

**Port Stephens Council
Holiday Van Occupancy Agreement
Terms & Conditions – Edition 11/2020**



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
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This occupancy agreement consists of the following sections:

SECTION A – Standard Terms & Conditions

SECTION B – Special Conditions

**SECTION C – Park Rules, Fee Schedule &
Summary of Changes**

SECTION D – Details Page

SECTION E – Execution Page

Port Stephens Council Holiday Van Occupancy Agreement Terms & Conditions - Edition 11/2020

STANDARD TERMS & CONDITIONS CONTENTS PAGE

SECTION A

Part 1 - Introduction	Page 4
Part 2 - Site fees, visitor fees and charges	Page 5
Part 3 - Rights and obligations	Page 8
Part 4 - Agreement to minimise loss	Page 12
Part 5 - When can we come onto the site?	Page 12
Part 6 - Obligations of park owner relating to park rules	Page 13
Part 7 - Ending this agreement	Page 13
Part 8 - Definitions	Page 17

SECTION B

Special Conditions	Page 19
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SECTION C

Park Rules & Fee Schedule	Page 23
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SECTION D

Details Page	
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SECTION E

Execution Page	
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Port Stephens Council Holiday Van Occupancy Agreement Terms & Conditions – Edition 11/2020

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 2019 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].

Occupants can consist of a single person, a couple, up to four (4) immediate family members, or two (2) separate persons who are not family members. Occupants 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 6].

(b) The size of the site is [Section D, Item 4]

4. Who can occupy the site?

No more than 6 persons may ordinarily occupy the site at any one time. Occupants other than those listed in Section D of this agreement must contact the Holiday Park reception before occupying the site, unless previously confirmed as authorised users.

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 8] & Termination Date: [Section D, Item 9]. Consecutive agreements should not be assumed.

6. What happens when this agreement ends?

When the time for this agreement ends:

- (a) 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 occupation fee under a new agreement may remain the same or increase (if the 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 Lands Act 1989.
- (g) Australian New Zealand Standard AS/NZS 3001:2008 Electrical installations—

Part 2: Site fees, visitor fees & charges

9. Amount of occupation fees

The occupation fees payable are [Section D, Item 10] payable every month starting on the first day of the agreement. The fee is to be paid one month in advance and covers the first 150 nights of occupancy after which additional nights are payable at the daily tariff rate at the time of the stay up to the maximum 180 nights.

10. Amount of Additional Fees if applicable.

- (a) Annual Holiday Van Occupancy Agreement preparation fee [Section D, Item 11] payable upon receipt of Holiday Van Occupancy Agreement.
- (b) Postage Fee [Section D, Item 12] – If required for postal delivery of Holiday Van Occupancy Agreement. Payable upon receipt of Holiday Van Occupancy Agreement.

- (c) Agreement Sale / Transfer Fee [Section D, Item 13] - If required for sale or transfer of Holiday Van, payable upon application. Transfer would include the addition or change of occupant 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.

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, for:

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

13. Occupation fees are payable in advance and on time

- (a) The Occupant(s) agree to pay the occupation fees monthly and in advance ensuring payment is received by the park no later than the last day of the month prior.
- (b) Occupant(s) agree to pay the occupation fees on time. *(Failure to do so will be considered a breach of this agreement and may result in the termination of the agreement)*
- (c) Occupants whose fees are in arrears will be notified in writing and requested to comply with the site rental schedule.
- (d) Occupants whose fees are thirty days in arrears will be notified that failure to pay the current month's outstanding rent, and the next month's rent in full and in advance, will result in termination of their annual occupancy agreement.
- (e) Without limiting the above clause, occupants whose fees are ninety days in arrears will have their occupancy agreement revoked and must remove all goods, including the caravan and annex within thirty (30) days and return the site to its natural state. If the Occupant(s) do not comply with this clause, the caravan and annex become the property of the park owner and the park owner may sell or otherwise dispose of the caravan and annex and return the site to its natural state at the cost of the Occupant(s).
- (f) Where there is a history record of continued late payment, occupants will be notified and given the opportunity to establish a direct payment plan or may be required to pay by direct debit. Failure to keep rent payments current or pay by direct debit will result in either termination or non-renewal of this agreement, at the discretion of the park owner.

14. How to pay occupation fees and charges

Port Stephens Councils preferred method for receiving payments is direct debit from a bank account. The occupation fees and charges may be paid in the following ways – direct debit, cash, cheque, credit card deduction or by eftpos. These methods of paying may be changed during the term of this agreement at the discretion of the park owner.

15. Manner of paying occupation fees and charges

Occupation fees and charges must be paid:

- (a) to the park owner, or the park manager, 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 occupation fees or other charges

- (a) The park owner agrees to provide a receipt for any occupation fees or other charges under this agreement paid to the park owner or to make sure that the park manager provides a receipt for the occupation fees or charges paid to the park manager. If the occupation fees or charges are not paid in person, the park owner agrees to make the receipt available for collection by the occupant or to post it to the occupant if requested.
- (b) The park owner agrees that any receipt for 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 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.

17. Fee increases

- (a) The park owner cannot increase the occupation fees during the fixed term of this agreement unless the park owner determines that an increase in occupation fees is warranted. Factors which would warrant 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 must be given 30 days' notice in writing if the park owner wants to increase the occupation fees, if an increase is permitted by sub clause (a). This applies even when this agreement provides for, or permits, an 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.

18. Refund of occupation fees

The park owner agrees to refund any fees paid in advance if the occupancy is ended by the park owner before the end of the fixed term agreement.

Part 3: Rights and obligations

DIVISION 1 - OBLIGATIONS OF THE OCCUPANT(S)

19. Offensive behavior

The occupant agrees 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.

20. Use of the site

The Occupant(s) agree:

- (b) 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
- (c) not to cause or permit a nuisance; and
- (d) not to on sell, advertise or offer for sale any credit nights or vacant nights; and
- (e) 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
- (f) not to undertake any external works to the holiday van (except maintenance works) or reconfiguration of the holiday van and annexes on the site without the prior written approval of the park owner.

21. 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.

22. Alterations and additions to the site

The Occupant(s) agree not to attach any fixture or renovate, alter or add to the moveable dwelling or the site without the park owner's prior written permission. All additions and alterations are to be of a re-locatable nature. Examples include a carport, deck, verandah, screen, pergola, clothes line, shed, driveway, fence, pathway, paving or related retaining wall, cooling / heating systems, garden.

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

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 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.

28. 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 Beachside Holiday Parks Standard Operating Procedures for the Administration and Management of Holiday Vans as published from time to time.
- (c) The Occupant(s) must ensure that all 15 amp power leads connected to the parks power source are tested and tagged annually by a licensed electrician. This must be a double-insulated 15 amp lead.
- (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).

29. Condition of moveable dwelling and other structures

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.

- (a) 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.

30. Signing an Occupancy Agreement

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

31. 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 Occupants Legal Will & Testament.

32. 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, 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).

DIVISION 2 - OBLIGATIONS OF THE PARK OWNER

33. Possession of the site

The park owner agrees:

- (a) 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 on 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.

(Please note that 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 occupants 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) direct 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 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 (it is recommended that a spare set of keys is provided to the Park Manager for these 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 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).

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.

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 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 (for example, 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 (for example, 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 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 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 agree that a notice of termination given under this clause must not specify a day earlier than 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 occupation fees has no effect unless the fees have remained unpaid in breach of this agreement for not less than 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 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 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 Occupants personally, or
 - (iii) given to a person aged over 18 who normally pays the occupation fees, or
 - (iv) given to a person aged over 18 who occupies the site to pass on to the Occupant(s).
 - (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, and including a notice of termination given to a park owner, may be:
 - (i) posted to the park owner's residence, or
 - (ii) given to the park owner or to the park manager personally, or
 - (iii) posted or faxed to the park owner's, or park manager's, place of business, or
 - (vi) given to a person aged over 18 who normally collects the occupation fees.
 - (vii) emailed to the park owner's business email address

DIVISION 5 – MISCELLANEOUS

52. Apportionment and recovery of occupation fees on termination

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

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

The park owner and the Occupant(s) agree that a demand for, any proceedings for the recovery of, or acceptance of, 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 Lands Act 1989 the occupation agreement terminates unless the notification of the revocation in the Government Gazette otherwise provides. No compensation is payable in respect of the termination of the occupation agreement in this circumstance.

55. **Indemnity of Reserve**

The Occupant(s) agrees that the occupant will indemnify the Crown, the Minister administering the Crown Lands Act 1989, 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. 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)

"authorised 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:

"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 4 persons for one night whereby no additional 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).

Port Stephens Council Holiday Van Occupancy Agreement Terms & Conditions – Edition 11/2020

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, but we are not obliged to do so. 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 the park rules for the park are terms of this agreement and that if those park rules change, the terms as changed are terms of this agreement. We may change the park rules from time to time. If we do change the park rules, we must notify you of a change to the rules by publishing notice of the change on Our website and also on any applicable notice board at the park.

3. Giving out 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 fees on time during the terms of agreement entitles You to 150 credit nights. Credit nights may be used by either You or credit night users approved by the park owner. Unused credit nights can not be sold or offered for sale.
- (b) If You and/or Your credit night users elect not to use one of your credit nights for a particular stay, occupation fees must be paid in accordance with our fee schedule.
- (c) 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. (Maintenance activity should be restricted to the hours of 9.00am and 5:00pm Monday to Friday. School & public holidays should be avoided)
- (d) If You do not pay site fees on time, We may give you notice canceling the whole or any part of your taken or untaken credit nights. You must immediately pay us occupation fees in accordance with our fee schedule for any taken credit nights that we have cancelled.
- (e) You must pay occupation fees in accordance with Our fee schedule for any person (including You) who stays on the site other than on a credit night basis. Our fee schedule sets out different rates of occupation fees, depending on the category and number of occupants.

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 14 [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. (A copy will be retained by the park for record purposes)
- (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 of this agreement by You, or
 - (iv) your use of the site and the park.

- (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 other reasonable requirements of Us.

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 180 days during any 12 month period and not more than 150 days consecutively. The annual occupation fees cover the first 150 days and additional days up the maximum will be charged at the applicable fee rate shown in section C.

15. Trades people

All Tradesmen, Service Provides and Contractors engaged by the Occupant(s) are required to undergo a site induction and provide all appropriate insurances and their WH&S card etc., before access to the park is permitted. A list of these requirements can be obtained from Park Reception.

16. Boat / Vehicle storage

Boat / Vehicle storage on your site or any other sites is not permitted.

17. Parking

Vehicle parking is allocated for each site. Parking is not permitted on unoccupied sites.

Port Stephens Council Holiday Van Occupancy Agreement Terms & Conditions – Edition 11/2020

SECTION C

Park Rules

- 1. Follow reasonable direction** – Guests are required to follow any reasonable direction given by Park Staff or Security personnel during their stay within the Holiday Park. **Failure to comply with these directions may result in eviction from the park.**
- 2. Speed Limits** - For the safety of all guests, please keep speed limit to **8km/h (walking speed)** at all times. (The park is a shared zone which requires vehicles to give way to pedestrians .Motorists are requested to remain alert to the movement of pedestrians and cyclists within the Park)
- 3. Offensive Behaviour** – Drunkenness, offensive, aggressive or threatening behaviour will not be tolerated under any circumstances. **Persons displaying this type of conduct will be removed from the Park.**
- 4. Damage to Property** – Wilful damage to park or guest property or tampering with park or guest property will not be tolerated under any circumstances. **This type of conduct will result in eviction from the Park.**
- 5. Excessive noise** – In the interest of Park patrons, guests are required to keep noise to reasonable levels, please ensure your televisions and radios are kept at a volume that will not disturb your neighbours. Excessive noise will not be tolerated under any circumstances. **All noise of a disruptive nature is to cease by 10.00pm.**
- 6. Security Gates** are in operation. Guests arriving outside reception hours (usually 9.00am to 5pm) must arrange prior entry. Use of your access number for another vehicle will prevent your own access. Issuing your boomgate PIN to any Tradesperson is strictly prohibited.
- 7. Dogs** are welcome during **non-holiday times**. Dogs are not allowed during designated NSW holiday periods, including the weekends before and after school holiday weeks, and weekends before and after gazetted public holidays, including Easter LWE.. Dogs must be kept on a lead at all times. Special litter bags are provided near the Orana Street amenities and near the main garbage area on Barkala Street, **Dog acceptance is at the discretion of Park Management**. Please register your dog with the Holiday Van Admin Officer via registration form.
- 8. Day Visitors** - Guests are responsible for the conduct of their visitors and a fee is applicable for day visitors or overnight stays. Visitor's cars must be left outside the park unless permission is obtained to bring them in.
- 9. Vehicles and Boats** must not be parked on roadways, walkways or other sites within the park. Additional vehicles must be parked outside the Park perimeter. If your site is allocated one vehicle and nil accessories, only one car, boat, trailer etc is permitted on the site.
- 10. Boats & Jet Skis** are only to be washed in designated zone. (Please check with reception). Storage of fuel on site is not permitted. Storage of boats, jet skis, trailers etc onsite is not permitted.
- 11. Ground Covering** - Mats/carpets are not permitted to cover grass on sites. **NO TENTS, SWAGS** or similar are permitted to be erected on Holiday Van sites at ANY time.
- 12. Scooters, Bikes, Skateboards and Roller Blades**. Must be used on roadways only and not on the pathways. The management of the park is not responsible for any accident or injury caused whilst riding or skating in the park. All activities of this nature **must** cease when street lights are activated and are prohibited prior to 7.00am. **No** riding in or around the boom gate or amenities areas is permitted. Normal road rules apply in park grounds. Helmets **must** be worn whilst riding on roads. All forms of motorised scooters are prohibited. Please check park for exclusion periods. Bike Licenses are required to be worn by ALL riders and are available from Reception.
- 13. Amenities** are not to be used by children under the age of 8 years unless accompanied by an adult. Family bathrooms are accessible with a key which is available from reception with a deposit payable of \$20.00 refunded upon return. Children **MUST** be supervised at all times.
- 14. Trenches** - Guests are not permitted to dig trenches around sites.
- 15. Fish Cleaning** is not permitted within the Park.

16. **Stormwater Drains** - Please do not empty sink waste water into the storm water drains.
17. **Fires** are not permitted within the Park at any time.
18. **Playground Rules** – The playground is closed from dusk till dawn. The playground is for use of children under the age of 12. Children must be supervised at all times.
19. **Barbecues** - Only gas or electric are permitted. No wood fires or other fuel permitted.
20. **Garbage** – All general household garbage is to be placed in the general waste and recycle bins provided. Large domestic waste items are not to be disposed of within the Park premises. These items are to be disposed by and at the expense of the owner. Port Stephens Council provide waste stations for disposal of large items. Fees apply.
21. **No Responsibility** is taken by the Council or Crown Lands Reserve Trust, PSBHP or its representatives for personal injury damage or loss of property. Guests are responsible to secure their belongings at all times. **No responsibility** is taken by Council, the Crown Land Reserve Trust or PSBHP for personal injury, damage to or loss of property or whilst undertaking in programmed park activities.
22. **Pool Rules** must be observed. Children under the age of 12 **MUST** be accompanied by an adult. Strictly no dogs or glass is permitted in the pool area at any time. Pool hours are 9.00am to 9.00pm.

Fee Schedule

HOLIDAY VAN OWNER SITE FEES

Shoal Bay and Halifax Holiday Park = \$500.00

Fingal Bay Holiday Park A Sites = \$510.00

Fingal Bay Holiday Park B Sites = \$500.00

POWERED SITE FEES

Charges will be from \$36.00 per night to \$83.00 per night

Applicable tariff rates can be obtained from our website: 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

Disabled Key Security Deposit = \$20 cash deposit required as security, refunded upon return.

Family Bathroom Key Security Deposit = \$20

Holiday Van Annual Agreement Preparation Charge = \$12.50

Holiday Van Annual Agreement Postal Charge = \$6.50

Holiday Van Annual Agreement Sale / Transfer Fee = \$459.00

Holiday Van Valuation Surcharge = \$230.00

Electricity Account Administration Charge = \$6.00 per quarter

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

Washing Machines & Dryers = \$4.00 per token

Washing Powder= \$2.00 per sachet

Photocopying: A4 = \$0.70 per copy A3 = \$1.10 per copy

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

**Port Stephens Council Holiday Van Occupancy Agreement
Terms & Conditions – Edition 11/2020**

SECTION D

DETAILS PAGE

Details Page to be distributed as attachment.

**Port Stephens Council Holiday Van Occupancy Agreement
Terms & Conditions – Edition 11/2020**

SECTION E

EXECUTION DOCUMENT

Execution Document to be distributed as attachment.

See 2nd attachment for section D and E