

## **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 uses and, as these open spaces have become more popular, demand has risen for the use of Council owned and managed land to conduct commercial operations.

By ensuring a consistent approach to the approval and management of commercial activities on Council owned or managed land, Council can facilitate the economic and social benefits across the community whilst also ensuring a diversity of quality product complimentary to each location.

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 operations.

## **Target Audience/Users**

This Guideline is intended for use by persons applying for a commercial operator's licence and Council Officers responsible for the assessment and approval of licenses for commercial operations 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 Management Act 2016.

## **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, nature of activity and the demand.

### **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. Details of any relevant insurance policies including public liability cover of \$20m noting Port Stephens Council as an interested party
3. A business plan that details the projected viability of the activity and the proposed timetable for use of the site.
4. A plan of management that outlines how the activity will be conducted that, at a minimum, addresses the site, safety, public and environmental risks associated with your business.
5. A risk management plan that details all risks associated with the activity on the site including treatments to ensure all risks are as low as reasonably practicable.
6. A Working with Children Check for all personnel who will be involved with any child under the age of 18 years.
7. Applications shall be assessed by a Review Panel led by the Contracts and Services Coordinator. The Panel shall convene as required. Membership of the Panel shall include one Section Manager, a representative from Property Services, Community and Recreation Assets Coordinator, Parks and Programs Coordinator, Environmental Health and Compliance Coordinator, Roads Coordinator, Corporate Risk Team and Events /Tourism Coordinator – The panel will provide advice on the implementation of the policy, asset planning, scheduled improvements, Risk, Environment and WH&S management, liaison with Sports Councils, Environmental Health requirements, traffic management, not for profit requirements and liaison relating to the coordination of events and bookings on Council owned and managed land;
8. Successful applicants shall be notified by email by a Contracts & Services team representative.
9. A police check may be required at the applicant's expense upon request by Council.
10. Site map detailing traffic flow, exits, emergency evacuation points, medial officer/attention location, electrical connection, amenities, signage and any significant infrastructure

## 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 Management Act 2016, it is illegal to conduct a commercial operation 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 Management Act 2016.
3. Any licence issued on Crown land will be subject to native title assessment, and will be determinable at will by the Council or the Minister in the event a claim is made under either the Native Title Act 1994 or the Aboriginal Land Rights Act 1983.
4. A License does not constitute a relationship or partnership between Port Stephens Council and the Licensee.
5. 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.
6. Council may amend or revoke the conditions of a License at any time.
7. A License is not finalised until all fees and charges payable are received from the Applicant
8. A License shall be for a maximum single term of 5 years.
9. 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.
10. Council at its discretion and based on the nature of the activity will provide a short term licence agreement to commercial operators where appropriate for a trial period. The short term licence will assist Council and the operator in determining the overall viability of the business based on the requirements detailed in The Commercial Operators Policy and Guidelines prior to entering into a long term licence agreement.
11. Council will set the term of the licence and advise the applicant. Council's decision will be final and not be open to negotiation.
12. The Commercial Operators Policy provides a list of approved land and water based locations for suitable activities.
13. Council as required may initiate a process to identify supplementary sites for Markets to activate a particular location. Where an existing market operator is trading on set days and times and where appropriate, Council at its sole discretion may consider other market applications to operate from the same location. This will be based on appropriate location, the nature and size of market, days of operation. i.e. operating on alternate weekends and community benefit.
14. A License does not provide the Licensee with exclusive use of a site.
15. A License may be issued for up to 3 land and 1 water based sites to any single Licensee.

16. 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.
17. 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.
18. 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.
19. A License to operate a Mobile Food /Retail activity will be assessed after applicant's lodgement of completed application to the Councils Contracts & Services Team. Consideration will be based on suitability and availability of requested mobile Food/Retail operating locations. Following receipt of a completed application Council Environmental Health Team will then undertake an assessment of the vehicle against relevant legislation and guidelines. If approved and on payment of applicable fees an approval will be granted allowing operation of the mobile food vehicle. Once the Environmental Health Team has granted approval the Contracts and Services Team will finalise the application process, invoice licence fee and issue a licence.

[Refer to Mobile Food Vehicle Guideline](#)

20. Council as required and at its sole discretion may initiate a process to identify supplementary sites for commercial operators.
21. Licensed activities involving, Temporary Events are to be referred to Councils Events Team and are required to comply with the relevant legislative provisions under the Local Government Act 1993 and Crown Lands Management Act 2016.

[Refer to Temporary Event Guidelines.](#)

22. Licenced activities involving ongoing Markets on Council owned and managed land are managed under the Commercial Operator Policy. Ongoing Markets are classified as Markets that operate (***in excess of four times per year***)

**Suitable market stalls may include but are not limited to:**

- Fresh foods, local produce and flowers
- Unique goods
- Specialist niche markets goods including antiques and collectables
- Arts and crafts
- Fair trade goods
- Community based stalls raising awareness and funds for registered charities, community and sporting groups

**Types of stalls not suitable may include but are not limited to:**

- Mass produced imported goods
- Illegal, toxic or counterfeit goods

**Other criteria to consider:**

- The number of stalls will be determined by site selection
- Pedestrian flow must not be impeded

- The market activity must not have a negative impact on the area
- The market activity must not cause a significant increase in traffic and congestion
- The market activity must include parking options that do not impact on residential areas.

Only activities included on the original commercial operator's application are permitted. Additions to market content including mechanical rides, inflatable devices, entertainment or animal rides may be deemed as an event. If this is the case, appropriate application and supporting documentation must be submitted and the event will be assessed and approved separately. It will NOT be allowed to go ahead under a commercial operator's license.

Where Markets are one off or operate less than 4 times per year refer to Councils *Temporary Events Guidelines*.

23. Not-for-profit and charitable organisations are **not** exempt from this policy and will be assessed on the basis;
- There are suitable sites available,
  - The business can demonstrate it is a Not for Profit (NFP) /Charitable organisation.
  - The business can demonstrate it does not operate on a profit basis but a cost-recovery basis
  - The business can demonstrate its level of competition with businesses undertaking the same or similar commercial activities.
  - Applicants will be required to complete the commercial operator's application form to determine whether the proposed activity on Council land has either Not for Profit or charitable status, and whether associated fees should apply or can be waived either partially or in full. Once the assessment questionnaire is completed by the applicant, Council's internal review panel will assess the questionnaire responses in accordance with the requirements of the (Not for Profit) ASSESSMENT CRITERIA AND ASSOCIATED WEIGHTING.
24. License fees are determined by the Setting of Fees and Charges Management Directive. Fees and charges are subject to annual CPI increases.
25. Commercial operator fees apply to licence administration and site fees only. The fee will not apply to other associated "operational costs" such as electricity, water use, waste disposal, roadside parking etc.
26. A fee or charge may only be reduced or waived by a resolution of Council.
27. A License must be retained with the Operator when conducting an activity and be able to be viewed by a Council Officer if requested.
28. 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.
29. 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.

30. 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 Management Act 2016 where applicable and Other Authority approvals.
31. 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.
32. 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.
33. Commercial operators must take into consideration any negative noise impacts on surrounding residents or businesses.
34. A Licensee shall not operate from another licensed site:
  - In entering into the licence a commercial operator agrees to only operate within the designated site and not infringe on any other commercial operator's site for the duration of the licence;
  - If a breach of (1) above occurs which causes conflict with other licensed operators, this may result in Council's cancellation of their licence;
  - It is agreed that the only exception to (1) is where both licensed commercial operators have agreed by prior arrangement that the other can enter onto the licensed site in order to conduct a purely social activity where no money was exchanged in respect of the event.
35. 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.
36. Where operating from a sports field site, usage arrangements will need to be negotiated and agreed between Council, the licensee and the local sporting clubs and/or Sports Council.
37. No compensation will be payable by Council in respect of any required relocation.
38. 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.
39. Emergency vehicle accesses to open space areas are to be kept clear at all times.
40. A Licensee shall not use Council's electricity or water supply unless approved in the License.
41. A Licensee shall comply with the Parks Rules sign at a site at all times.
42. A License shall permit Land & Water based activities to operate from 6am to 8pm Monday to Saturday and 9am to 6pm on Sundays.
43. Mobile food/retail operators - 5am to 10pm, operating times will be approved based on impact to residents, other businesses and based on location.
44. Markets 7am to 10 pm
45. Activities shall not be permitted on sites that are of cultural or environmental significance.
46. Activities shall not be permitted within the following areas:
  - Within 10 metres from any neighbouring residential property; or as otherwise approved; or
  - Within 10 metres from any flagged area of beaches and/or as directed by the duty lifeguard.

47. A Licensee shall mark their licensed area using witches hats or other hi visibility markers as required.
48. Where field lighting is requested, the Licensee will pay an agreed fee in accordance with Councils Fees & Charges.
49. Application for keys to light boxes will be considered by Council upon request.
50. A Council Officer shall conduct a site inspection of a Licensed site at any time.
51. A site induction shall be conducted by a Council Officer and the Licensee prior to the commencement of the activity on a site.
52. 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.
53. In the event a site has been damaged in the course of the commercial activity, **ALL** costs relating to the remediation of the site will be borne by the licensee.
54. If amenities are required to be used as part of your activity council will assess upon application and if approved council will order a key and a fee will be charged to the applicant.
55. Licensee to submit a "post event/licence report" detailing attendances, promotion, customer satisfaction, lessons learned or identified improvements from season.

***Electrical Conditions as per events licence conditions***

56. *All concession installations shall comply with AS 3002 - 2008 Electrical Installations Shows and Carnivals.*
57. *The licensee is required to pay the cost of any "call out" necessary to reinstate power at the venue due to a power overload.*
58. *At no time shall any power outlets or electrical switchboards be changed, upgraded or modified in any way.*
59. *Vandalism of the power supply and/or faulty power outlets should be reported to Council's customer Service Department by phoning 02 4988 0255.*
60. *Ensure electrical switchboards are properly secured and locked (where switchboard design permits) during use and after the completion of using the power facility.*
61. *All leads must exit the switchboard from the bottom of the box and be anchored via the supporting base of the switchboard.*
62. *All flexible extension leads and / or power boards must be of the heavy duty sheathed type.*
63. *All leads and equipment should comply with Australian Standards for Test & Tag and Council's electrical procedures and policies. Any leads or equipment that doesn't comply may be removed from service, or tested and tagged by Port Stephens Council at the users cost.*
64. *The flexible extension lead is to be supported in an appropriate manner at a minimum height of two point four (2.4) meters and a maximum span of ten (10) meters, or run along the ground under approved ground lead protection covers.*
65. *Should additional / Extra power requirements be realized during your event contact Council's Customer Service Department by phoning 02 4988 0255 to discuss. (NB: Charges may apply if call outs are needed).*
66. *The installation of tent pegs, star pickets or stakes is prohibited on some reserves unless prior approval has been given by a Council Officer. Any damage caused will be charged to the event licensee. Where allowable a "dial before you dig" report may be required at the licensee's cost (minimum 3 days' notice is required).*
67. *No excavation of surface soils to be carried out without permission of the responsible Council Officer.*