreements, based on the information provided in the Community Joint Use Proposal submitted by the parties.

Paying the Legal Costs for Drafting the Community Joint Use Agreement

The Department is required to use a whole of government legal panel that includes a number of law firms that have expertise in drafting legal documents. These law firms will be provided with the template Community Joint Use Agreement. The parties to the Community Joint Use Agreement, usually a School Council and Community Partner, will be required to pay the costs associated with the legal drafting of the Community Joint Use Agreement. These funds may be sourced from the total funds allocated to the project, or as agreed between the parties.

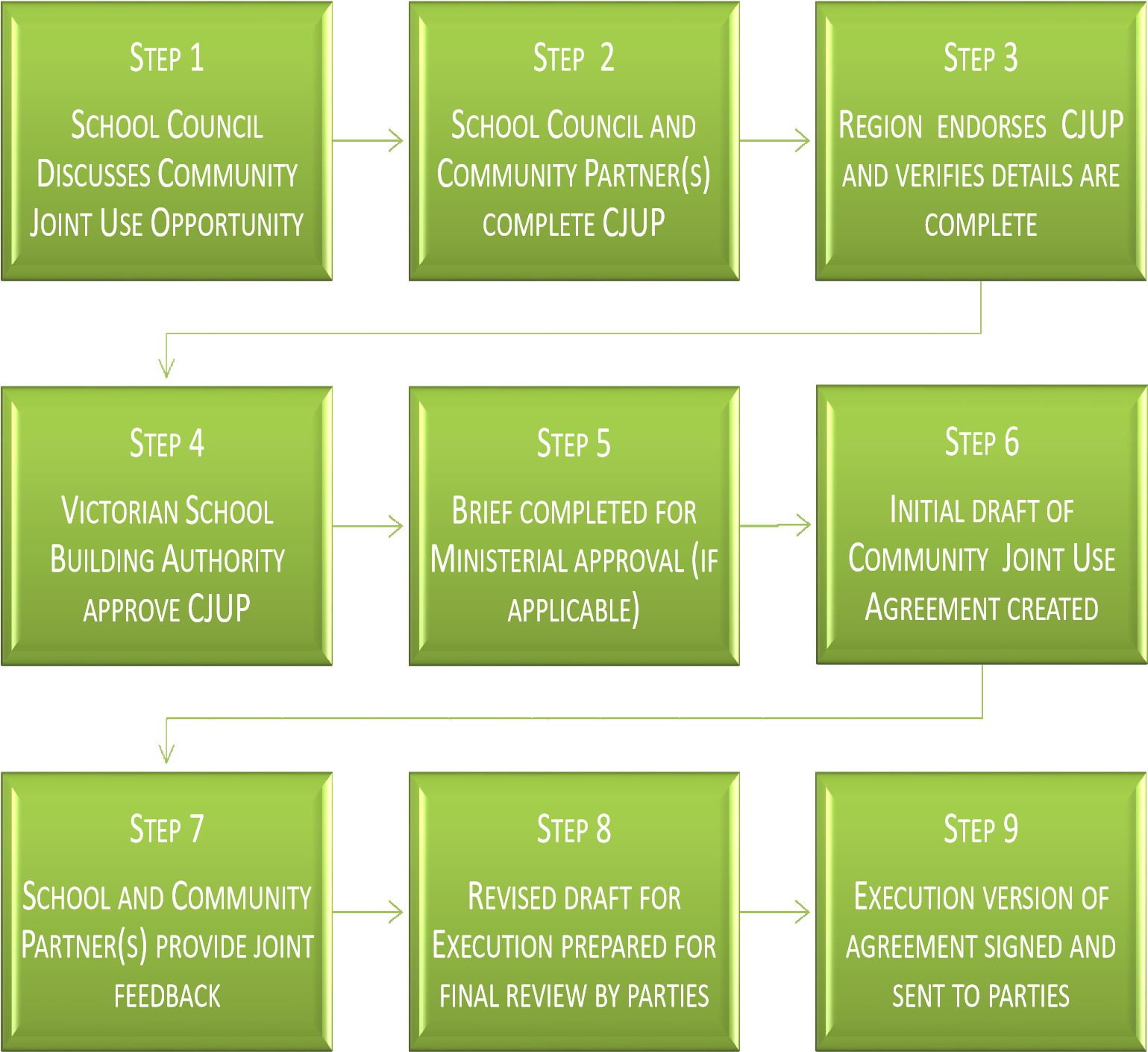
Note that if the Department, or the Community Partner, request legal advice, as separate from the drafting of the Community Joint Use Agreement based on the template, then they will each be responsible for their own legal costs.

# Part C: The Process

## Summary of the Steps Involved in Creating a Community Joint Use Agreement (CJUA)

Listed below is a flow chart summarising the main steps towards developing a community joint use arrangement and documenting that arrangement in a formal Community Joint Use Agreement.

# **Community Joint Use Agreement Process Flow**



## Step 1: School Council Discusses Community Joint Use Opportunity

Before the Principal or a representative of the School Council meet with a Community Partner to discuss a proposed community use arrangement, the School Council itself should first meet as a group to discuss it.

If a potential Community Partner has made the initial approach to the School, the Principal should obtain preliminary details from the Community Partner for discussion at this meeting of the School Council.

One of the purposes of this initial meeting is for the School Council to understand the process and the level of commitment that will be required, both in terms of time and financial resources, to bring these arrangements to a conclusion.

To assist with this process, the Department has prepared a suite of documents, including this Guide, to generate discussion and create a general understanding of the key concepts and level of commitment required by the School Council and Community Partner.

When an understanding has been reached by the School Council they must endorse the

Principal to continue discussions with the proposed Community Partner on behalf of the School. It may take more than one School Council meeting to work through the concepts.

## Step 2: Submitting a Community Joint Use Proposal (CJUP)

Following discussions and consultation, the School Council and the Community Partner must complete a Community Joint Use Proposal (CJUP) and submit it to the Regional office for review and endorsement. This document can be accessed by the School Council and is available from the following Department website link: Community Joint Use Proposal.

The Community Joint Use Proposal is a document that:

* Confirms the School Council's and the Community Partner's intention to enter into a Community Joint Use Agreement covering the construction or refurbishment of the Facility and its ongoing shared use;
* Confirms important information relevant to the preparation of the formal Community Joint Use Agreement, such as the type of Facility being constructed, the ownership of the land on which the Facility is located, use arrangements and the division of operational responsibilities for the Facility;
* Records the School Council's and the Community Partner's agreement to key aspects of the arrangement, and their agreement to use a specific type of Australian standard building contract; and
* Is not intended to be legally binding.

It is important to understand that the Community Joint Use Proposal must be completed in full before it is submitted to the Regional Office and the Victorian School Building Authority. The Department cannot commence drafting a Community Joint Use Agreement until it has received all of this information. Remember, the parties can approach the Region or the Department for advice on any aspect of completing the Proposal. Where required a meeting may be required between the parties, Region and/or Department in order to complete the Proposal.

When completing the Community Joint Use Proposal, the School Council and the Community Partner need to identify which options they have chosen in respect of the following critical areas related to the operation and upkeep of the Facility:

* days and hours of use
* utilities
* hire
* regular maintenance
* capital works
* governance

All the options are explained in greater detail in the document: *Instructions for Completing the Community Joint Use Proposal*

## Step 3: Region Endorses Community Joint Use Proposal

The School Council must submit the Community Joint Use Proposal (CJUP) to the Regional Office for endorsement. If there is any missing information the CJUP will be returned to the parties to complete any items outstanding.

The Region will send the endorsed copy of the CJUP to the Victorian School Building Authority for review. The Department cannot approve the proposed arrangements until they have reviewed the CJUP endorsed by the Region.

## Step 4: Department Approves Community Joint Use Proposal

The Department will review the Community Joint Use Proposal. Please note that if there is information missing in the Community Joint Use Proposal then this may delay preparation of the initial draft Community Joint Use Agreement.

During this approval process, the Department may contact the parties to discuss particular aspects of the proposed arrangement or to seek more information. This may take the form of telephone conferences, emails or face to face meetings.

## Step 5: Ministerial Approval

If Ministerial Approval to proceed with drafting the Community Joint Use Agreement (CJUA) is required, the Department will complete a Brief seeking this approval. The Minister or the Minister’s delegate is required to sign the Community Joint Use Agreement (CJUA) and approve the proposed development and construction of the new Facility.

## Step 6: Initial Draft of the Community Joint Use Agreement

When the Community Joint Use Proposal (CJUP) has been completed in its entirety, then the

Department will instruct lawyers, where required, to prepare an initial draft Community Joint Use Agreement, based on the Department's template agreement using the information supplied by the parties. This will be sent to the parties for their review and comment.

The Department will provide the parties with a copy of the Community Joint Use Agreement as a PDF document as it is not intended for the parties to be able to make changes to the document. Only the Department and its legal advisors will do this.

At this time, the Department will confirm that the proposed arrangement has been approved in principle, subject to all parties reaching agreement on the terms of the formal Community Joint Use Agreement.

The parties should receive the initial draft Community Joint Use Agreement from the Department within eight weeks of the Community Joint Use Proposal being accepted.

## Step 7: School and Community Partner Provide Joint Feedback

After the initial draft Community Joint Use Agreement has been issued by the Department to the parties, the parties need to discuss any issues outstanding and provide a written joint response back to the Department with their feedback on the initial draft.

The Department will contact or meet with the parties to discuss any aspects that need clarification, and the parties will also provide any additional information requested by the Department.

## Step 8: Second Draft for Execution Prepared for Review by Parties

The Department will prepare the second draft Community Joint Use Agreement which takes into account the joint response of the parties and which is intended to represent the final Community Joint Use Agreement. When this is confirmed by the parties, the Department will prepare an execution version of the Community Joint Use Agreement. It is not expected that there will be any major changes at this stage of the process.

## Step 9: Final Execution Version of Community Joint Use Agreement

The Minister, School Council and Community Partner will sign the executable version of the Community Joint Use Agreement, copies of which will then be sent to the parties. Please note that these are legal documents that commit the parties to joint responsibilities, usually for a minimum of 20 years. They should be retained in a safe place where they can be referred to in the future, as required.

## Part D: Content of the Community Joint Use Agreement

What is the Structure of the Community Joint Use Agreement?

Being a template document, designed for consistency, the Community Joint Use Agreement is comprised of two parts. The first part contains the Core Clauses, which are non-negotiable and cannot be altered. These clauses form the bulk of the Community Joint Use Agreement.

Additionally, there are a number of clauses covering different options for key operational responsibilities and rights. These are known as Options Clauses and deal with the variable aspects of a Community Joint Use Agreement, the use and operation of the Facility. These clauses contain alternatives, for the School Council and the Community Partner to consider and select, depending on the arrangements that best suit their community.

### Core Clauses

The core clauses remain unchanged regardless of the specific arrangements reached between the School Council and the Community Partner. An example is the Minister's rights of termination where the Facility is located on School land. Sometimes these are referred to as the standard terms and conditions. They form the basis of every Community Joint Use Agreement.

In the majority of cases the land is owned by the Minister, but in some cases the land may be owned by the Local Council, or it may be crown land. There may be some instances where the Facility is on land owned by the Minister and land owned by the Community Partner. There are different sets of Core Clauses depending on who owns or manages the land on which the Facility is located. The reason for the different sets of core clauses is because many of the Core Clauses address the rights of the owner of the land.

### Options Clauses

The times for use, operations, maintenance and capital works for the Facility are addressed through the Options clauses, as agreed between the parties. These provisions are called Options clauses because they ask the parties to the Agreement to select from a number of identified options the one that is the most suitable for their community.

If the facility is a competition-grade two, three, or four basketball court stadium, the Victorian School Building Authority has developed template maintenance and capital renewal schedules for guiding CJUA discussions.

These options clauses are discussed in more detail in the *Instructions for Completing a Community Joint Use Proposal,* as there are clear explanations provided to the parties explaining the features of each option.

### Special Types of Facilities

Certain types of facilities may require drafting changes or the inclusion of facility-specific clauses in the Community Joint Use Agreement. Examples are Community Joint Use Agreements for swimming pools, fitness centres or types of specialised facilities.

## Part E: Resolving Differences

Disputes between the parties can occur for a number of reasons during the life cycle of a Community Joint Use Agreement. These can occur during:

* The initial phases when negotiating the Community Joint Use Proposal
* Upon receipt of the first draft of the Community Join Use Agreement
* During the term of the Community Joint Use Agreement

### Dispute: During the Negotiation of the Community Joint Use Agreement

The Department wishes to ensure that all Community Joint Use Agreements are progressed and finalised as soon as possible after the parties have submitted a Community Joint Use Proposal.

To facilitate this objective, the Department requires the parties to abide by the following protocol, if they cannot progress the Community Use Agreement or if they have reached an impasse or stalemate.

1. School Council and Community Partner discuss the issue and document the different viewpoints or perspectives.
2. Contact the Manager, Property Management Unit, in the Victorian School Building Authority. to review the dispute to ensure that it is not due to a lack of understanding of the process, or interpretation of the options clauses.
3. Should impasse remain unresolved then it is escalated to the Director, Service Delivery, (or equivalent) in the Victorian School Building Authority and equivalent manager from the Local Council for action.

This process should take no longer than four weeks from the time the initial issue has been raised to the parties receiving a resolution. The objective is to arrive at a mutually acceptable solution. However, it should be recognised that one outcome could be that the parties cannot come to an agreement, thus terminating the discussions.

### Dispute: During the Operational Phase of the Community Joint Use Agreement

The Department wishes to ensure that all parties to the Community Joint Use Agreements adhere to their obligations in terms of the operation and upkeep of the Facility.

To facilitate this objective, the Department requires the parties to abide by the following protocol, if there is disagreement in the understanding or interpretation of the operational aspects of the Community Joint Use Agreement.

1. School Council and Community Partner discuss the issue and document the different viewpoints or perspectives.
2. Contact the joint use project officer in the Victorian School Building Authority. The project officer to review the dispute to ensure that it is not due to a lack of understanding of the process, or interpretation of the options clauses.
3. Should the issue remain unresolved then the parties are to follow the process as outlined in the Dispute Clauses of the Community Joint Use Agreement. First step is for a party to serve a written notice of dispute (Notice of Dispute).
4. Should the issue remain unresolved then it is escalated to each party’s nominated senior representative.
5. Should the impasse remain after it has been escalated within the Department and Local Council then a formal mediation will be convened within sixty days from receipt of the Notice of Dispute unless the parties agree to a longer time period. An independent mediator will be appointed and agreed to by both parties. The school council and the local council will each contribute equally to the costs of the mediator.

## Part F: Department’s Contact Details

For advice and guidance in relation to creating Community Joint Use Agreements schools should contact their Regional team member from the Provision and Planning Unit or the Victorian School Building Authority contact.

The table below lists the contact details located in Regions and Central Office who can be contacted for advice and guidance in relation to creating Community Joint Use Agreements (CJUAs).

### Contacts for Regional and Departmental Team Members

|  |  |  |
| --- | --- | --- |
| Region | Region Contact | Phone |
| South-Western Victoria Region | Manager, Provision & Planning Unit | 1300 333 232 |
| North-Western Victoria Region | Manager, Provision & Planning Unit | 1300 338 691 |
| North-Eastern Victoria Region | Manager, Provision & Planning Unit | 1300 333 231 |
| South-Eastern Victoria Region | Manager, Provision & Planning Unit | 8765 5600 |

Contact details for Regions are also available from the Department's website: DET Regions

Contact details for the Victorian School Building Authority:

Joint Use Project Officer: 7022 2660

Manager, Property Management Unit: 7022 2661