Shoalhaven City Council

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Occupation of Council Owned or Managed Land

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Directorate:	City Services
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1. Purpose

The purpose of this policy is to provide clear guiding principles for the ongoing professional management of occupancies over Council owned or managed land (apart from that land excluded from this policy in Section 4 Exclusions).

2. Objectives

In managing land covered by this policy Council seeks to ensure that:

- Council's strategic intentions are identified, (and publicly available) and are being met.
- Assets are fully utilised in accordance with their strategic intention and community expectations.
- Market rates are applied to leasing agreements that are longer than three months unless the Council resolves to accept a less than market rate for strategic reasons. Refer to Section 6.16.
- Council will comply with all legislative requirements that are applicable to Council for the purpose of owning and managing its property portfolio.
- Each asset will be identified in an appropriate Asset Management Plan and maintained adequately to preserve the strategic intent of the asset.

3. Scope

Supporting documents and procedures have been developed in accordance with this Policy to ensure transparency, equity of process, and accountability in its application.

The Guiding Principles outlined in this policy provide detail in relation to the types of investigations, checks and research required to be undertaken as part of any Occupation of Council Owned Land/Building process when considering a transaction. The list is not exhaustive; however, each land transaction should be investigated on its merits and some of the listed principles may not necessarily apply to every transaction.

4. Exclusions

Management Committees pursuant to Sections 355 and 377 of the Local Government Act 1993 are not covered by this policy, however, are offered as an alternative occupational arrangement for a multi-use facility (refer Section 6.11) which are covered by the Management Committee Guidelines.)

This policy does not apply to:

- Industrial Subdivisions and Developments undertaken by Council as part of its Economic Development Initiatives.
- Council reserves (i.e., road, drainage, natural etc)
- Parks and Recreation sites
- Land that is zoned to prevent commercial activities.

The Chief Executive Officer (or nominee) may decide to approve occupations with like businesses of that surrounding and offer short term agreements (less than 3 months) at less than the market rate to achieve the Objectives detailed in Section 2.

5. Definitions and Relationship to Other Documents

5.1. Definitions

a) **Agreements** means the following, as applicable:

- Lease - Suitable when lessee requires exclusive use of Council Land.
- Licence - Suitable when licensee does not require exclusive use of Council Land or requires use only in a limited way.
- Temporary Licence – Less than or equal to 12 months in duration. Includes Licences issued under S2.20 of the Crown Lands Management Act 2016 where Council is Crown Land Manager.
- Approvals – relating to S68 Local Government Act or S125 Roads Act.
- Consent - Encroachments & Construction on Road Reserve relating to S68 Local Government Act or S125 Roads Act.
- Permit – Relating to S68 of the Local Government Act 1993.
- Memorandum of Understanding (MOU) – Relating to the occupation by other agencies or authorities of Council owned or managed land, for example Emergency Services Agencies (SES and RFS).
- Deed of Agreement (DoA) – Relates to the policing by Rangers of private car parking areas.

b) **Community Group** – Organisations which may or may not be incorporated and exist for purposes other than profit or private gain.

c) **Land** - Council owned (Operational or Community) or managed land (unclassified public roads and Crown land), developed or otherwise. Including but not limited to commercial buildings, community facilities, ground licences (e.g., Men's Sheds) and vacant land etc.

5.2. Relationship to Other Documents

Conveyancing Act 1919	S23C – Needs for leases to be in writing S23F – Need for current plan S85 – Powers of lessor S86 – Short form of covenants S129 – Restrictions of forfeiture leases S133B – Covenants against assigning leases
Crown Land Management Act 2016	Section 8.7 - Native Title Manager advice Section 2.18 – Leases/licences granted directly by the Minister Section 2.20 – Short term licences (max 12months) Section 2.23 – Conditions for the Minister's deemed consent to Development Application Schedule 7 Clause 5 – continuation of existing tenure

Dividing Fences Act 1991	Exclusion under Section 25
Real Property Act 1900	
Retail Leases Act 1994	
Native Title Act 1993 (Commonwealth)	Future act assessments over Crown land
Residential Tenancies Act 2010	
Aboriginal Land Rights Act 1983	Determination of Aboriginal Land Claims over Crown land
Local Government Act 1993	Sections 35-47F - Use and management of community land Section 68 Sections 355 & 377 – power of Council to appoint Committees and delegate management of the facilities to local residents and/or organisations
Roads Act 1993	Section 107 - Obstructions & Encroachments Section 125 - Footway Dining Use Section 138 - Works & Structures Section 139 - Nature of Consent Section 142 - Maintenance of Works & Structures Section 149 - Above or below the surface of the road Section 153 - 157 Short-term leases of unused public roads Section 223 - roads authority may charge fees
Land Tax Management Act 1956	Sections 21C (1) & 21C (2)
Protection of the Environment Operations Act 1997	
Council Plans of Management	
Other relevant statutory plans and other policies	

6. Guiding Principles

6.1. **Guiding Principles for Councils -** This Policy fulfils elements of Section 8A (1) of the Local Government Act 1993, including but not limited to:

- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers; and
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.

6.2. **Council's Code of Conduct** – This policy is to provide clear guiding principles (Part 3, Section 3.2) for the ongoing professional management of occupancies over Council owned or managed land.

6.3. **Probity -** Independent Commission Against Corruption (ICAC) Guidelines – Probity and Probity Advising – November 2005**.**

6.4. **Risk -** Office of Local Government Circular – Public-Private Partnerships (PPP) Guidelines January 2022.

6.5. **Agreements -** All occupancies over Council land must be formalised via a written executed agreement agreed by Council.

6.6. **Capacity –** That tenants demonstrate their capacity to meet the commitments under agreement terms, prior to the lease being granted.

6.7. **Cost Recovery –** Council is to ensure that agreements do not impose an unreasonable burden on general revenue. Council is to obtain a reasonable dividend and at a minimum, cost neutrality from the use of its property, i.e., the tenancy is to be at no cost to Council.

6.8. **Defined Lease Term –** That no community lease is for a term greater than five years unless exceptional circumstances are demonstrated by the community groups (e.g., a substantial upgrade to the asset is to be undertaken by the occupant, and agreed to by Council)

6.9. **Legal & Advertising Cost –** That Council's Legal fees in preparing the necessary legal documentation or making variations to any template documentation in addition to the cost of complying with statutory requirements for advertising are to be met by the tenant, unless otherwise approved by Council

6.10. **Asset Management Plans –** That agreements for occupancy of Council Community buildings for a term greater than 5 years not be granted unless an "Asset Management Plan" is prepared indicating cost of structural and minor repairs likely during the term of the agreement (in consultation with Council's Manager, Technical Services).

6.11. **Multiple-Use –** That Council encourage multiple and optimum use of its existing community buildings. Preference is to be given to the multiple occupations of buildings over one exclusive occupation. This principle will be applied to complement the Management Committee Guidelines.

6.12. **Equality of Access –** When a community agreement expires and Council wishes to retain community uses within the building, Council may call for 'expressions of interest' for the use of buildings to ensure that interested community groups are given equal opportunity to obtain occupation.

6.13. **Funding** – For hard court facilities under an agreement (e.g., tennis, hockey), 100% of the income received from an agreement will be set aside in a sinking fund and applied towards capital upgrades of that facility.

6.14. **Sub, Variation, Assignment and Transfer of Agreements -** Any variation, assignment, transfer, or sub agreement to an existing agreement must be approved by Council in writing.

6.15. **Approvals**

6.15.1. Decisions to grant agreements to occupy Council owned or managed land are made by resolution of Council**.**

6.15.2. The Chief Executive Officer is delegated authority to approve and execute leases and licences for:

- maximum term of 5 years and have an annual rental of $5,000 or less
- telecommunications licences where the agreement relates to an existing telecommunications site

- properties managed by Integrity Real Estate

providing the terms and conditions are in accordance with Council's policies and procedures. Refer to MIN14.912 and MIN15.237

6.15.3. Approvals for the issue of S139A & S125 of the Roads Act 1993 Consents for the Commercial Use of Footpaths (A-Boards, Merchandise displays and out-door dining) do not require a report to Council. Approval of these is delegated to the Chief Executive Officer.

6.16. Rental and other Fees & Charges - Assessments and Reviews**:**

6.16.1. All rents charged in the first instance are to be determined in accordance with market values and subject to market trends thereafter.

6.16.2. Community Groups - Rental figure is determined through a rental assessment framework (R.A.F.). Only in exceptional circumstances where the community group can demonstrate that it essentially functions as a volunteer or self-help group (with no funding from State or Federal Government) within the local community, will Council consider a rent of equivalent to the minimum statutory rent.

6.16.3. Approval to waive rent and other charges is delegated to the Chief Executive Officer. A quarterly report is to be submitted to Council on any waivers that have been granted.

6.16.4. Occupation - No occupation is to commence until the requirements of this policy have been fulfilled e.g., agreements have been executed by both parties and initial rent paid**.**

6.16.5. Other charges applicable via the fees & charges.

7. Review

The City Services Directorate is responsible for this policy. It will be reviewed within one year of the election of every new Council, or earlier if required.