

GUIDELINE

Licensing of a commercial activity on Council owned or managed land

Author: Ian Crawford

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Procedure Ref: #

Background information/Situation

Port Stephens has a diverse range of open space including parks, sports fields, foreshores, beaches, and bushland reserves. These open spaces are well suited to a wide range of passive and active recreation activities. As these open spaces have become more popular, a demand has arisen for the use of Council Owned and Managed Land to conduct commercial operations specifically activities centred on tourism, education and healthy lifestyles. The total open space deemed suitable for these activities is 367 hectares or approximately 28% of Port Stephens Councils total open space provision.

Council's approach to commercial operators is directed by the Commercial Operators Policy. This Guideline details the terms and conditions pertaining to the licensing of Council owned and managed land for commercial activities.

Target Audience/Users

This Guideline is intended for use by Council Officers responsible for the assessment and approval of licenses for commercial activities on Council owned or managed land.

Applicable Standards

The Guideline is the delivery mechanism for the Commercial Operators Policy. All aspects of this Guideline are limited by the leasing and licensing requirements of the Local Government Act 1993 and the Crown Lands Act 1989.

Procedure Description

Application process

1. Council shall conduct an expression of interest process and receive applications for a license to conduct a commercial activity on Council owned or managed land between 1 September and 30 September every 5 years.
2. Council shall advertise the expression of interest on the Council web site and in the Port Stephens Examiner, and the Newcastle Herald or the equivalent should they cease to exist.
3. Applicants shall make a submission by lodging the Application Form and all supporting documentation listed in Application Form.
4. Applications will be received for either Water Based Activities or Land Based Activities.
5. Applications may be received at other times of the year subject to supply of sites and the demand for them.

Assessment process

Submission of an application does not constitute approval to conduct a commercial activity on Council owned or managed land.

Applications shall be assessed against the following criteria:

1. Applicant's details and qualifications
2. Experience and professionalism in the proposed activity
3. Capacity to deliver the proposed activity
4. Compliance with insurance requirements, work health and safety, public safety and environmental risks
5. Suitability of the proposed activity for the requested site
6. Implications of the proposed activity on existing businesses or activities in the same area

Applicants are required to submit the following supporting documents:

1. Certificates of accreditation including: Business Registration, ABN Certification, Personnel qualifications, Certification from any relevant peak body, and supporting references.
2. A business plan that details the projected viability of the activity and the proposed timetable for use of the site
3. A management plan that details how the site is proposed to be established and managed
4. A risk assessment that details all risks associated with the activity on the site including treatments to ensure all risks are as low as reasonably practicable
5. A Working with Children Check for all personnel who will be involved with any child under the age of 18 years.
6. Applications shall be assessed by a Panel led by the Contracts and Services Coordinator. The Panel shall convene when required. Membership of the Panel shall include one Section Manager, a representative from Property Services Section and a representative from Civil Assets Section.
7. Successful applicants shall be notified by email by the Contracts & Services Coordinator.

License terms and conditions

General Conditions

1. Pursuant to sections 46 to 47A, 68 and 672 of the Local Government Act 1993 and section 108 of the Crown Lands Act 1989, it is illegal to conduct a commercial activity on Council owned and managed land without written approval.
2. A License shall be issued under the provisions of the Local Government Act 1993 and or the Crown Lands Act 1989.
3. A License does not constitute a relationship or partnership between Port Stephens Council and the Licensee.
4. A License is not transferable to any other party. Should an operator wish to sell their equipment & revoke their license before termination date, the license does not transfer to the purchaser with the sale of the equipment. Under these circumstances the purchaser will be required to submit their application following 'Expression of Interest' being advertised for the vacant site which will be assessed on merit.
5. Council may amend or revoke the conditions of a License at any time.

6. A License is not finalised until all fees and charges payable are received from the Applicant
7. A License shall be for a maximum single term of 5 years.
8. A License shall not be offered for a total maximum term of more than 5 years to any one Licensee. At the expiry of a License that has been held by one Licensee for a maximum term of 5 years, Council shall advertise that site along with all other available sites through an expression of interest process.
9. Council shall determine the location of a suitable site for an activity.
10. A License does not provide the Licensee with exclusive use of a site.
11. A License may be issued for up to 3 sites to any single Licensee.
12. Where a license has been issued under the Commercial Operators Policy it will not negate the need for development consent under the *Environmental Planning and Assessment Act 1979*, where required.
13. Where a licence has been approved and where development consent is required. The licensee will be given 6 months from the date of lodgement to either be granted formal DA approval or (if unsuccessful) to relinquish the licence back to Council.
14. Licensed activities involving the retail sale of food and drink products are required to comply with the relevant legislative provisions of the NSW Food Act 2003, the Australia/NSW Zealand Food Standard Codes and related guidelines and policies. Councils Environmental Health officers will provide a formal assessment of all submissions to determine the appropriateness of the activity.
15. License fees are determined by the Setting of Fees and Charges Management Directive. Fees and charges are subject to annual CPI increases.
16. A fee or charge may only be reduced or waived by a resolution of Council.
17. A License must be retained with the Operator when conducting an activity and be able to be viewed by a Council Officer if requested.
18. Council may terminate a licence if the licensee breaches any conditions of the licence. No compensation is payable in respect of the termination of a licence.
19. Privacy - Council is authorised to request personal information from the Licensee which will be used by Council to assess the permit application and manage the Licensee's occupation of the site. If the Licensee does not provide the requested information, the permit application cannot be assessed. In accordance with the Privacy Code of Practice and Council's Privacy Management Plan, personal information collected as a consequence of the Commercial Operator's Policy will only be used for the purpose of assessing eligibility under the Policy and will not be used for any other purpose or disclosed to any other person unless Council is required by law to do so, where it is reasonably necessary for law enforcement purposes or where Council is authorised to do so by the Licensee.
20. The Licensee must not conduct the permitted activity unless the Licensee holds a policy of public liability insurance sufficient to cover any liability the Licensee may have to third parties or Council or the Minister under the agreement, and in any case for an amount of not less than \$20 million in respect of any single event, noting Port Stephens Council as an Interested Party as well as the Minister administering the Crown Lands Act 1989 where applicable and Other Authority approvals Public Liability Insurance of not less than \$20 million noting Port Stephens Council as an interested Party as well as the Minister administering the Crown Lands Act 1989 where applicable and Other Authority approvals
21. In the event of any third party injury or damage caused in the pursuit of the licensed activity the Licensee must document the incident, send an incident report to Council within 24 hours of the incidents occurrence and retain a copy of the incident report for inspection by a Council Officer at any time.

22. All signage relating to the License shall be detailed in the approved management plan and shall be subject to Council policies. Fees may apply for signs.
23. A licensed activity shall not cause nuisance to other site users or neighbouring property owners.
24. A Licensee shall not operate from another licensed site.
25. A Licensee shall relocate to another site at the request of Council at times when Council is required to conduct works on the site or when a site is closed due to wet weather, renovations or where there is a sporting activity, school carnival or commercial event.
26. Where operating from a sportsfield site, usage arrangements will need to be negotiated between the licensee and the local sporting clubs and/ or Sports Councils.
27. No compensation will be payable by Council in respect of any required relocation.
28. The enclosure and/or roping off of areas by the Licensee will not be permitted under any circumstances other than to identify a hazard temporarily.
29. Emergency vehicle accesses to open space areas are to be kept clear at all times.
30. A Licensee shall not use Council's electricity or water supply unless approved in the License.
31. A Licensee shall comply with the Parks Rules sign at a site.
32. A License shall permit activities on a site to operate from 6am to 6pm Monday to Saturday and 9am to 5pm on Sundays.
33. Activities shall not be permitted on sites that are of cultural or environmental significance and or are subject to high levels of visitation.
34. Activities shall not be permitted within the following areas:
 35. Within 20 metres from a war memorial;
 36. Within 20 metres of a playground or skate park;
 37. Within 20 metres from any public change room, toilet or kiosk areas;
 38. Within 50 metres from any neighbouring residential property; and
 39. Within 50 metres from any flagged area of beaches and/or as directed by the duty lifeguard.
40. A Licensee shall mark their licensed area using witches hats or other hi visibility markers.
41. A Licensee shall not store any equipment on a site.
42. Where field lighting is requested, the Licensee will pay an agreed fee in accordance with Councils Fees & Charges.
43. Keys to light boxes are to be requested and signed for at time of licence approval.
44. A Council Officer shall conduct a site inspection of a Licensed site at any time.
45. A site induction shall be conducted by the Licensee and a Council Officer prior to the commencement of the activity on a site.
46. A Licensee is responsible to undertake all necessary due diligence on the ground conditions and maintenance of a site prior to making application for a site.