

Port Stephens Council

Holiday Van Occupancy Agreement

Terms & Conditions – Edition 13/2022



PORT STEPHENS
C O U N C I L



fingal bay
holiday park



halifax
holiday park



shoal bay
holiday park

This is the agreement covering your use of the site and park set out on your Details page [Section D]. Please read all sections of the agreement carefully and make sure that you understand it before you sign the corresponding Execution Page [Section E]. Some words and expressions have special meanings. They are explained in Part A, Item 54 and when you are reading the agreement you should refer to Part A, Item 54.

**Port Stephens Council
Holiday Van Occupancy Agreement
Terms & Conditions - Edition 13/2022**

This Occupancy Agreement consists of the following sections:

SECTION A – Standard Terms & Conditions

SECTION B – Special Conditions

**SECTION C – Park Rules, Fee Schedule and
Summary of Charges**

SECTION D – Details Page (separate document)

SECTION E – Execution Page (separate document)

Port Stephens Council Holiday Van Occupancy Agreement Terms & Conditions - Edition 13/2022

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Port Stephens Council Holiday Van Occupancy Agreement Terms & Conditions – Edition 13/2022

SECTION A

STANDARD TERMS & CONDITIONS

Part 1: Introduction

1. Date of this agreement? – refer to details page [Section D, Item 7]

All agreements MUST be signed and returned by 30th June 2021 to confirm the right of the site owner to occupy the allocated site.

2. Who is making this agreement? – refer to details page [Section D]

The agreement is made between:

(a) the park owner [Section D, Item 1]; and

(b) the Occupant(s) / [Section D, Item 2].

Occupant(s) can consist of a single person, a couple, up to four (4) immediate family members, or two (2) separate persons or couples who are not family members. Occupant(s) must be at least sixteen (16) years old.

The Occupant(s) are jointly and individually liable and responsible for compliance with the terms of this agreement. A breach by any individual occupant will be taken to be a breach by the Occupant(s) as a whole.

3. Where is the site? – refer to details page [Section D, Item 3]

(a) This park owner gives the Occupant(s) the right to occupy site number [Section D, Item 4] at [Section D, Item 3] and permit parking for the following number of vehicles / accessories [Section D, Item 7].

(b) The size of the site is [Section D, Item 5]

4. Who can occupy the site?

No more than six (6) persons may ordinarily occupy the site at any one time. Occupant(s) other than those listed in Section D of this agreement must contact the Holiday Park reception before occupying the site, unless previously confirmed as authorized (permitted) users. All occupants must comply with any current Park requirements (including but not limited to COVID Declarations and QR code check in (as applicable) etc).

5. How long does this agreement last?

The fixed term of this agreement is for 12 months as specified in Section D – Details Page. Commencement date - [Section D, Item 9] & Termination Date: [Section D, Item 10]. Consecutive agreements should not be assumed.

6. What happens when this agreement ends?

When the time for this agreement ends the park owner is under no obligation to offer a new occupancy agreement. It is at the discretion of the park owner if the Occupant(s) are offered a new occupancy agreement to remain in the park. The park owner is not obliged to give reason for not offering a new occupancy agreement. The site occupation fee under a new agreement may remain the same or increase (if the site occupation fee is increased it will be in accordance with this agreement).

7. Agreement to comply with the terms of this agreement

The park owner and Occupant(s) agree to comply with the terms of this agreement.

- (a) No relationship of landlord and tenant is or is intended to be created between the parties by this agreement or in any way whatsoever.
- (b) Any breach of the terms of this agreement may result in the termination of this agreement and the removal of the Holiday Van and any alternations or additions made by the occupant.

8. Legislation and standards

The Occupant(s) agree to comply with all laws applicable to occupation by Holiday Vans of sites with the caravan park, including (without limitation):

- (a) *Local Government (Manufactured Home Estate, Caravan Parks, Camping Grounds and Mobile Home Dwellings) Regulation 2005.*
- (b) *Holiday Parks (Long-term Casual Occupation) Act 2002.*
- (c) *Holiday Parks (Long-term Casual Occupation) Regulation 2009.*
- (d) *Work Health and Safety Act 2011.*
- (e) *Work Health and Safety Regulations 2011.*
- (f) *Crown Land Management Act 2016.*
- (g) Australian New Zealand Standard AS/NZS 3001:2008 Electrical installations— Transportable structures and vehicles including their site supplies
- (h) Australian New Zealand Standard AS/NZS 3760:2010 in service safety inspection and testing of electrical equipment.

Part 2: Site fees, visitor fees & charges

9. Amount of site occupation fees

The site occupation fees payable are [Section D, Item 11] payable every month starting on the first day of the agreement. The fee is to be paid one month in advance (no later than the first day of each month for that month: *pay on or prior to 1 July for the month of July*) and covers a maximum of 150 nights of occupancy. Alternative periodic payments (such as quarterly or yearly) are by agreement with Occupant(s) and park owner.

10. Amount of Additional Fees if applicable.

- (a) Annual Holiday Van Occupancy Agreement preparation fee [Section D, Item 12] payable no later than 30 June 2021 (for automatic payments, this amount will be processed with site occupancy fees for June).
- (b) Postage Fee [Section D, Item 13] – If required for postal delivery of Holiday Van Occupancy Agreement. Payable at time of postal request.
- (c) Holiday Van Sales Administration Fee [Section D, Item 14.1] – If required during a nominated sales period, for the sale of van to remain onsite. Payable upon application during Designated Sale Period.
- (d) Holiday Van Valuation Fee - [Section D, Item 14.2] - If required during a nominated sales period, for sale of van to remain onsite. Payable upon application during Designated Sale Period.
- (e) Holiday Van Change / Transfer of Ownership [Section D, Item 14.3] - If required for the change, or transfer of ownership of the Holiday Van, including the addition or change of Occupants(s) details on the Annual Occupancy Agreement.

11. Amount of other charges (such as water or electricity charges)

- (a) Where electricity meters are installed the Occupant(s) agree to pay the metered electricity usage charges and service availability charges applicable to the site.
- (b) The park owner will provide quarterly electricity accounts to the Occupant(s). An account administration fee will be charged per quarter.
- (c) The Occupant(s) must ensure payment is received by the park within 30 days of the account notice date.
- (d) For works conducted by the park owner at the request of the Occupant(s) at the agreed costs.
- (e) The mandatory annual testing and tagging of the power supply leads to all Holiday Vans by Council's nominated electrical contractor.

12. Payment of Council rates and other charges by Park Owner

The park owner agrees to pay, in connection with the holiday park on which the site is situated:

- (a) Council rates;
- (b) Land taxes, and
- (c) Electricity / Water (where no metering exists).

13. Site occupation fees are payable in advance and on time

- (a) The Occupant(s) agree to pay the site occupation fees monthly (unless otherwise agreed upon as per Part 2 clause 9) and in advance as described in Clause 9. The additional months' site occupation fee paid either in July 2013 or when transfer of ownership into current Occupant(s) name(s) occurred (whichever is relevant) is being held as a bond under a separate charge: "Month In Advance Bond Payment". This payment is not applied to any ongoing monthly site occupancy fee charge and therefore cannot be considered as site occupancy fees paid in advance. This charge is more recently referred to as a 'Month In Advance Bond' payment.
- (b) Occupant(s) agree to pay the site occupation fees on time. Payment should be received no later than the first day of each month for that month.

Note: Failure to do so will be considered a breach of this agreement and may result in the termination of the agreement.

Breach of Fee Payment Schedule:

- (c) **Step 1:** Occupant(s) whose site occupation fees and other charges not paid on time, will be notified by phone call/voice message with payment requested within 24 hours.
- (d) **Step 2:** Occupant(s) who fail to remit unpaid fees and charges within the additional requested 24 hour period (without reasonable explanation) will be contacted by email and given a further 24 hours to comply with payment request.
- (e) **Step 3:** Occupant(s) who fail to remit unpaid fees and charges within the additional requested 24 hour period (without reasonable explanation) will be contacted by SMS/text message and given a further 24 hours to comply with payment request.
- (f) **Step 4:** Occupant(s) who fail to remit unpaid fees and charges within the extended requested time period (without reasonable explanation), will be issued with a First Notice of Breach from the Administration officer on behalf of Park Management. A further 30 days is given to obtain compliance.
- (g) **Step 5:** If compliance is not reached within the additional 30 day period, a Second Notice of Breach will be issued directly from the Holiday Park Manager. A further 30 days is given to obtain compliance.
- (h) **Step 6:** If compliance is still not reached within the second additional 30 day period, a Third and Final Notice of Breach will be issued directly from the Holiday Parks Section Manager. If compliance is not realized within this final 30 day period, a Termination of Agreement will be issued to achieve vacant possession of site.
- (i) Without limiting the above clauses, Occupant(s) whose site occupation fees are ninety (90) days in arrears will have their occupancy agreement revoked and must remove all goods, including the caravan, annex and any other associated structures, within thirty (30) days and return the site to its natural state. If the Occupant(s) do not comply with this clause, the caravan, annex and any goods become the property of the park owner who may sell or otherwise dispose of these and return the site to its natural state at the Occupant(s) cost.
- (j) Where there is evidence of more than one late payment within the term of an occupancy agreement, and without a reasonable explanation, a Notice of Breach will be issued. Any subsequent late payment will prompt the next step of the Breach process.

14. How to pay site occupation fees and charges

Council's preferred method for receiving payments is direct debit from a bank account or credit/debit card. The site occupation fees and charges may be paid by any of the following methods:

- Direct debit,
- Credit/debit card deduction; or
- By EFTPOS by means of online automatic authorization, over the phone or in person.

Note: Cash is no longer a preferred method of payment.

These methods of payment may be changed during the term of this agreement at the discretion of the park owner. Direct debit deductions for any site occupation fees and charges that fail will incur a dishonor fee [Section C – Fee Schedule - Additional Charges] with payment required for that occupation period by an alternative method. Once approval has been granted by the Occupant(s) to automatically deduct/charge site occupation fees and/or other fees/charges monthly, this will continue until such time as the Occupant(s) withdraws this authority in writing. If credit card payment should fail, and payment is not made on the day of notification, a Late Fee [Section C – Fee Schedule - Additional Charges] will be charged.

15. Manner of paying site occupation fees and charges

Site occupation fees and charges must be paid:

- (a) to the park owner, or the park manager or any Park staff at [Section D, Item 3];
or
- (b) at any other reasonable place the park owner names to the Occupant(s) in writing.

16. Receipts for site occupation fees or other charges

- (a) The park owner, or nominated staff, agrees to provide a receipt for any site occupation fees or other charges under this agreement paid to the park. If the site occupation fees or charges are not paid in person, the park owner agrees to make the receipt available for collection by the Occupant(s) or to email it to the Occupant(s) if requested.
- (b) The park owner agrees that any receipt for site occupation fees or charges must include the following particulars:
 - (i) the name and address and ABN (16 744 377 876) of the holiday park and the number of the site;
 - (ii) the period for which the fees or charges are paid;
 - (iii) the date on which the fees or charges are received; and
 - (iv) the amount of fees or charges paid.
- (c) The park owner is not required to provide or make available a receipt if site occupation fees or other charges are paid, in accordance with an agreement between the park owner and the Occupant(s), into an account at an authorised deposit-taking institution (such as a bank, building society or credit union) nominated by the park owner.

Site occupation fee increases

- (a) The park owner cannot increase the site occupation fees during the fixed term of this agreement unless the park owner determines that an increase in site occupation fees is warranted. Factors which would warrant site occupation fee increases include relevant financial indicators such as the Consumer Price Index (Sydney All Groups) or increases in any statutory charge, such as rates or land tax.
- (b) The Occupant(s) must be given 30 days' notice in writing if the park owner wants to increase the site occupation fees, if an increase is permitted by sub clause (a). This applies even when this agreement provides for, or permits, a site occupation fee increase. Where a notice of an increase has been given and the park owner and occupant subsequently agree to a lesser increase than that set out in the notice, the park owner does not need to give a further 30 days' notice.

17. Refund of site occupation fees

The park owner agrees to refund any site occupation fees paid in advance if the occupancy is ended by the park owner before the end of the fixed term agreement. However no compensation or refund will be paid in respect of any disruption or inconvenience due any Holiday Park projects and associated works.

Part 3: Rights and obligations

DIVISION 1 - OBLIGATIONS OF THE OCCUPANT(S)

18. Offensive behavior

The Occupant(s) agree not to interfere with or cause or permit interference with, or allow any person that the occupant invites into the holiday park to interfere with:

- (a) the reasonable peace, comfort or privacy of any neighbour of the Occupant(s) or any other person lawfully in the holiday park, or
- (b) the proper use and enjoyment of the holiday park by the other occupants or residents of the holiday park.

19. Use of the site

The Occupant(s) agree:

- (a) not to conduct unlawful behavior on the site or use the site, or cause or permit the site to be used, for any illegal purpose, and
- (b) not to cause or permit a nuisance; and
- (c) not to on sell, advertise or offer for sale any credit nights or vacant nights; and
- (d) not to undertake any works at the holiday park including the site without the prior written approval of the park owner (except for compliant internal refurbishment of the holiday van) and

- (e) not to undertake any external works to the holiday van (except general, minor maintenance works) or reconfiguration of the holiday van and annexes on the site without the prior written approval of the park owner. [Part 3, Clause 22] Refer to the Standard Operating Procedures for more detail.

20. Cleanliness of and damage to the site

The Occupant(s) agree:

- (a) to keep the site clean and tidy to the park owners satisfaction;
- (b) to notify the park owner as soon as practicable of any damage to the site;
- (c) not to cause or permit any damage to the site or any other part of the holiday park; and
- (d) when this agreement ends, to leave the site as nearly as possible in the same condition (reasonable wear and tear excepted) as when this agreement started.

21. Alterations and additions to the site

The Occupant(s) agree not to attach any fixture or renovate, add, alter, or replace to the moveable dwelling or the site without the park owner's prior written permission. Examples are, including but not limited to, a carport, deck, verandah, screens/blinds, pergola, clothes line, shed, driveway, fence, pathway, paving or related retaining wall, hot water systems, outdoor/indoor showers/toilets, cooling/heating systems and plants/gardens. All additions and alterations are to be of a re-locatable nature.

Note: Applicable forms for Site Addition Alteration & Maintenance can be obtained from Reception at the Holiday Park or from the park's Holiday Van Owner webpage).

22. Maintenance of Moveable Dwelling and Associated Structures

The Occupant(s) agree to maintain the moveable dwelling and any additions, alterations or extensions in a condition satisfactory to the park owner, having regard to their condition at the time they were installed on the site.

23. Occupant's responsibility for the actions of others

The Occupant(s) are responsible and liable for the acts or omissions of any person the Occupant allows on the site or in the holiday park as if that person's acts or omissions were the acts or omissions of the Occupant(s). The Occupant(s) must ensure that any person it allows on site or the holiday park does not cause a breach of this agreement or the park rules for casual occupants.

24. Boomgate access, keys and opening devices

- (a) The Occupant(s) or guests of the Occupant(s) agree to provide car registration details to the holiday park management for all cars to be taken on site when obtaining boomgate access codes.
- (b) The Occupant(s) agrees to return any key or other opening device provided to the occupant, when this agreement is terminated.

25. Selling the moveable dwelling

The Occupant(s) agree not to sell the moveable dwelling while it is on the site without the prior written permission of the park owner or a New South Wales Civil and Administrative Tribunal order.

Note: Refer to "Port Stephens Beachside Holiday Parks Standard Operating Procedures for the Administration and Management of Holiday Vans" – Section 8 for details.

26. Agreement not to transfer without consent

(a) The Occupant(s) agree not to transfer the whole or part of the interest under this agreement without the park owner's prior written permission (*Note: A fee applies when changing the Occupant(s) on this agreement*).

(b) The Occupant(s) agree that the park owner may, at its discretion, require a new occupation agreement to be entered into as part of the transfer.

Note: Adding and removing names from agreements is deemed to be a transfer under this clause 26. The park owner has published guidelines about circumstances where occupants will be permitted to add or remove their names from agreements without going through the process in clause 26.

27. Moveable dwellings must comply with law

(a) The Occupant(s) agree to ensure that the moveable dwelling complies with the regulations under the *Local Government Act 1993 (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* and all other relevant laws.

(b) The Occupant(s) agree to and will ensure that the moveable dwelling complies with Port Stephens Council's Beachside Holiday Parks Standard Operating Procedures for the Administration and Management of Holiday Vans as published from time to time.

(c) It is now a mandatory requirement for all Holiday Van power supply leads to be tested and tagged on an annual basis by the reputable electrical contractor engaged by Council. The nominal fee for each lead tested (see Section C – Fee Schedule - Additional Charges) will be charged to the Occupant(s) on 1 June with the test to be conducted in the 4th quarter of the term of agreement. Rectification of any non-compliant items is the Occupant(s) responsibility and cost.

(d) The Occupant(s) agree, in signing this agreement, to comply with all orders made by Park Management, and make any necessary alterations to the moveable dwelling and associated goods prior to the date stipulated in the order (notwithstanding the terms of any prior orders made from time to time).

28. Condition of moveable dwelling and other structures

(a) The Occupant(s) agree to make sure that the moveable dwelling and any other structure that the Occupant(s) are permitted to erect is kept in a condition allowing it to be moved without difficulty or delay.

(b) Any fixtures or improvements erected by the Occupant(s) and not forming an integral part of the moveable dwelling are to be removed by the Occupant(s) upon termination of the agreement, unless the park owner agrees in writing that the fixtures and improvements may remain in place.

29. Signing an Occupancy Agreement

The Occupant(s) agree to sign & only enter into one occupancy agreement during the term of occupation.

30. Transfer of assets and interest in event of death

Where there are multiple occupants who are signatories to this agreement, if an individual occupant dies during the term of this agreement, the Occupant(s) agree and direct the park owner that ownership of his or her assets on site and interest in this agreement are to be transferred to the remaining occupants or otherwise stated in the Occupant's Legal Will & Testament.

31. Relocation of Moveable Dwellings

The Occupant(s) may be required to relocate the moveable dwelling to another site as part of redevelopment works (dependant on site availability as determined by the park owner). The cost of this relocation is at the expense of the Occupant(s). In this case, Park Management will attempt to offer a site of similar size, however if the site has restrictions the Occupant(s) must ensure all structures are modified to comply with Law (see item 28 above).

32. Breach of Occupancy Agreement (Notice of Breach)

For any breach of an occupancy agreement, the following process will be applied:

Step 1: On notification or identification of a breach, an initial conversation will occur to discuss the issue(s) and arrive at a suitable resolution and agreed date for compliance to be obtained by.

Correspondence documenting and confirming the breach identified and initial conversation including the discussed suitable resolution for compliance, stating a date whereby compliance is required will be sent to the nominated email address.

Step 2: If compliance is not reached by the agreed date, the first Notice of Breach will be issued from the Administration officer on behalf of Park Management. A further 30 days is given to obtain compliance.

Step 3: If compliance is not reached within the additional thirty (30) day period, a Second Notice of Breach will be issued directly from the Holiday Park Manager. A further thirty (30) days is given to obtain compliance.

Step 4: If compliance is still not reached within the second additional thirty (30) day period, a Third and Final Notice of Breach will be issued directly from the Holiday Parks Section Manager. If compliance is not realized within this final thirty (30) day period, a Termination of Agreement will be issued to achieve vacant possession of site.

DIVISION 2 - OBLIGATIONS OF THE PARK OWNER

33. Possession of the site

The park owner agrees to make sure the site is vacant so the Occupant(s) can move in on the date agreed.

34. Occupant's right to no interruption

Subject to the terms of this agreement, the park owner agrees that the Occupant(s) will have use of the site without undue interruption by the park owner. The Occupant(s) acknowledge that other persons use the holiday park and they must co-operate and share common area facilities with other users of the holiday park.

35. Cleanliness

The park owner agrees to use all reasonable endeavours to keep the site and the common areas reasonably clean and fit to occupy or use. The Occupant(s) must ensure that the holiday van, all associated structures and the site is kept clean, free from vermin and in good order and condition.

36. Tradespeople allowed to come in

The park owner and Occupant(s) agree that any tradespeople required by either the park owner or the Occupant(s) to undertake work should be allowed into the holiday park without unreasonable interference, subject to Section B Special Condition 15. The Occupant(s) agree to notify the Park or Admin Officer by phone or email in advance, advising of the contractors attendance to their site and whether they have permission to gain access to the van by use of a key held at the Park. The park owner may enquire of the Occupant(s) or the contractor the nature of the works to ensure the Site Alteration and Additions process is not being circumvented.

Note: All service providers, tradesmen and contractors wishing to enter park premises for business purposes must report to Reception to sign in, be inducted and obtain an access number. Under no circumstances are Occupant(s) permitted to give their access number to these individuals to enter the Park. Entry will not be permitted to service providers, tradesmen and contractors who have not been inducted by the park owner or representative prior to any work being conducted within the park).

37. Permitting family members and others to temporarily occupy a site

- (a) The park owner agrees and the Occupant(s) directs the park owner to allow any family member of the Occupant(s) or any other person to temporarily occupy the site if he or she has the prior permission of the Occupant(s) and the park owner.
- (b) The park owner and Occupant(s) agree that the park owner may demand proof that the family member of the Occupant(s) or any other person has the permission of the Occupant(s) to occupy the site. That proof may be given in person, in writing or over the telephone.
- (c) Family members or other persons not listed on this agreement must contact the Holiday Park reception prior to entering the Holiday Park, unless previously confirmed as approved users.
- (d) The Occupant(s) are responsible and liable for the acts and omissions of any persons who gain access to the site or the holiday park under this clause, as per the terms of clause 24 above.
- (e) The park owner reserves the right to refuse persons access to, or remove person from, the site or holiday park, notwithstanding that they have the Occupant(s)'s permission.

38. Investigation of breaches and disputes.

The park owner agrees to follow the process included in the Port Stephens Beachside Holiday Parks Standard Operating Procedures for the Administration and Management of Holiday Vans when investigating disputes or suspected breaches of this agreement.

39. Standard Operating Procedures

The park owner agrees to operate in accordance with the Port Stephens Beachside Holiday Parks Standard Operating Procedures for the Administration and Management of Holiday Vans. The Occupant(s) must comply with these Standard Operating Procedures as varied from time to time.

Note: A copy of the Procedures is available on the park's webpage or it can be viewed at the Park reception upon request)

Part 4: Agreement to minimise loss

40. Parties to minimise loss from breach of agreement

The park owner and the Occupant(s) agree that the legal principles relating to mitigation of loss or damage on breach of a contract apply to a breach of this agreement. For example if the Occupant(s) breach this agreement, the park owner will not be able to claim damages for loss that could have been avoided by reasonable effort by the park owner.

Part 5: When can we come onto the site?

41. Park owner's access to the site

The Occupant(s) agree that the park owner, the park manager or any person authorised in writing by the park owner, during the currency of this agreement, may enter the site only in the following circumstances:

- (a) in an emergency (including entry for the purpose of carrying out urgent repairs);
- (b) if the New South Wales Civil and Administrative Tribunal so orders;
- (c) if there is reason for the park owner to believe the site is abandoned;
- (d) if electricity, water or gas is supplied to the Occupant(s) by the park owner, to inspect and read an electricity, water or gas meter situated on the site;
- (e) to carry out regular maintenance and care taking of the site, such as by mowing the lawn;
- (f) to carry out functions required under any legislation;
- (g) if the Occupant(s) agree;
- (h) if the park owner determines that access to the site is warranted;
- (i) if the park owner believes any activity on the site contravenes this agreement; or

- (j) to carry out site safety and compliance audits, including inspections of fire safety equipment (smoke alarm, dry chemical extinguisher and fire blanket) etc.

Note: To facilitate entry to the site in any of the listed circumstances, it is recommended that a spare set of keys is provided to the park manager.

Part 6: Obligations of the park owner relating to park rules

42. Park rules for casual occupants

The park owner agrees to give the Occupant(s) a copy of any Park Rules for casual occupants that are in force for the holiday park before or at the time they enter into this agreement and with each new Occupancy Agreement Park.

43. Obligation to promote compliance with park rules for casual occupants

The park owner agrees to take all reasonable steps to make sure that the park owner's other occupants do not contravene any park rules for casual occupants for the holiday park. This obligation does not extend to commencing litigation or other enforcement proceeding.

Part 7: Ending this agreement

DIVISION 1 - WHEN CAN THIS AGREEMENT BE ENDED?

44. Ending this agreement

The park owner and the Occupant(s) agree that this agreement can be terminated in one or more of the following circumstances:

- (a) if the park owner or the Occupant(s) gives notice of termination under this Part;
- (b) if the New South Wales Civil and Administrative Tribunal makes an order terminating this agreement;
- (c) if a person having superior title to that of the park owner becomes entitled to possession of the site;
- (d) if a person succeeding to the title of the park owner (eg a purchaser) becomes entitled to possession of the site to the exclusion of the Occupant(s);
- (e) if a mortgagee in respect of the site becomes entitled to possession of the site to the exclusion of the Occupant(s);
- (f) if the Occupant(s) abandon the site;
- (g) if the Occupant(s) delivers up vacant possession of the site with the prior permission of the park owner, whether or not that permission is subsequently withdrawn;

- (h) by merger (that is, where the interests of the park owner and the Occupant(s) become vested in the one person);
- (i) by disclaimer (eg: on repudiation by the Occupant(s) accepted by the park owner);
- (j) if the fixed term ends, unless the park owner permits the Occupant(s) to continue using the site on a month to month basis on the terms of this agreement (varied to make it appropriate for a monthly agreement). Any month to month license under this clause can be terminated by the park owner giving the Occupant(s) at least one month's prior written notice.

DIVISION 2 - WHEN CAN THE OCCUPANT END THIS AGREEMENT?

45. Termination by occupant on breach of agreement

- (a) The park owner and the Occupant(s) agree that the Occupant(s) may give the park owner a notice of termination of this agreement if the park owner has breached a term of this agreement.
- (b) The park owner and the Occupant(s) agree that a notice of termination given under this clause must give at least seven (7) days' notice as to the day on which vacant possession of the site will be delivered up to the park owner.
- (c) If this agreement creates an occupancy for a fixed term, the park owner and the Occupant(s) agree that a notice of termination given under this clause is not ineffective merely because the day specified as the day on which vacant possession of the site will be delivered up to the park owner is earlier than the day the term ends.

46. Notice of termination by occupant without any reason (but not for a fixed term agreement that has not finished)

- (a) The park owner and the Occupant(s) agree that the Occupant(s) may give notice of termination of this agreement without having to give any reason.
- (b) The park owner and the Occupant(s) agree that a notice of termination given under this clause must give at least thirty (30) days' notice as to the day on which vacant possession of the site will be delivered up to the park owner.
- (c) This clause does not apply if the agreement creates an occupancy for a fixed term and that term has not finished.

DIVISION 3 - WHEN CAN THE PARK OWNER END THIS AGREEMENT?

47. Termination on breach of agreement

- (a) The park owner and the Occupant(s) agree that the park owner may give notice of termination of this agreement to the Occupant(s) if the Occupant(s) has breached a term of this agreement.
- (b) The park owner and the Occupant(s) agree that a notice of termination given under this clause must not specify a day earlier than seven (7) days after the day on which the notice is given as the day on which vacant possession of the site is to be or will be delivered up to the park owner.

- (c) The park owner and the Occupant(s) agree that a notice of termination given by a park owner on the grounds of a breach of the agreement to pay site occupation fees has no effect unless the fees have remained unpaid in breach of this agreement for not less than fourteen (14) days before the notice is given.
- (d) The park owner and the Occupant(s) agree that a notice of termination given by a park owner on the grounds of a breach of the agreement to pay site occupation fees is not ineffective merely because of any failure of the park owner or the park manager to make a prior formal demand for payment of the site occupation fees.
- (e) If this agreement creates an occupancy for a fixed term, the park owner and the Occupant(s) agree that a notice of termination given under this clause is not ineffective because the day specified as the day on which vacant possession of the site is to be or will be delivered up to the park owner is earlier than the day the term ends.

48. Notice of termination by park owner without any reason (but not for a fixed term agreement that has not finished)

- (a) The park owner and the Occupant(s) agree that the park owner may give notice of termination of this agreement without having to give any reason.
- (b) The park owner and the Occupant(s) agree that a notice of termination given under this clause must give at least 3 months' notice as to the day on which vacant possession of the site will be delivered up to the park owner.
- (c) This clause does not apply if the agreement creates an occupancy for a fixed term and the notice of termination specifies that it takes effect before that term finishes.

49. Consequences of Termination

If this agreement is terminated the Occupant(s) must remove all goods whatsoever from the holiday park within thirty (30) days from the date of termination and return the site to its natural state. If the Occupant(s) do not comply with this clause, the property left in the holiday park becomes the property of the park owner and the park owner may sell or otherwise dispose of the property and return the site to its natural state at the cost of the Occupant(s).

DIVISION 4 - NOTICES OF TERMINATION

50. Notices of termination

The park owner and the Occupant(s) agree that a notice of termination must:

- (a) be in writing, and
- (b) state the address and site number of the site, and
- (c) be signed by the person giving it, and
- (d) be dated, and
- (e) allow the required period of time, and

- (f) give the date the Occupant(s) intends to, or is required to, give vacant possession, and
- (g) give the reasons for ending this agreement (if any), and
- (h) be properly given.

51. How notices are properly given

- (a) The park owner and the Occupant(s) agree that all notices required to be given or served on the Occupant(s), and including a notice of termination given to the Occupant(s), may be:
 - (i) posted to the Occupant(s)'s ~~site and to the Occupant(s)'s~~ principal place of residence, or
 - (ii) given to one or more of the Occupant(s) personally, or
 - (iii) given to a person aged over eighteen (18) years who normally pays the site occupation fees, or
 - (iv) given to a person aged over eighteen (18) years who occupies the site to pass on to the Occupant(s), or
 - (v) emailed to the Occupant(s) nominated email address.
- (b) The park owner and the Occupant(s) agree that all notices required to be given or served on the park owner, including a Notice of Termination, may be:
 - (i) posted to the park owner's or park manager's place of business, or
 - (ii) given to the park owner or to the park manager personally, or
 - (iii) given to a person aged over eighteen (18) years who normally collects the site occupation fees, or
 - (iv) emailed to the park owner's business email address.

DIVISION 5 – MISCELLANEOUS

52. Apportionment and recovery of site occupation fees on termination

The park owner and the Occupant(s) agree that the site occupation fees payable under this agreement accrue from day to day and on termination any outstanding site occupation fee is payable.

53. Breach or notice of termination not waived by acceptance of site occupation fees

The park owner and the Occupant(s) agree that a demand for, any proceedings for the recovery of, or acceptance of, site occupation fees payable under this agreement by the park owner:

- (a) does not operate as a waiver of:
 - (i) any breach of this agreement, or
 - (ii) any notice of termination on the ground of breach of this agreement given by the park owner, and
- (b) is not evidence of the creation of a new occupancy.

54. Revocation of Reserve

If the reservation or dedication of the park is revoked by the Minister administering the *Crown Land Management Act 2016* this occupation agreement terminates unless the notification of the revocation in the Government Gazette otherwise provides. In this circumstance no compensation is payable in respect of the termination of the occupation.

55. Indemnity of Reserve

The Occupant(s) agrees that the occupant will indemnify the Crown, the Minister administering the *Crown Land Management Act 2016*, and the Minister's agents, servants, employees and contractors (the Minister) from and against all actions, suits, claims, demands, proceedings, losses, damages, compensation sums of money, costs, legal costs, charges and expenses whatsoever to which the Minister shall or may be or become liable in respect of the occupation and use of the park for or in respect of all losses, damages, accidents or injuries of whatsoever nature or kind and howsoever sustained or occasioned (and whether to any property or to any person or resulting in the destruction of any property or the death or injury of any person or not) at or upon the park except to the extent that any such claims and demands arise from the negligence or wilful act or omission on the part of the park owner or the Minister.

56. This agreement may be executed in any number of counterparts with all counterparts taken together constitute one instrument.

Part 8: Definitions

57. Meaning of words

In this agreement:

"**Occupant(s)**" means the Holiday Van Owner(s)

"**authorized/permitted user(s)**" means persons permitted by the Occupant(s) to use the Holiday Van

"**park owner**" means Port Stephens Council acting as trustee for the Crown where applicable.

"**park property**" means any items owned or operated by the park including but not limited to vehicles, machines, buildings, structures, fixtures, fittings, vegetation, signs or other improvements.

The following definitions apply unless the context requires otherwise:

"**site occupation fee**" means an amount payable under an occupancy agreement by an occupant in respect of a period of the occupancy.

"**park manager**", in relation to a holiday park, means the person employed or appointed by the owner of the property to act as park manager.

"**accessories**" means towing attachments to vehicles such as trailers and does not exclude items that utilise any allocated parking area of the Site.

“agreement” means Section A: Standard Terms & Conditions; Section B: Special Conditions; Section C: Park rules and fee schedule, Section D: Details Page and Section E: Execution page;

“credit nights” means use of the site by up to six (6) persons for one (1) night whereby no additional site occupation fee is payable.

“credit night user” means the persons the park owner approves to be credit night users; this may incorporate up to four (4) immediate family members or approved persons in reference to clause 37.

“GST” means the tax payable on taxable supplies under the GST legislation;

“GST legislation” means the *A New Tax System (Goods and Services Tax) Act 1999* and any Act imposing GST or any other act, or regulations made under such act, enacted to validate, recapture or recoup such tax;

“holiday van” means a holiday van or caravan as defined in the *Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* and any annex or other structure that has previous written approval from park management listed in Section D, item 5;

“input tax credit” has the meaning given to it in the GST legislation;

“invitees” means any person on the site or the park with your express or implied consent or invitation;

“item” means an item in this agreement;

“park” means the holiday park in Section D, item 3;

“month” means a calendar month;

“site” means the site described in Section D, item 4 and includes our property within the site;

“fee schedule” means a published schedule of fees for the park, as amended by us from time to time;

“tax invoice” has the meaning given in the GST legislation;

“taxable supply” has the meaning given to it in the GST legislation;

“Tribunal” means the New South Wales Civil and Administrative_

“Us or Our” where applicable means the park owner described in Section D (item 1).

“You or Your” where applicable, means each of the Occupant(s) described in Section D (item 2).

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SECTION B

SPECIAL CONDITIONS

By signing this agreement you agree to the following Special Conditions.

1. Utility Connections

You must ensure that water and power supply to the site are disconnected at the conclusion of each stay. If for any reason we suspect that water or power supplies have not been disconnected at the conclusion of a stay, we may enter the site to undertake the disconnection without giving notice, but we are not obliged to do so. Compensation for damaged/spoiled items/appliances cannot be claimed from the park owners. You must ensure that the 15 amp power lead is connected correctly between the van and the metered power outlet allocated by the park owner. Unauthorised connection to unmetered or to another user's power supply is considered a breach of this agreement.

2. Obligations under park rules

You must comply with the Park Rules and agree that they form part of this agreement and that if they change from time to time, those changed terms are accordingly changed in this agreement. Should we change the Park Rules, we must notify you of a change to the rules by publishing notice of such change on our website and also on any applicable notice board at the park.

3. Giving our consent or approval

- (a) Unless otherwise stated in this agreement, we may withhold any consent or approval under this agreement in our absolute discretion or impose any requirements as a condition of giving our consent or approval. We may vary or revoke any consent or approval by notice to you at any time.
- (b) You must obtain our consent or approval in writing in order for it to be binding upon us.

4. Entire agreement

This agreement represents the entire agreement between the parties concerning the subject matter.

5. Governing law

This agreement is governed by the laws of New South Wales.

6. Individual and joint liability

If two or more persons are described in Section D, item 2, each person described in the item is liable for the obligations individually and together for each other person in that item.

7. Interpretation

- (a) When this agreement requires anything not to be done this includes not allowing or permitting the thing to be done.
- (b) A word or expression in the singular includes the plural and the plural includes the singular.
- (c) Examples are descriptive only and not exhaustive.

8. GST

- (a) Where we make a taxable supply under or in connection with this agreement, we will be entitled, in addition to any other consideration recoverable in respect of the taxable supply, to recover from you the amount of any GST on the taxable supply. You must pay us the full amount of GST at the same time as making the payment to which the GST relates. In respect of each such payment, we will provide you with a tax invoice.
- (b) Where we are entitled under or in connection with this agreement to recover all or a proportion of our costs or are entitled to be compensated for all or a proportion of our costs, the amount of recovery or compensation shall be reduced by the amount of any input tax credits available in respect of those costs.

9. Credit nights

- (a) Payment of site occupation fees on time during the terms of agreement entitles you to one hundred and fifty (150) credit nights. Credit nights may be used by either you or credit night users approved by the park owner. Unused credit nights cannot be sold or offered for sale and are forfeited at the end of the term of each agreement.
- (b) To avoid being charged credit nights whilst performing maintenance on the holiday van, you must advise staff at the holiday park reception prior to entering the park. Any maintenance activity should be restricted to the hours of 9.00am and 5:00pm, Monday to Friday. Weekends, school & public holidays should be avoided unless management approval has been granted).
- (c) If you do not pay site occupation fees on time, we may give you notice cancelling the whole or any part of your taken or untaken credit nights. You must immediately pay us site occupation fees in accordance with our fee schedule for any taken credit nights that we have cancelled.

10. Compliance with direction

You must comply with any reasonable direction we give you regarding use or occupation of the site and the park.

11. Risk and insurance

- (a) You occupy the site and use the park at your own risk;
- (b) You must have current insurance for:
 - (i) public liability insurance for at least the amount set out in Item 15 [refer to Section D, details page], and
 - (ii) property damage insurance for the holiday van for the market value, and
 - (iii) other insurances required by law or reasonably required by us;
- (c) You must ensure that all insurance policies to be taken out in accordance with special condition 11(b) above are taken out in the name of the Occupant(s) for your rights and interests.
- (d) You must give us evidence of the above insurance which will be retained for record purposes. A Certificate of Currency or copy of the renewed policy must be supplied to us annually)
- (e) You must either provide us with a copy of the policy wordings, or the wordings of all exclusions, endorsements and Special Conditions.
- (f) You must not do anything that may make our insurance invalid or able to be cancelled or that may increase our insurance premium.

12. Release and indemnity

- (a) You are liable for and indemnify Us against all actions, demands, loss or damage incurred or suffered directly or indirectly in connection with:
 - (i) Your acts and omissions or the acts and omissions of your invitees, and
 - (ii) loss or damage to property or person caused by your use, or by your invitee's use, of the site or the park or otherwise relating to the site or the park, and
 - (iii) a breach by you of this agreement, or
 - (iv) your use of the site and the park; and
- (b) You release Us from any action, demand, loss or damage for any damage, loss, injury or death occurring on the site or the park except to the extent that it is caused by our negligence.

13. Your acknowledgement

You acknowledge that the Standard Operating Procedures and other rules may change from time to time. Prior approval of the type, arrangement, assembly, set backs, annex or other aspects of your holiday van or moveable dwelling on the site does not prevent us from changing our requirements in accordance with changes to the Standard Operating Procedures, rules or our other reasonable requirements.

14. How long can you or any other person occupy the site?

A holiday van on the site may only be occupied for a maximum of one hundred and eighty (180) nights during any twelve (12) month period and not more than one hundred and fifty (150) nights consecutively. The annual site occupation fees cover one hundred and fifty (150) nights.

15. Trades people

All Tradesmen, Service Providers and Contractors engaged by the Occupant(s) are required to undergo a site induction and to sign the Contractors Register to obtain a boomgate access code before access to the park is permitted. It is at the Occupant(s) own discretion and risk to ensure the contractors they have engaged are qualified, ticketed and insured to conduct the works requested, and the contractors should be able to provide all appropriate insurances and WHS cards, etc. if requested by the Occupant(s) or park management. We reserve the right to refuse entry to any contractor should we believe the Site Alteration and Addition Process has been contravened therefore no permission granted by park management to conduct works.

16. Boat / Vehicle storage

Boat / Vehicle (includes, but is not limited to, motorbikes, mopeds, etc) storage on your site or any other sites is not permitted at any time when your site is unoccupied.

17. Parking

Vehicle parking is allocated for each site. Parking is not permitted on unoccupied tourist or holiday van sites or any other communal spaces.

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SECTION C

Park Rules

To ensure you have an enjoyable experience we ask that the following Park Rules are adhered to.

Vehicles & Parking:

- For the safety of all guests, please keep speed limit to 8km/h (walking speed).
- Normal NSW Road rules are enforced within our parks.
- Only one vehicle is permitted per site.
- Vehicles and boats must not be parked on road ways, walkways or other sites within the park.
- Guests are responsible for the conduct of their visitors. All visitors' vehicles must be left outside the park.

Park Access:

- Security gates are in operation. Please use the access code generated for you
- Access code allows access for ONE CAR ONLY and cannot be used to admit unauthorised/second vehicles.
- Tailgating other cars is not permitted.

Bikes:

- Anyone riding a bike, skateboard or rollerblades must adhere to the bike rules. These are available at reception.
- Bikes must be used on road ways and not on the pathways.
- All activities of this nature must cease when street lights are activated.
- Helmets must be worn at all times whilst riding on roads.
- Parents and/or guardians are responsible for their children's behaviour and safety.

Pet Friendly Rules:

- Pets are welcome outside school holidays and peaks periods, at the discretion of Park Management.
- No more than 2 pets are allowed per site.
- Pets are welcome on van/tent sites only.
- Pets must not be left unattended at any time.
- When in the park all pets must be on a leash at all times and owners must pick up after them.
- No pets are permitted in guest cabins, communal areas and pool areas.

Site Set-up:

- Additional tents or swags must only be erected on the concrete slab area under awning/in annex. None to be erected on grass area surrounding slabs.
- Mats/carpet are not permitted to cover grass on van sites.
Only your vehicle or open sided gazebo may be placed on your allocated grass area (if gazebo is erected vehicle must be parked off site).

Anti-Social Behaviour & Noise Curfew:

- The peaceful enjoyment of the Park and the use of guest facilities is important to us. Please respect other guests and keep noise to a minimum.
- There is a strict no noise curfew from 10pm until 7am.
- Socially unacceptable behaviour - excessive noise, drunken, offensive, aggressive, intimidating, inappropriate or threatening behaviour, causing wilful damage, disturbing other guests and/or using unacceptable language will not be tolerated under any circumstances. Displaying this type of conduct will result in you and your party being evicted from the park without refunds/credits and charges will apply for any damage caused. Future bookings will not be considered at any BSHPs.

Open Fires:

- Open fires and charcoal cookers are not permitted within the park
- Only gas or electric barbeques are permitted

Smoking:

- Smoking is not permitted in any dwelling or the common areas
- All guests must ensure that smoke caused by the smoking of tobacco or any other substances does not penetrate to the common areas of the park or any other occupant's site in the park

Fee Schedule and Summary of Charges

HOLIDAY VAN OWNER SITE OCCUPATION FEES

Shoal Bay and Halifax Holiday Park = \$510.00

Fingal Bay Holiday Park A Sites = \$520.00

Fingal Bay Holiday Park B Sites = \$510.00

POWERED SITE FEES

Charges will be applied based on applicable standard site tariff at the time

Applicable tariff rates can be obtained from our website at www.beachsideholidays.com.au

ADDITIONAL CHARGES

Day Visitor (per person) = \$5.00 per day

Extension Lead Hire = \$5.50 per day

Extension Lead Hire – Security Deposit = \$50.00

Extra Adults = \$10.00 - \$15.00 – Low/Shoulder – Peak

Extra Children = \$5.00 - \$10.00- Low/Shoulder - Peak

Family Bathroom Key Security Deposit = \$20

Holiday Van Annual Agreement Preparation Charge = \$12.50

Holiday Van Annual Agreement Postal Charge = \$6.50

Holiday Van Sales Administration Fee = \$295

Holiday Van Sales Valuation Fee = \$230.00

Transfer / Change of Holiday Van Ownership / Occupants Administration Fee - \$95

After Hours Call out Fee = \$150

Direct Debit Dishonour Fee - \$25

Late Payment Fee - \$25

Electricity Usage Fee = Metered electricity usage charged quarterly based on latest retail tariffs of the local area energy retailer

Service Availability Charge= calculated per day for 150 days of the year based on latest retail tariffs of the local area energy retailer, charged quarterly

Test Tag Fee = \$10 per power lead

Washing Machines & Dryers = \$4.00 per token

Washing Powder= \$2.00 per sachet

Photocopying / printing: A4 = \$1.00 per copy

NB: Rectification Costs incurred as a result of damage to the Parks infrastructure caused by non-compliance will be forwarded to the Holiday Van Owner.

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SECTION D

DETAILS PAGE (separate document)

Details Page to be distributed as an e-Signature document via email unless paper copy specifically requested.

**Port Stephens Council Holiday Van Occupancy Agreement
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SECTION E

EXECUTION DOCUMENT (separate document)

Execution Document to be distributed as an e-Signature document via email unless paper copy specifically requested.