

FILE NO: PSC2019-00384

TITLE: COMMERCIAL OPERATORS GUIDELINE

OWNER: COMMUNITY SERVICES SECTION MANAGER

1. PURPOSE:

- 1.1 The Commercial Operators Guideline (guideline) is the delivery mechanism for the Commercial Operators Policy (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.

2. CONTEXT/BACKGROUND:

- 2.1 This guideline is intended for use by persons applying for or operating under a commercial operators licence and Council officers responsible for the assessment and approval of licences for commercial operations on Council owned or managed land.

3. SCOPE:

- 3.1 The following conditions and processes are requirements of any person applying for or operating under a Commercial Operators Licence:

Application process

- a) Council shall conduct an expression of interest process and receive applications for a licence to conduct a commercial activity on Council owned or managed land every 5 years.
- b) Council shall advertise the expression of interest on the Council website and social media and as required to comply with relevant legislation.
- c) Applicants shall make a submission by lodging the Commercial Operators Application Form and all supporting documentation listed in application form.
- d) Applications may be received at other times of the year subject to supply of sites, nature of activity and 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:

- a) Applicant's details and qualifications.
- b) Experience and professionalism in the proposed activity.
- c) Capacity to deliver the proposed activity.

- d) Compliance with insurance requirements, work health and safety, public safety and environmental risks.
- e) Suitability of the proposed activity for the requested site.
- f) Implications of the proposed activity on existing businesses or activities in the same area.

Applicants are required to submit the following supporting documents:

- a) Certificates of accreditation including: business registration, ABN certification, personnel qualifications, certification from any relevant peak body, and supporting references.
- b) Details of any relevant insurance policies including, but not limited to, public liability cover of \$20m noting Port Stephens Council as an interested party
- c) A business plan that details the projected viability of the activity and the proposed timetable for use of the site and should also address the site, safety, public and environmental risks associated with your business.
- d) 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.
- e) A clear waste management plan ensuring the litter created from the operations of the business do not adversely impact on the surrounding environment or Council's existing waste management service in the surrounding area.
- f) Site map detailing traffic flow, exits, emergency evacuation points, medical officer/attention location, electrical connection, amenities, signage and any significant infrastructure
- g) A Working with Children Check for all personnel who will be involved with any child under the age of 18 years and a police check may be required at the applicant's expense upon request by Council.
- h) Applications shall be assessed by a review panel led by the Community Contracts Coordinator. The panel shall convene as required.
- i) 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 operations on Council owned and managed land.
- j) Successful applicants shall be notified by email by an authorised Council representative.

Licence Terms and Conditions

General Conditions

- a) 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.
- b) A licence shall be issued under the provisions of the Local Government Act 1993 and/or the Crown Lands Management Act 2016.

- c) 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.
- d) A licence does not constitute a relationship or partnership between Port Stephens Council and the Licensee.
- e) A licence is not transferable to any other party. Should an operator wish to sell their equipment & revoke their licence before termination date, the licence 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.
- f) Council may amend or revoke the conditions of a Licence at any time.
- g) A licence is not finalised until all fees and charges payable are received from the Applicant
- h) A licence shall be for a maximum single term of 5 years.
- i) A licence shall not be offered for a total maximum term of more than 5 years to any one Licensee. At the expiry of a licence 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.
- j) 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 policy and guidelines prior to entering into a longer term licence agreement.
- k) Council will set the term of the licence and advise the applicant. Council's decision will be final and not be open to negotiation.
- l) The policy provides a list of approved land and water based locations for suitable activities.
- m) Council as required may initiate a process to identify supplementary sites for commercial operators to activate a particular location.
- n) Where an existing commercial operator is trading on set days and times and where appropriate, Council at its sole discretion may consider other applications to operate from the same location. This will be based on appropriate location, the nature and size of operations, days of operation. i.e. operating on alternate weekends and community benefit.
- o) A licence does not provide the licensee with exclusive use of a site.
- p) A licence may be issued for up to 3 sites to any single licensee.
- q) A licence fee is payable per site.
- r) Where a licence has been issued under the policy it will not negate the need for development consent under the Environmental Planning and Assessment Act 1979, where required.
- s) 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.
- t) Licence fees are determined by the Setting Fees and Charges Management Directive. Fees and charges are subject to annual increase and change.

- u) 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.
- v) A fee or charge may only be reduced or waived by a resolution of Council.
- w) Any advertising signage must comply with the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 – Temporary Event Signs legislation. Any proposed signage being placed on Council land must be detailed in the application. Any signage that does not comply with the legislation or has not obtained approval may be removed by Council.
- x) 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.
- y) In the event of any third party injury or damage caused in the pursuit of the licenced 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.
- z) 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 authorised event.
- aa) 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 councils.
- bb) No compensation will be payable by Council in respect of any required relocation.
- cc) 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.
- dd) Emergency vehicle access to open space areas are to be kept clear at all times.
- ee) A Licensee shall not use Council's electricity or water supply unless approved in the Licence.
- ff) Any electrical equipment used must have been tested and tagged as per Work Cover Code of Practice within 6 months of use.
- gg) A Licensee shall comply with the parks rules signs at a site at all times.
- hh) Activities shall not be permitted on sites that are of cultural or environmental significance.
- ii) A site induction shall be conducted by a Council officer and the licensee prior to the commencement of the activity on a site.
- jj) An authorised Council officer may conduct a site inspection of a licenced site at any time.
- kk) 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.
- ll) 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.
- mm) Activities shall not be permitted within the following areas:
 - i. Within 10 meters from any neighbouring residential property, or as otherwise approved.
 - ii. Within 10 meters from any flagged area of beaches and/or as directed by the duty lifeguard.

- nn) Not-for-profit and charitable organisations are not exempt from the policy and guidelines. Not-For-Profit organisation licences will attract an annual licence fee. Licence fees will be determined at either current fees as found in Council's Fees and Charges or through a market rent review where rebates may be applied in accordance with the Community Leasing, Licensing and Tenancy Policy.
- oo) Privacy - Council is authorised to request personal information from the licensee which will be used by Council to assess the application and manage the licensee's occupation of the site. If the licensee does not provide the requested information, the 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 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.
- pp) Licenced activities involving, temporary events are to be referred to Council's 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 Toolkit.

Specific Conditions

Markets

Markets that operate in excess of four (4) times per year will be deemed as a commercial operator. Where markets are one off or operate less than four (4) times per year, operators are to refer to Council's Events Team and the Temporary Event Toolkit. The following conditions apply to any commercial operator markets.

- i. The number of stalls will be determined by site selection.
- ii. Pedestrian flow must not be impeded.
- iii. The market activity must not have a negative impact on the area.
- iv. The market activity must not cause a significant increase in traffic and congestion.
- v. The market activity must include parking options that do not impact on residential areas.
- vi. 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 considered as a breach and result in termination of licence.
- vii. Additional insurances may be required for vehicles or apparatus entering or operating on Council land.

Mobile Food or Retail Business

A mobile food or retail business is defined as a company or individual that operates a mobile food or other retail vehicle, cart or stall. 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 owned or managed land.

The following conditions apply to any mobile food or retail business operating on Council Land:

- a) Mobile food operators must ensure that the design, construction and operation of their mobile food vehicle meets the NSW Food Authority Guidelines for Mobile Food Vending Vehicles (NSW/FA/FI055/1302). Vehicles must be of a size, design and construction appropriate for the type and scale of food being prepared and sold.
- b) Operators must not sell or hawk alcohol, cigarettes or other related items.
- c) The location and operation must not have a detrimental impact on the safety of pedestrians and other road users.
- d) Operators must comply with parking restrictions and applicable road and traffic rules.
- e) Operators must not place out tables, chairs or other seating apparatus at any time unless approved by Council.
- f) Mobile food or retail operators must not trade within a 350 meter radius of an existing trading land-based food business or competitive retail outlet or within 50m of another approved commercial operator unless otherwise approved by the review panel through the application process. This minimum distance requirement is measured in a straight line from the closest point of the operator (location) to the main entrance of a food and drink premises, kiosk or other commercial operator. The only exemption of the 350m radius is where a commercial operator is operating within the confines of Port Stephens Council Holiday Parks.
- g) Operators are permitted to trade between 5am and 10pm unless otherwise stated in the approval. Council may also limit operating hours to particular days or dates or shorter trading times if determined as appropriate.
- h) Operators must not trade on any street deemed by Council as being unsuitable by virtue of its location, traffic condition or other safety issue.
- i) Operators must only occupy a permitted selling location for such a period of time whilst engaged in the actual setting up and serving of a customer and shall after serving all customers move on.
- j) Additional insurances may be required for vehicles or apparatus entering or operating on Council land.

Land Based Activities

Examples of land based activities include, but are not limited to: personal fitness trainers, group fitness classes, bicycle hire, dog obedience schools etc.

The following conditions apply to commercial operator land based activities:

- a) Where field lighting is requested, the licensee will pay an agreed fee in accordance with Councils Fees & Charges.

- b) A licensee shall mark their licenced area using witches hats or other hi visibility markers as required.
- c) No excavation of surface soils to be carried out without permission of the responsible Council officer. This includes driving pegs or stakes into the ground.
- d) Additional insurances may be required for vehicles or apparatus entering or operating on Council land.

Water Based Actives

Activities that are conducted mostly in waterways but require access to the waterway from Council owned and managed land are deemed as water based activities. 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.

The following conditions apply to commercial operator water based activities:

- a) In addition to any Council approvals, your operation may also require approvals from external service providers. It is the operator's responsibility to apply for and provide evidence of:
 - i. Marine Park Permit.
 - ii. Aquatic Licence.
 - iii. Additional insurances for marine vessels or water craft.
 - iv. Any other documentation requested by Council relevant to your operation.

4. DEFINITIONS:

4.1 An outline of the key definitions of terms included in the guideline.

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 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 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 4 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 4 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 The aim of the guideline is to support the policy by providing a clear and transparent leasing and licensing framework to ensure fair and equitable negotiations and outcomes for all commercial operators. By ensuring a consistent approach to the approval and management of commercial operators on Council owned or managed land, Council can facilitate the economic and

social benefits across the community whilst also ensuring a diversity of quality tenants complimentary to each location.

6. RESPONSIBILITIES:

- 6.1 Overall review and evaluation of this guideline 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) Environmental Health and 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 Leader, 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
- 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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Author	Contracts and Services Coordinator		
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VERSION HISTORY:

Version	Date	Author	Details
1	22/2/2021	Contracts and Services Coordinator	Creation of guideline.
2	5/2/2025	Properties & Facilities Coordinator	Updated to new guideline template. Reviewed and updated in line with the Commercial Operators Policy.