

Lockyer Valley Regional Council

26 Railway Street, Gatton

PO Box 82

GATTON QLD 4343

Telephone 1300 005 872 Facsimile (07) 5462 3269

Email: mailbox@lvrc.qld.gov.auWebsite: www.lockyervalley.qld.gov.au**Application and Loan Agreement****Giant Chess and Checkers**

Please use BLOCK LETTERS to complete the application and tick boxes where applicable. If you have any specific enquiries regarding how to complete this form, please contact Council's Marketing Community and Engagement Team on 1300 005 872.

**This Agreement is between the Lockyer Valley Regional Council (LVRC) and
The Borrower as specified in the Schedule.**

The Parties agree that the Council will supply the equipment to the Borrower for the Purpose subject to the Terms and Condition of this Agreement and information contained in the schedule.

Schedule

Item 1 Borrower's Details	Hirer: _____ (Organisation Name)	
	Address: _____ (Street Address) (Suburb) (State) (Postcode)	
	Authorised Contact:	
	Contact Phone:	Alternate Phone:
Item 2 Bank Details	Bank Name	
	BSB and A/C Number	BSB: Account:
	A/C Name	
Item 3 Purpose	For supervised use at a public event for either general entertainment or community fundraising purpose. Not for domestic, private or commercial use.	
Item 4 Event Location Details	Street Address (s):	
	Event Description	
Item 5 Term (Must Not exceed 7 business days)	Commencement Date:	/ /
	Expiry Date:	/ /
Item 6 Borrower's Signature	Signature:	Date: / /
	Office Use	
	Receipt to Account	
	\$250 Bond Paid:	Yes <input type="checkbox"/> / No <input type="checkbox"/> / Not applicable <input type="checkbox"/>
	Receipt Details:	Receipt No: Date: / /

Item 7 - Equipment List (Please tick ✓ the requested equipment)

- Giant Chess**
- 16 x Black Chess Pieces
 - 16 x White Chess Pieces
 - 1 x Plastic Chess Tarp
 - 1 x Black Tarp
 - 4 x Tent Pegs
 - 2 x Duffle Bags

- Giant Checkers**
- 13 x Black Checkers Pieces
 - 13 x White Checkers Pieces
 - 1 x Plastic Chess Tarp
 - 4 x Tent Pegs
 - 6 x Plastic Spikes
 - 1 x Duffle bag

Item 8 Explanation, Equipment Pick Up and Return

An explanation of setup and use of the equipment will be under taken at the time of pick up and the following documents will be discussed and acknowledged by you:

- Equipment Explanation Checklist & Acknowledgement and of Pick-Up and Return (attached)
- Giant Chess and Checkers Instructions.

Checklist – Pick-Up (Please tick ✓ to acknowledge, complete and sign)**Explanation or Demonstration:**

- An explanation of the setup, care and packing up of equipment
- An explanation of the safety requirement of the equipment
- Return Instructions
- Hirer’s Liability for Damage to Equipment
- Hirer’s Responsibility for Safe Operations and Site Management

Instructions of return of equipment

The Supply and receipt of the following document is acknowledged:

- All equipment must be returned clean
- If equipment is not clean upon return, then a cleaning fee will be deducted from your bond or charged separately at the full cost of cleaning plus 15% administration fee.
- Any repairs or replacement of parts of the equipment damaged or not returned to Council may incur the full cost recovery of the bond or cost exceeding the bond plus 15% administration fee.
- All of the equipment and documentation must be returned no later than **(Date):** _____

Borrower’s Name & Acknowledgement Signature

Full Name: _____
(First Name) (Middle Name) (Surname/Family Name)

Signature: _____ **Date:** ____/____/____

Office Use

Officer’s Name: _____
(First Name) (Middle Name) (Surname/Family Name)

Signature: _____ **Date:** ____/____/____

Checklist – Equipment Return		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Equipment was returned on (Date) : _____
Yes <input type="checkbox"/>	No <input type="checkbox"/>	All equipment was returned in clean condition
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Is there a cost for equipment cleaning, equipment replacement, or repair of damaged equipment
Provide details (if required): _____ _____ _____ _____ _____		
Borrower's Name & Acknowledgement Signature	Full Name: _____ (First Name) (Middle Name) (Surname/Family Name)	
	Signature: _____ Date: ____/____/____	
Office Use	Officer's Name: _____ (First Name) (Middle Name) (Surname/Family Name)	
	Signature: _____ Date: ____/____/____	

Terms and Conditions

1. Definitions

- 1.1 **Agreement** means this document and the Hire Contracts entered by the Borrower from time to time.
- 1.2 **Bond** means the amount of \$250 payable by the Borrower to the Council on signing this Agreement, which is refundable to the Borrower on the return of the Equipment to Council in a fit and proper condition.
- 1.3 **Borrower** means the person detailed in Item 1 of the Agreement and all employees, contractors, invitees and licensees of the Borrower.
- 1.4 **Claim** means liability, suits, actions, proceedings, claims, demands, penalties, losses, damages and expenses.
- 1.5 **Council** means the Lockyer Valley Regional Council A.B.N. 52 673 165 312.
- 1.6 **Damage** means damage caused to the Equipment as a result of the Borrower's use, transportation or storage of the Equipment.
- 1.7 **Equipment** means the Giant Chess and Checkers, Black and White Chess and Checkers pieces, tarps, tent pegs, duffle bags and power board covers. Operating Manuals and user guides supplied by the Council to the Borrower in accordance with this Agreement.
- 1.8 **Injury** means any injury sustained by persons or livestock as a result of the Borrower's use, transportation or storage of the Equipment.
- 1.9 **Land** means the land identified in Item 4 of the Schedule.
- 1.10 **Operating Manual** means Giant Chess and Checkers Instructions provided to the Borrower at the time of entering into this Agreement.
- 1.11 **Penalty** means a fee of \$50 per day payable by the Borrower to the Council for each day that the Equipment is late in being returned to Council upon expiration of the Term (Item 5) or the Council's written direction.
- 1.12 **Purpose** means the purpose specified in Item 3 of the Schedule.
- 1.13 **State** means the State of Queensland.
- 1.14 **Term** means the period specified in Item 5 of the Schedule for which the Borrower has possession and control of the Equipment.
- 1.15 **Transport Fee** means a fee of \$50 payable to Council in the event that Council is required to arrange delivery, or collection, of the Equipment to or from the Borrower for the purposes of this Agreement, which fee is payable per delivery or collection.
- 1.16 The clause headings appearing in this document are inserted for convenience of reference and do not affect the construction of this document.
- 1.17 Whenever more persons than one constitute a party all covenants, agreements, conditions, restrictions and provisos on the part of that party contained or implied in this document bind those persons jointly and each of them severally.
- 1.18 An inclusive definition, or an example or particularisation of a provision, does not limit but may extend that definition or provision.
- 1.19 Where a word or expression is defined another part of speech or grammatical form of that word or expression has a corresponding meaning.

2. The Equipment

2.1 The Borrower shall:-

- (a) use the Equipment on a “hire or loan for use” basis in accordance with these Terms and Conditions;
- (b) not permit the Equipment to be used other than on the Land and for the Purpose
- (c) adhere to the correct operation of the Equipment in line with the Operators Manual and user guides
- (d) maintain the Equipment in reasonable repair and condition for the term of the Agreement (reasonable wear and tear accepted); and
- (e) comply with all relevant State and Commonwealth statutes, including health and safety requirements.

2.2 The Borrower agrees:-

- (a) that the Equipment has been received by the Borrower in clean and good working order and condition;
- (b) not to conceal, alter or make any addition or variation to the Equipment;
- (c) to allow Council to examine, inspect, and test the Equipment at the commencement, during, and upon expiration of the Term or at any other time upon written direction by the Council and the Borrower grants Council a licence to enter the Land or any other property where the Equipment is, or may be, located for this purpose;
- (d) that if the Equipment is defective or unsuitable for Council’s purpose after the Borrower has taken possession of the Equipment, immediately, at the request of Council, replace the Equipment with an equivalent item of Equipment suitable for Council’s purpose or pay the applicable fee as per market price within 14 days of Council’s request to do so.

2.3 The Borrower acknowledges and agrees that Council at all times retains title to the Equipment and that the LVRC Application and Loan Agreement – Giant Chess and Checkers Page 7 of 9

Borrower has the right to use the Equipment during the Term on a loan basis only, at the Borrower’s sole risk of loss or damage.

2.4 The Borrower agrees to deliver the Equipment to Council promptly upon expiration of the Term or otherwise in accordance with a written direction given by Council.

2.5 Should the Equipment not be delivered to Council immediately upon expiration of the Term or in accordance with a written direction given by Council, Council shall be entitled to claim from the Borrower a Penalty for the late delivery of the Equipment, or alternatively the Transport Fee if Council arranges for the collection of the Equipment, at Council’s sole discretion. Any Penalty or reimbursement payable by the Borrower may be deducted by Council from the Bond or paid to Council within 14 days of such request being made.

3. Payment

3.1 The Borrower agrees to pay the Bond to Council at the time of entering into this Agreement and prior to taking possession of the Equipment.

3.2 The Bond shall be held by Council and only returned to the Borrower upon the Equipment being returned to Council in good working order and condition.

3.3 Council shall be entitled to deduct from the Bond any costs or loss incurred by Council due to the breakdown, failure or unsuitability of the Equipment during the term.

3.4 In addition, the Borrower is responsible for any physical damage to the Equipment during the term, reasonable fees associated with any necessary cleaning on return of Equipment, consumables, fines arising out of the use of the Equipment and any operation training requested by the Borrower. The Borrower will pay the amount of any repair or replacement costs, or any other costs incurred by Council, within 14 days of Council’s request to do so.

3.5 If the Borrower requires Council to deliver the Equipment at the start of the term and or collect the Equipment at the end of the term, Council will charge the Borrower an additional Transport Fee, which fee is payable per delivery or collection.

4. Borrower Warranties

4.1 The Borrower warrants that:-

- (a) by signing this Agreement it has read and understood all of the terms of this Agreement, and sought clarification where required;
- (b) the Equipment will be used for the Purpose only in accordance with the terms and conditions of this Agreement and not in any other way;
- (c) the particulars in this Agreement are correct in every respect and are not misleading in any way including, without limitation, by omission;
- (d) the Borrower, as operator of the Equipment, currently holds any permits, licences or approvals required to operate and/or transport the Equipment;
- (e) the Borrower's vehicle is suitable for towing the Equipment if required;
- (f) the Equipment complies with its description, is in merchantable condition and is fit for the Borrower's purpose;
- (g) the Borrower will not, without Council's prior written permission, tamper with, repair or modify the Equipment in any way, or permit another to do so;
- (h) the Borrower will not allow any other person, in particular persons under the age of eighteen years, to be primarily responsible or exercise effective control over the Equipment;
- (i) the Borrower will not offer to sell, assign, sublet, charge, lend, pledge, mortgage, let or hire or otherwise part with or attempt to part with possession of, or create a security interest over, the Equipment;
- (j) the Borrower will do all things necessary, including permitted the Council to remove the Equipment from the Borrower's possession or control, to ensure that the "loan-for-use" character of the Equipment is preserved and made known to the Borrower's creditors if any claim to the Equipment is or might be asserted by a creditor.

5. Borrower Indemnities

5.1 The Borrower releases and indemnifies Council, its servants and agents from all Claims whatsoever which may be made or brought against them or any of them by any person in respect of or arising out of any negligence or other wrongful act or omission of the Borrower, its servants, employees, sub-contractors or agents or any other persons and Claims of or to the Borrower, its sub-contractor or their respective servants, employees, agents or visitors. LVRC Application and Loan Agreement – Inflatable Soccer Field Page 8 of 9

5.2 To the full extent permitted by law, the Borrower releases, discharges and indemnifies Council from all claims and demands by third parties upon Council arising out of, or consequent on the use or misuse of the Equipment during the Term, including damage to property or livestock or injury to persons.

5.3 The Borrower agrees that if it makes any claim against Council for loss as a result of breach of these Conditions and that loss is contributed to by the Borrower's own actions, then liability for the Borrower's loss will be apportioned as is appropriate having regard to the respective responsibility for the loss and the amount the Borrower may recover from Council will be reduced to the extent of the Borrower's contribution to that loss.

6. Borrower Responsibility

6.1 The Borrower will:-

- (a) assume all risks and liabilities for, and in respect of, the Equipment and for all injuries to or deaths of persons and any Damage howsoever arising from the Borrower's possession, use, maintenance, repair, storage or transport of the Equipment;
- (b) maintain the Equipment in good working order and condition in accordance with the Operator's Manual, user guides and manufacturer's requirements and specifications at all times and not subject it to adverse electrical or environmental conditions, but will not repair, or attempt to repair, the Equipment;
- (c) immediately stop using the Equipment and notify Council of any breakdown or failure of, or damage to, the Equipment;
- (d) take all necessary steps to prevent Damage or injury occurring to persons or property as a result of the Borrower's use of the Equipment;
- (e) ensure that all appropriate safety signs remain attached to the Equipment
- (f) be responsible for any Damage due to the negligence of the Borrower, its servants or agents (reasonable wear and tear excepted).
- (g) at the Borrower's cost, reimburse Council for any repairs or replacement of parts of the Equipment damaged or not returned to Council, as evidenced by itemised account given by Council to the Borrower, by way of Bond forfeiture or, where the repairs or replacement costs exceed the amount of the Bond held, by payment within fourteen days of receiving the itemised account.

6.2 The Borrower must fully co-operate with Council and any other agency in respect of any investigation into any accident, loss, injury or Damage arising from the Borrower's use of the Equipment.

7. Disclaimer

7.1 To the extent permitted by law, Council disclaims all liability for, and does not give any warranties to the Borrower as to, the condition of the Equipment.

7.2 Council does not accept any responsibility or liability for operator licensing or use.

7.3 Council gives no guarantee as to the condition, safety or suitability of the Equipment. Council will arrange for all repairs to, and replacement of, the Equipment or any part of it to be undertaken as soon as possible. The Borrower releases Council from any liability for any loss caused by breakdown of the Equipment.

8. Borrower Default

8.1 Council may retake possession of the Equipment if:-

- (a) the Borrower is in breach of any provision of this Agreement; or
- (b) the Borrower causes damage to the Equipment or any property or injury to any person or livestock;
- (c) the Term ends and the Borrower has not returned the Equipment to Council.

8.2 All costs incurred by Council in repossessing the Equipment due to the Borrower's breach are to be paid by the Borrower and the Borrower acknowledges and agrees that its Bond will be forfeited to Council in full.

8.3 In the case of repossession due to a breach of the Agreement, the Borrower agrees to grant Council permission to enter any premises where the Equipment is situated to remove that Equipment.

8.4 In addition to Council's right to retake possession Council are entitled (in Council's sole discretion), following any breach of any provision of this Agreement by the Borrower, to terminate the Agreement, claim forfeiture of the Bond and/or sue for recovery of any damages or loss suffered by Council in respect of the Equipment.

9. Termination

9.1 This Agreement terminates on the earlier of:-

(a) expiration of the Term;

LVRC Application and Loan Agreement – Inflatable Soccer Field Page 9 of 8

(b) the return of the Equipment, in clean and good working order and condition, to Council by the Borrower;
or

(c) the date on which the Council retakes possession and control of the Equipment upon written termination of this Agreement due to the Borrower's breach.

9.2 The Borrower must ensure the Equipment is:-

(a) returned to Council in a clean and good working order and condition, failing which the Borrower agrees to pay the Council a reasonable cleaning fee to be determined by Council.

9.3 The Borrower acknowledges that if the Equipment is not returned to Council immediately upon termination of this Agreement in accordance with Clause 9.1 the Borrower's failure to do so can constitute criminal theft and may be immediately reported to the police. The Borrower will also become liable to reimburse Council the costs of any recovery fees incurred by Council.

10. Waiver

10.1 The failure, delay or omission of a party at any time to:-

(a) enforce or require the strict observance of or compliance with any provision of this Agreement; or

(b) exercise any election or discretion under this Agreement;

(c) shall not operate as a waiver of them or of the rights of a party, whether express or implied, arising under this Agreement.

11. Severance

11.1 If any provision of this Agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this Agreement must be construed as if that provision or part of a provision had been severed from this Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

12. Governing Law

12.1 This Agreement is governed by the laws of the State of Queensland and each party submits to the exclusive jurisdiction of the courts of that State.

13. Entire Agreement

13.1 This Agreement constitutes the entire Agreement between the parties. All previous negotiations, understandings, representations and warranties in respect of the Equipment are superseded by this Agreement and no amendment to this Agreement shall bind the parties unless in writing and signed by both parties.