

<b>Property Use Agreements</b>	Document No:	SCS - 034
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Responsible Officer:		General Manager Governance and Infrastructure
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## 1. Purpose

To ensure that Council has a clear and workable framework for property use agreements with individuals, businesses and/or groups that:

- Are consistent in their application;
- Protect public land and assets; and
- Support the users' objectives.

## 2. Scope

This policy covers the following aspects of developing Agreements for the use of Council property:

- Types of Agreements;
- Conditions of Agreements;
- Landowner obligations; and
- User obligations.

## 3. Application

This policy applies to individuals, groups or businesses that have been determined by Council to be a preferred user of a Council property.

The consideration of eligible preferred users will be determined through other policies and processes approved by Council.

This policy applies to parties who use Council owned or managed property on a regular, medium to long term basis.

This Policy does not apply to users seeking access to facilities for less than 3 months or an ad-hoc basis.

### 3.1 Pre-Agreement requirements

The party must have all the following before entering into an agreement:

- Be a registered legal entity;
- Hold current Public Liability Insurance; and
- Capacity for electronic business transactions primarily financial and communication.

## 4. Definitions

**Agreement** – A Lease, Licence, User Agreement, Casual Hire Agreement, Tour Operator Licence, Retail Lease, Residential Tenancy Agreement, Commercial Lease for Council Property.

**Casual Hire Agreement** – An Agreement that is no longer than three months in length and is for short term, non-regular bookings.

**Carrying Capacity** – Acknowledges the competing goals of recreation and preservation of site values in natural public land. It can refer to a numerical threshold of activities beyond which the loss of site values is unacceptable.

**Commercial Occupiers** – Any occupier who operates a business or commercial enterprise with the intent to generate profit. \* Note that does not include operators who are classified as Tour Operators under the Crown Land Reserves Act 1978.

**Council** – Surf Coast Shire Council which may be the Landlord, Licensor or Lessor under an Agreement.

**Council Property** – Land (including open space), buildings, property or facilities owned or managed by Council.

**Crown Land** – As defined in the Crown Land (Reserves) Act 1978

**Expression of Interest** – A process whereby Council invites individuals, groups or businesses to submit a detailed expression of interest detailing how it will meet key objectives, to be assessed under evaluation criteria

**Not for Profit** – Any occupier who operates a business or activity that does not operate for profit, personal gain or other benefit of particular people i.e. its members.

**DELWP** – Department of Environment Land Water and Planning

**Facility** – A place and amenity provided for a particular purpose

**Head-lease** – A Head-lease is the original Lease between a Tenant and a Landlord. In such a Lease, the overall contractual responsibility is given to one identifiable tenant called the Head-lessee. It is a primary Lease under which Sub-leases have been granted.

**Insurable Value** – The cost of replacement of a building which could conceivably be destroyed. The assessed value excludes any contents stored on the premises e.g. furniture and equipment.

**Lease** – A Lease is a right granted by the owner of the property (Landlord) to another person (Tenant) to have exclusive possession of that property, or part thereof, for a fixed duration in return for rental payment. Council will grant a Lease where the premises will be occupied exclusively by the one user.

**Licence** – A Licence permits a person (Licensee) to occupy property (or part thereof) under particular conditions. The main feature that distinguishes a Licence from a Lease is that a Licence does not permit exclusive occupancy of the property.

**Market Rental Value** – The estimated amount for which an asset should rent, as at the relevant date, between a willing Tenant and a willing Landlord in an arm's length transaction, wherein the parties had each acted knowledgeably, prudently and without compulsion, and having regard to the usual terms and conditions for agreements of similar property.

**Minimum Rent / Peppercorn** – \$1.00 per annum

**Non-commercial group** - Not-for-profit community based groups and funded organisations and agencies that service community members that live, work or have a connection with Surf Coast Shire.

**Outgoings** – including but not exclusive to water, sewerage services and usage charges, electricity and gas utilised at the property.

**Residential Tenancy Agreement** – A Residential Tenancy Agreement is a right granted by the owner of the land (Landlord) to a Tenant to have possession of a house for a fixed duration in return for rental payment.

**Regular User** – Regular pattern of use for a period between 3 to 12 months, however it must be less than 10 occasions. A regular use cannot reapply for a User Agreement on an annual basis.

**Sub-letting** – Sub-lease or Sub-let is the name given to an arrangement in which the Tenant in a Lease assigns or transfers the Lease to a third party, thereby making the old Lessee the Sub-lessor, and the new Tenant the Sub-tenant. This means they are not only leasing the property, but also Sub-leasing it simultaneously.

**Tenant** – a person who occupies land or property rented from a landlord.

**Tour Operator** – A person who conducts an organised tour or recreational activity for profit on land reserved under section 3A of the Crown Land Reserves Act. This amendment to the Act came in 2009.

**User** – a person who uses Council property as per a User Agreement or Casual Hire Agreement.

**User Agreement** – An Agreement that is no longer than twelve months in length and is for regular bookings with a high frequency.

## 5. Policy

Council aims to provide a workable framework for property use agreements that are consistent in their application, protect public land and assets; and Support the users' objectives.

## 6. Consultation and Notification

Council will undertake consultation or notification in following circumstances:

- Where Council has an identified desired use for a property and is seeking to identify potential users to deliver this use, eg. a Commercial Occupier or Tour Operator. The consultation process will generally be an Expression of Interest (EOI) process. Once the EOI process is completed all submissions will be assessed in accordance with the eligibility criteria advertised to determine the preferred user.
- Where Council is approached by a potential interested individual, group or business that wishes to use a Council property and Council wishes to inform key stakeholders, competitors or the broader community. Council will advertise a notice stating we are considering entering into an agreement in the local newspaper and or on Council's website seeking public feedback. This may also occur when existing agreements are nearing expiry.
- Where Council needs to comply with legislation or regulatory requirements.

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## 7. Types of Agreements

The following table sets out a framework for different types of agreements to be applied under various situations and with an outline of typical pre-requisites or conditions.

Types of Agreement	Intended or desired Access	User Type	Pre-application Process	Payment Type	Payment Basis	Initial Terms	Options for further terms	Outgoings	Maintenance by User	Sub-letting Permissible
<b>Casual User</b>	<3 months and irregular pattern of use	N/A Users will access through casual user hire arrangements								
<b>Regular User</b>	<ul style="list-style-type: none"> <li>• between 3-12 months; and</li> <li>• regular pattern of use; and</li> <li>• less than 10 occasions.</li> </ul>	Any user	N/A	User Fee	Set through Annual Budget	<12months	No	Contribution through fee.	No	No
<b>Licence</b>	<ul style="list-style-type: none"> <li>• Greater than 12 months; and</li> <li>• Regular pattern of use; and</li> <li>• Non-exclusive occupation</li> </ul>	Crown Land Tour Operator	Expression of Interest	Licence Fee	Statutory Fee set by State Govt.	3 years	2 x 2 years	N/A	Yes	No
		Commercial User	Expression of Interest	Licence Fee	Market Valuation	3 years	2 x 2 years	Direct outgoings charged if possible, otherwise apportionment based on time	Yes	No
		Non-commercial User	Advertise Council are considering entering into an	Licence Fee	Set through Annual Budget	1 to 3 years by agreement	Nil	Direct outgoings charged if possible, otherwise	Yes	No

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Types of Agreement	Intended or desired Access	User Type	Pre-application Process	Payment Type	Payment Basis	Initial Terms	Options for further terms	Outgoings	Maintenance by User	Sub-letting Permissible
			agreement					apportionment based on time		
<b>Lease</b>	<ul style="list-style-type: none"> <li>• Greater than 12 months; and</li> <li>• Exclusive occupation</li> </ul>	Commercial User	Expression of Interest	Rent	Market Valuation	5 years	3 x 3 years	Yes	Yes	Yes
		Non-commercial User	Advertise Council are considering entering into an agreement	Rent	Peppercorn amount (set through Annual Budget)	5 years	Nil	Yes	Yes	Yes
		Non-commercial User	Advertise Council are considering entering into an agreement	Rent	Peppercorn amount (set through Annual Budget)	5 years	2 x 2 years (Where Tenant has contributed 25% or more capital)	Yes	Yes	Yes
<b>Lease</b>	<ul style="list-style-type: none"> <li>• Greater than 12 months; and</li> <li>• Residential occupation</li> </ul>	Residential Tenancy	Tenant Selection by Dept. of Human Services	Rent	Rent determined by Department of Human Services	1 year	Nil	Yes	Yes	No

## 7.1 Lease

A Lease may be used if Council considers that providing exclusive rights to a single Tenant is:

- Necessary to provide sufficient certainty and security to the Tenant to invest in their business;
- Necessary to recognise financial investment by the Tenant to the facility;
- The only way to secure the desired use; and
- Aligned with the long term strategic plan for the property.

### 7.1.1 Commercial Leases / Retail Leases

Commercial lease agreements will be prepared and managed in accordance with the requirements of the Retail Leases Act 2003 (if applicable) and any other legislative requirements.

### 7.1.2 Peppercorn Leases

Peppercorn leases are generally used where access and conditions are as per a standard commercial or retail use but Council is entering the lease with a not-for-profit or non commercial group. In these circumstances the lease agreements will be prepared and managed in accordance with the requirements of the Retail Leases Act 2003 (if applicable) and any other legislative requirements, but only a nominal or 'peppercorn' rent will be requested.

### 7.1.3 Residential Tenancy Agreement

Residential Tenancy Agreements will be prepared and managed by Council's preferred Real Estate Agent in accordance with the Residential Tenancies Act 1997 and the Residential Tenancies Regulations 2008.

## 7.2 Licences

### 7.2.1 Tour Operator Licence (only applicable to Crown land managed by Council)

Tour Operator Licences are required for anyone who runs an organised tour or recreational business for profit on Crown Land managed by Council which may be part of Council's open space network. Tour Operator Licences will be prepared and managed in accordance with the requirements of the Crown Land (Reserves) Act 1978.

### 7.2.2 Other Licences

Other licence agreements will be used where users require certainty about facility or land availability but do not require exclusive use. In these instances, licence agreements will be based on the requirements of the Crown Land (Reserves) Act 1978 or the Local Government Act 1989.

## 8. Rent

### 8.1 Rent

Rent is applicable for all Lease agreements as follows:

- Commercial users will pay rent based on a market valuation prepared by a suitably qualified independent valuer.
- Not-for-profit users will pay a peppercorn amount for rent based on a peppercorn fee set by Council through the Annual Budget.

### 8.2 Rent Review

Council reserves the right to review and amend the rent if a Tenant or Licensee obtains access to other commercial means of income (excluding fundraising) generated during the term of the Agreement e.g. rent received from sub-letting, obtaining a liquor licence, telecommunication tower rental, revenue received from advertising at the premises. Consent from Council is required for any such use.

Council reserves the right to review and amend the rent if the footprint of the property increases to be greater than the footprint in the existing Agreement, or the property has undergone significant refurbishment improvements which increases the value of the property by more than 10%.

All Commercial rent will be increased annually by 3% during the term of a Lease or Licence. On the exercise of any option for renewal the rent will be determined by Council's qualified Valuer at the current market rental.

### **8.3 Sub-letting**

Tenants or Licensees may only Sub-Lease or Sub-Licence with prior written consent from Council in all instances and the Department of Environment Land Water and Planning (DELWP) if the property is Crown Land.

The rent of the Head-lease or Head-Licence will immediately be reviewed when a Sub-lease or Sub-Licence is developed.

Any financial gain from Sub-leasing or Sub-licensing will be payable to the Head tenant or Head Licensee, except where Council has decided to apply a subsidy to assist the Tenant or Licensee with operational costs such as outgoings, maintenance or to reinvest into future capital works.

### **8.4 Maintenance responsibilities**

Each Tenant, Licensee or User is required to maintain the facility in accordance with the Outgoings and Maintenance Schedule attached to their agreement. This Outgoing and Maintenance Schedule is available on Council's website as updated from time to time. The Outgoing and Maintenance Schedule specifies the responsibilities of Council and the Tenant, Licensee or User. The Tenant, Licensee or User will be responsible for keeping the facility clean, in good condition and performing incidental maintenance not requiring a skilled tradesperson.

All work is to be undertaken by an accredited qualified tradesperson registered on Council's Work Health and Safety (WHS) System.

Council reserves the right to negotiate maintenance responsibilities and costs. Council reserves the right to inspect the premises each year or more frequently as required.

### **8.5 Capital Works – Alterations or Additions**

Tenants and Licensees will not make any alteration or additions to the Council Property without Council and / or DELWP consent. Any alterations or additions consented to shall be undertaken by Council's contractors, unless otherwise agreed between the parties in writing.

### **8.6 Outgoings**

Council reserves the right to apply a subsidy for outgoings. Any subsidy will be decided through Council resolution or by an officer that has been delegated this authority by Council.

### **8.7 Insurance (Building, Contents and Public Liability)**

The Tenant, Licensees or Users must hold current insurance for contents or equipment held by them at the Council Property.

Building Insurance for all Council assets will be paid for by Council.

All Tenants, Licensees, or Users are required to hold current Public Liability Insurance to a value determined by Council as detailed in the agreement. A copy of the Public Liability Insurance is to be provided to Council on an annual basis as evidence of cover.

## 8.8 Use of Council Property

Tenants, Licensees or Users must obtain prior written consent for any change or additional use of the Council Property.

For Licensees who occupy Council property under a Licence Agreement, Council may also use or allow others to use the Council Property outside the normal operating hours of the Licensee, provided the use does not unreasonably interfere with the Licensees' use.

Tenants, Licensees or Users must also comply with all guidelines and directions issued by the Environment Protection Authority, Planning Permit provisions (including Liquor Licence provisions), Liquor Licensing Commission and Council Local Laws.

### 8.8.1 Child safe standards

Surf Coast Shire Council is committed to creating a child safe and child friendly environment where children and young people are respected valued and encouraged to reach their full potential. Surf Coast Shire Council's policies and procedures support the implementation of requirements under the Child Wellbeing and Safety Act 2005. If the use of Council's property involves the tenant or any sublease tenant being in the physical proximity of children, the tenant must comply with the Child Safe Standards made under section 17(1) of the Child Wellbeing and Safety Act 2005.

## 8.9 Permits

All Tenants, Licensees or Users must adhere to the conditions of any Planning Permit, Food Handling Permit, or any other permit issued by Council or any other authority.

Council prohibits gaming Licences in Leased or Licensed Council Property.

Liquor Licence applications require Council approval and must only be applied for after prior written consent is given.

## 9. Records

Record	Retention/Disposal Responsibility	Retention Period	Location
Legal Documents	General Manager Governance and Infrastructure	Term of Legal Document	Legal Documents Register – Authority  Original document – strong room  Relevant file in TRIM

## 10. Attachments

Nil

## 11. References

Local Government Act 1989  
 Local Government (General) Regulations 2015  
 Retail Leases Act 2003  
 Retail Leases Regulations 2003  
 Crown Land (Reserves) Act 1978  
 Crown Land Acts Amendment (lease and licence terms) Act 2009  
 Crown Land (Reserves) (Tour Operator Licence Fee) Regulations 2011  
 Occupational Health and Safety Act 2004  
 Residential Tenancies Act 1997  
 Residential Tenancies Regulations 2008

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Children's Services Act 1996 & Children's Services Regulations 1998 – Outlines the space and safety requirements for children's service centres.

**Other document references:**

Use of Council Facilities Policy (SCS-033)

Council Plan 2013-2017

Open Space Land Management System

Capital Works Program

Asset Management Plan for Buildings

Condition Appraisal Report

Outgoing and Maintenance Obligations Schedule

Casual Hire Form

Standard templates for Agreements for Council and Crown Land