

**FILE NO:** PSC2019-00384

**TITLE:** COMMERCIAL OPERATORS POLICY

**OWNER:** COMMUNITY SERVICES SECTION MANAGER

## **1. PURPOSE:**

- 1.1 The purpose of the Commercial Operators Policy (policy) is to confirm Council's approach to commercial activities on Council owned and managed land.
- 1.2 The policy aims to achieve well managed commercial operations that create vibrant public spaces, promote community participation and connections, improve the visitor experience and grow the Port Stephens economy.
- 1.3 The policy also provides the framework for a streamlined process for managing the use of Council owned or managed land by private business, markets, events and mobile food/retailers.

## **2. CONTEXT/BACKGROUND:**

- 2.1 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.
- 2.2 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 products complimentary to each location.

## **3. SCOPE:**

- 3.1 The policy applies to the management of commercial operations within the Port Stephens Council Local Government Area. The total open space deemed suitable for these activities is noted in **5.1 Table 1**.
- 3.2 Commercial operations include both land and water based activities ranging from events, markets, mobile food/retailers, including but not limited to personal and group fitness classes, bicycle hire, surf schools, watercraft hire and lessons in watercraft use and sport adventure activities.

- 3.3 Approval to issue a licence under the policy does not negate the need for nor is intended as a substitute for development consent under the Environmental Planning and Assessment Act 1979, where required.
- 3.4 Licenced 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, where required.
- 3.5 The policy does not apply to commercial operations on land that is not owned or managed by Council. Commercial operations on land that is not owned or managed by Council may require other development approvals.
- 3.6 The policy does not apply to the following activities that may be subject to separate approval processes:
- a) Commercial activities subject to a lease arrangement.
  - b) Commercial use of community halls.
  - c) Commercial use of sporting facility buildings.
  - d) Commercial activities on land that is not owned or managed by Council.
  - e) Activities not considered to be a commercial activity.

## 4. DEFINITIONS:

- 4.1 An outline of the key definitions of terms included in the policy.

Commercial activity	To conduct any aspect of a business, or service in order to provide goods or services to any person for profit or cost recovery on Council's owned and managed land.
Commercial operator	A person or entity that intends to conduct an activity for profit or personal gain on Council owned and managed land.
Commercial operators licence	A contract to operate across and or on Council owned and managed land.
Council owned and managed land	Land that is owned or managed by Port Stephens Council, including Crown Land where Council is the corporate trust manager.
Land based activity	Activities that are conducted on Council owned and managed land. Examples of land based activities include, but are not limited to: personal fitness trainers, group fitness, hiring of bicycles, dog obedience schools, mobile food/retailers, markets and events.

Water based activity	Activities that are conducted mostly in waterways but require access to the waterway from Council owned and managed land. Examples of water based activities include but are not limited to: learn to surf schools, hire of water craft, lessons in water craft use, sport adventure activities, mobile food/retailers and events.
Mobile food/retail operator	A company or individual that operates a mobile food or other retail vehicle, cart or stall.
Mobile food/retail vehicle	All mobile vans, mobile trailers, carts or maritime vessels (whether registered or not) used for the purpose of selling any article of food or merchandise on Council's owned and managed land.
Ongoing markets	A regularly scheduled outlet for the sale of goods and services at the same or regular location with the majority of goods and services provided by the producer, grower, craftsperson or service person (in excess of four times per year).
Temporary markets	A temporary outlet for the sale of goods and services at the same or regular location with the majority of goods and services provided by the producer, grower, craftsperson or service person (up to four times per year).
Temporary events	A temporary one off or annual activity on Council owned and managed land.
Not for profit operations	A company or individual that operates a business on a cost recovery basis and does not make a profit.
Licensing terms and conditions	This includes guidelines, processes and other internal documents used by Council staff in the assessment and approval of Commercial Operator Licence applications.

## 5. STATEMENT:

- 5.1 Port Stephens Council will support and facilitate commercial operations on Council owned or managed land that provide economic and community benefit, enhance the local culture and ensure the safety of residents and visitors. In order to achieve this Council will:

- a) permit the use of Council owned and managed land for commercial operations that meet the purpose of the land as defined in the Local Environment Plan, any Plan of Management for the land, the Crown Lands Management Act 2016, the Local Government Act 1993 and the licensing terms and conditions of any specific site
- b) encourage commercial operations on Council owned and managed land that provide economic, social and environmental benefit
- c) ensure Council owned and managed land is used in a safe manner
- d) permit licences for a maximum term of 5 years for the use of Council owned and managed land by approved commercial operators ensuring security of tenure for approved commercial operators. Accordingly, commercial operators shall be offered a licence term for any new licence subject to all requirements of the Local Government Act 1993 and the Crown Lands Management Act 2016
- e) at Council's sole discretion permit short term licences for the use of Council owned and managed land by approved commercial operators
- f) commit to implementing and keeping current terms and conditions that ensure that occupiers of licenced sites do not cause nuisance to neighbours and other stakeholders
- g) assess and apportion licence fees that are determined by market demand and the Setting of Fees and Charges Management Directive
- h) provide locations suitable for site specific commercial operations as listed in Table 1
- i) as required, Council may initiate a process to identify supplementary sites for land and water based commercial operations to activate a particular location.

**Table 1: Council owned and managed land that may be licenced for site specific commercial operations, excluding temporary events and temporary markets (operating less than 4 times per year). Mobile food/retail operator sites will be assessed upon application.**

Suburb	Location	Lot / DP	Permitted Use	
			Land Based Activities	Water Based Activities
Anna Bay	Birubi Beach	Lot 7325, DP 1156724	✓	✓
Anna Bay	Robinson Reserve	Lot 7325, DP 1156724	✓	
Boat Harbour	Boat Harbour Beach Reserve	Lot 7324, DP 1205289	✓	✓

Corlette	Bagnall Beach Reserve, corner of Sandy Point Road and Pantowarra Street (A)	Lot 540, DP 823768	✓	
Corlette	Bagnall Beach Foreshore Reserve, adjacent corner of Pantowarra Street (B)	Lot 540, DP 823768		✓
Corlette	Roy Wood	Lot 356, DP 27845		✓
Corlette	Conroy Park	Lot 256, DP 27048	✓	✓
Fingal Bay	Fingal Bay Foreshore Reserve	Lot 475, DP 728127	✓	
Fingal Bay	Fingal Bay Oval	Lot 418, DP 257378	✓	
Fingal Bay	Fingal Beach (A)	Lot 475, DP 728127	✓	✓
Fingal Bay	Fingal Beach Boat ramp end(B)	Lot 475, DP 728127	✓	✓
Fingal Bay	Fingal Bay Holiday Park	Lot 419, DP 257378	✓	✓
Fisherman's Bay	Fisherman's Bay Park	Lot 278, DP 753204	✓	
Hinton	Hinton Foreshore Reserve	Lot 26, DP 109540	✓	✓
Hinton	Stuart Park	Lot 1, DP 915417	✓	
Karuah	Aliceton Reserve	Lot 61, DP 24364	✓	
Karuah	Lionel Morton Oval	Lot 153, DP 753196	✓	
Karuah	Longworth Park	Lot 710 DP 1050943	✓	
Karuah	Memorial Park Boat Ramp	Lot 710 DP 1050943	✓	
Lemon Tree Passage	Kooindah Park	LOT:PT 93 DP 217567	✓	

Mallabula	Caswell Reserve	Lot 93, DP 11392		✓
Mallabula	Mallabula Sports Complex	Lot 398, DP 1142139	✓	
Medowie	Boyd Oval	Lot 1, DP 408155	✓	
Medowie	Coachwood Drive Reserve	Lot 37, DP 807956	✓	
Medowie	Ferodale Sports Park	Lot 22, DP 1021843	✓	
Medowie	Kindlebark Oval	Lot 59 DP 730472 LOT:129 DP 710216	✓	
Medowie	Yulong Oval	Lot 49, DP 249781	✓	
Nelson bay	Apex Park	PLT 154, DP753204	✓	
Nelson Bay	Bill Strong Oval,	Lot 101, DP 1175980	✓	
Nelson Bay	Dutchman's Beach Reserve	Lot 7318, DP1138620	✓	
Nelson Bay	Dutchman's Beach Foreshore	Lot 7318, DP1138620		✓
Nelson Bay	Fly Point Reserve	Lot 101, DP 1175980	✓	
Nelson Bay	Halifax Holiday Park	Lot 2, DP 1118650	✓	✓
Nelson Bay	Little Beach Reserve	Lot 101, DP 1175980	✓	
Nelson Bay	Neil Carroll Park	Lot 101, DP 1175980	✓	
Nelson Bay	Nelson Bay Foreshore adjacent to the Nelson Bay public wharf amenities (A)	Lot 550,559, DP 1033413	✓	
Nelson Bay	Nelson Bay Foreshore adjacent Nelson Bay Kiosk and carpark (B)	Lot 550 559, DP 1033413		✓

Nelson Bay	Nelson Bay Foreshore, Victoria Parade adjacent Fly Point amenities (C)	Lot 550,559 DP 1033413		✓
Nelson Bay	Tomaree Sports Complex	Lot 1, DP 1136350	✓	
Nelson Bay	Tom O Dwyer Oval	Lot 402, DP 753204	✓	
Nelson Bay	Yaccaba St	Lot 1, 2, DP1236311	✓	
One Mile	One Mile Beach	Lot 7311, DP 1120641	✓	✓
One Mile	Port Stephens Koala Sanctuary	Lot 2, DP 1109948	✓	✓
Raymond Terrace	Alton Park Reserve	Lot 61, DP 24364	✓	
Raymond Terrace	Boomerang Park	Lot 1, DP 1018979	✓	
Raymond Terrace	Bettles Park		✓	
Raymond Terrace	Fitzgerald Bridge Boat Ramp area	Lot 131, DP 1120122		✓
Raymond Terrace	King Park Sports Complex	Lot 1, DP 733011 Lot 131, DP 1120122	✓	
Raymond Terrace	Lakeside Reserve 2	Lot 261, DP 263821	✓	
Raymond Terrace	Lakeside Reserve 3	Lot 116, DP 262378	✓	
Raymond Terrace	Lakeside Sports Complex	Lot PT2, DP 502401	✓	
Raymond Terrace	Ross Walbridge Reserve	Lot 1, DP 115898	✓	
Raymond Terrace	Riverside Park	Lot 7005, DP 94774	✓	
Raymond Terrace	Vi Barnett Oval	Lot 131, DP 1120122	✓	
Salamander Bay	Bagnall Beach Road Detention Basin	Lot 5072, DP 841259	✓	

Salamander Bay	George's Reserve	Lot 1, DP 852661		✓
Salamander Bay	Joe Redman Reserve	Lot 356, DP 27845	✓	
Salamander Bay	Korora Oval	Lot 541, DP 27274	✓	
Salamander Bay	Roy Wood Reserve	Lot 356, DP 27946	✓	✓
Salamander Bay	Salamander Sports Complex	Lot 1, DP 1117732	✓	
Seaham	Brandon Park	Lot 11, DP 26452	✓	
Seaham	Seaham Park	Lot 1, DP 758899	✓	
Shoal Bay	Shoal Bay Foreshore - Boat Ramp (A)	Lot 7022,7023 DP 1126832		✓
Shoal Bay	Shoal Bay Foreshore Adjacent public wharf (B)	Lot; 7022,7023 DP 1126832		✓
Shoal Bay	Shoal Bay Foreshore Beach Road adjacent to Harbourside Haven (C)	Lot; 7022,7023 DP 1126832		✓
Shoal Bay	Shoal Bay Foreshore intersection of Harwood Avenue and Beach Road (D)	Lot: 7022,7023 DP 1126832		✓
Shoal Bay	Shoal Bay Holiday Park	Lot 1, DP 1225747, Lot 116, DP 1121203, Lot 1, DP 593555, Lot 3, DP 716089	✓	✓
Shoal Bay	Marrungbangbaa Reserve	Lot 7305, DP 1130568	✓	✓
Soldiers Point	Everitt Park	Lot 322, DP 636840	✓	
Soldiers Point	Thou Walla Sunset Retreat	Lot 2, DP 211909	✓	✓



Tanilba Bay	Forster Park	Lot: 7322 DP 1154060		✓
Tanilba Bay	Peace Park	Lot 1, DP 265326		✓
Taylors Beach	Taylors Beach Foreshore	Lot 637, DP 27626		✓
Wallalong	Bowthorne Park	Lot 1, DP 703382	✓	

## 6. RESPONSIBILITIES:

- 6.1 Overall review and evaluation of this policy lies with the Community Services Section Manager.
- 6.2 Key areas for implementation are delegated to the following positions:
  - a) Property & Facilities Coordinator – implement the policy, review and update the Licensing Terms and Conditions and supporting documents relating to this policy, issuing of licence approvals under delegation and internal and external relationship management.
  - b) Vibrant Places Coordinator – review and update the Temporary Events Toolkit and supporting documents relating to this policy, issue Temporary Events Licences and Market approvals under delegation.
  - c) Compliance Coordinator – review and update the Mobile Food Operators Guideline and supporting documents relating to this policy. Issue permit in accordance with the requirements of the NSW Food Act 2003 under delegation.
  - d) Community Contracts Officer prepare and administer licence documentation.
  - e) Environmental Health Team L, Compliance Coordinator, Vibrant Places Coordinator, Community and Engagement Coordinator, Community Assets Coordinator, Parks Programs Coordinator, Traffic Engineer, Civil Assets Manager, Corporate Risk Team and Native Title Manager – provide advice on the implementation of the policy relating to asset planning, traffic management and planning, scheduled improvements, liaison with sports councils, risk management, environmental health, safety and compliance requirements and liaison relating to the coordination of commercial operators on Council owned and managed land.

## 7. RELATED DOCUMENTS:

- 7.1 Port Stephens Council Setting of Fees and Charges Management Directive.
- 7.2 Port Stephens Council Commercial Operators Guideline.
- 7.3 Port Stephens Council Temporary Events Toolkit.
- 7.4 Port Stephens Council Commercial Operators Mobile Food Vehicle Guidelines.
- 7.5 Port Stephens Council Commercial Operators Application Form.
- 7.6 Liquor Act 2007 (NSW).

- 7.7 Port Stephens Council Mobile Food Vendor Permit (Council Land) Application Form.
- 7.8 Port Stephens Council Structures Application Form.
- 7.9 Port Stephens Council Plans of Management.
- 7.10 Local Environmental Plan (LEP) (NSW).
- 7.11 Roads Act 1993 and Roads Regulation 2008 (NSW).
- 7.12 Food Act 2003 (NSW).
- 7.13 Food Regulation 2015 (NSW).
- 7.14 Australia/NSW Zealand Food Standard Codes (Cth).
- 7.15 Protection of the Environment and Operations Act 1997(NSW).
- 7.16 Local Government Act 1993 (NSW).
- 7.17 Crown Lands Management Act 2016 (NSW).
- 7.18 Environmental Planning and Assessment Act 1979 (NSW).

## CONTROLLED DOCUMENT INFORMATION:

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<b>EDRMS container No.</b>	PSC2019-00384	<b>EDRMS record No.</b>	TBC
<b>Audience</b>	Existing and potential commercial operators, sports councils, Parks and Reserves 355c Committees, local business associations and their members, Destination Port Stephens and their members.		
<b>Process owner</b>	Community Services Section Manager		
<b>Author</b>	Community Services Section Manager		
<b>Review timeframe</b>	4 years	<b>Next review date</b>	TBC
<b>Adoption date</b>	11 June 2019		

## VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	11 June 2019	Contracts and Services Coordinator	New policy to incorporate all commercial activity on council owned or managed land covering commercial operators, temporary events, markets and mobile food vendors.	120

Version	Date	Author	Details	Minute No.
2	14 September 2021	Community Services Section Manager	<p>Updated policy into the new template including updating review timeframe in line with new guidelines.</p> <p>Updated policy wording into the new template.</p> <p>4. Definitions – added in new definition for Commercial Activity.</p> <p>6.2.1. Removed heading Contracts &amp; Services Coordinator and replaced with Community Contracts Coordinator.</p> <p>6.2.2. &amp; 6.2.5. Removed heading Tourism and Events Coordinator and replaced with Economic Development &amp; Tourism Coordinator.</p> <p>6.2.4. Removed heading – Property Officer Community Leasing and replaced with Community Contracts Officer</p> <p>Review Timeframe – changed from 2 to 3 years.</p>	237
3	TBC	Community Contracts Coordinator	<p>Reviewed and updated in the policy Template.</p> <p>2.3 Removed duplicate of 1.2.</p> <p>3.1 Reworded to better reflect purpose.</p> <p>5.1a – 5.1h Reworded to better reflect purpose.</p> <p>Table 1 Updated – removed number of sites per site to permitted use.</p> <p>6.1E Updated to reflect current positions.</p> <p>7.6, 7.7, 7.8, 7.9 updated to relevant documents.</p> <p>Amended review timeframe to 4 years in accordance with Council's</p>	

# Policy

Version	Date	Author	Details	Minute No.
			policy and management directive review process.	