

10.2. Commercial and Group Use of Open Space Policy

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ENDORSED BY	Marcelo Occhiuzzi, Director Planning and Environment
ATTACHMENTS	1. Commercial and Group Use of Public Open Space Policy [10.2.1 - 6 pages] 2. Conditions of use for Commercial Activities in Public Open Space [10.2.2 - 3 pages]
CSP LINK	Outcome 3 - An active community with space for everyone to exercise and enjoy the outdoors O2. Maximise the capacity of our existing open spaces and recreational facilities O4. Manage our open space and recreational facilities to ensure that they are well maintained and shared Outcome 8 - An effective, accountable and sustainable Council that serves the community G2. Put community needs at the core of everything we do and deliver excellent customer service G5. Exercise regulatory compliance responsibilities diligently to protect the environment and support our community

PURPOSE:

The purpose of this report is to seek Council's endorsement of the draft Commercial and Group Use of Public Open Space Policy for the purposes of publicly exhibiting the document to seek community feedback.

EXECUTIVE SUMMARY:

- Council currently has no formalised policies in place to effectively manage and balance the use of our limited public open space areas between commercial operators, large groups, and casual users.
- There are currently no formal courses of action available to staff, nor rules that can be enforced to ensure that these areas are equitably used and not misused or damaged, nor that reasonable commercial arrangements in place for those who use public open space for financial gain.
- Council has received many complaints in recent years regarding commercial enterprises pursuing their services and activities in Council's public open space areas. These activities require services from Council in the form of management of and response to complaints, maintenance and repair of grounds / surfaces, access to and use of amenities, and management of community expectations regarding equitable use and access to the limited areas of public open space in the Local Government Area.

- This report identifies the need for the introduction of a policy which clearly articulates Council's expectations regarding the sustainable use of Council's limited open space areas, the balance between commercial, group, and casual users, and standards and conditions of use.
- A fee structure should be considered, to ensure a reasonable return towards the ongoing maintenance and upkeep of such public assets.

RECOMMENDATION:

1. THAT Council endorse the attached draft Commercial and Group Use of Public Open Space Policy.

2. THAT the draft policy be placed on public exhibition for comment in accordance with the *North Sydney Community Engagement Strategy*.

3. THAT the results of the public exhibition be presented to Council along with a schedule of recommended fees that should be associated with application of the policy.

Background

Council's Open Space and Recreation Strategy identified that the North Sydney Local Government Area (LGA) has a significant deficit of public open space. The limited areas available serve a variety and diversity of demands which places significant pressure on its users as well as Council, as the asset manager.

In recent years, Council has received various complaints about fitness trainers, kayak users, dog walkers, organised commercial picnics, and other uses in open space areas. Complaints range from "hogging" space, ropes tied to assets and trees for resistance exercises, loud music, monopolising pathways and stairs, inappropriate use of the war memorial, blocking off parking spaces, and other issues.

Use of our public spaces, especially the scenic foreshores, for commercial activities like weddings and commercial picnics, has increased. Such uses tend to privatise and commercialise our limited areas of public space.

When Council's Rangers respond to complaints associated with the use of public space as described above, they have few rules to back up any decision they consider necessary to address the complaint or bring about change to the behaviour of the complaint subject.

The neighbouring Councils of Mosman, Willoughby, and Lane Cove all charge fees for commercial activities such as those mentioned above and provide a permit to the business to undertake that activity. The permit requires the holder to comply with stated conditions and non-compliance is managed by the relevant Council's Ranger teams; cancellation of the permit is an available remedy for continued non-compliance.

Historically, North Sydney Council has not required approval nor charged fees to enterprises or businesses using parks and open space for commercial gain and as such, has attracted many outdoors-based commercial activities on the lower north shore.

These broad issues were identified in the *Open Space and Recreation Strategy* adopted by Council on 10 February 2025. The relevant actions endorsed by Council are:

- *Action 4.2 - Prepare a policy to ensure that events and large gatherings in public open space, particularly in prime harbour foreshore parks, do not undermine the condition of our parks or inhibit general recreational use by the community. The policy shall also include consideration of fees and charges.*
- *Action 4.3 - Prepare a policy for use of public open space in North Sydney by personal trainers.*

Report

Council currently has a very accommodating approach to the management of its public open space areas. Much of our open space draws diverse users from within and outside North Sydney. At present, Council allows up to 60 people to use a public open space without approval. This has, at times, led to issues regarding the types of uses, over-use, exclusive use,

and commercialisation of open space. These issues can lead to community tension and complaints.

Council's open space areas are limited and, at times, are being exploited, often for commercial return and to the detriment of the enjoyment and amenity of other casual users. Nowhere is this more evident than with the use of our iconic foreshore areas which can be highly commercialised with weddings, organised picnics, and other "for profit" use.

The draft Policy (Attachment 1 to this report) has been developed by staff in response to Council's adoption of the Open Space and Recreation Strategy, and the difficulties that the current policy vacuum has created.

The commercial use of public land should balance the interests of private enterprises, the public good, and environmental sustainability, and ensure that ongoing maintenance is accommodated. The principles that have guided the preparation of the draft Policy are listed below.

- *Prioritisation of Public Needs:* public needs are prioritised;
- *Sustainable Land Use:* the long-term public use of the land should not be compromised by the introduction of fees and permits;
- *Income Generation for Cost Offsetting:* income generated should primarily be used to offset costs related to land use and its administration, acknowledging the commercialisation of public land, rather than as a tool for general fund-raising;
- *Consistency with Local Government Practices:* the adopted approach should align reasonably with practices followed by neighbouring Councils, and the sector more broadly;
- *Legal and Administrative Compliance:* actions will comply with legal and administrative requirements.
- *Efficiency in Administration and Compliance:* the processes of administration and compliance are to be efficient and workable.

The key elements of the draft Policy are:

- the defined user groups requiring approval are proposed to include:
 - any group which has more than 21 people attending a particular event.
60 people are currently allowed which is very difficult to manage as there are no current distinctions between organised/commercial events and community groups using open space areas;
 - commercial operators; and
 - educational establishments that use public open spaces for operational purposes.
- the requirement to gain approvals and/or fees for the organised use (including schools) or commercial use of public open spaces (as defined by clause 3.4 of the draft policy).
- the policy excludes sporting groups' and associations' use of parks and fields with prior or other formalised arrangements with Council.
- users of Council's open spaces that fall within the draft Policy will be required to gain approval and comply with the conditions of that approval.

Detailed operational conditions are attached to this report (Attachment 2). They seek to ensure that users and operators maintain certain minimum standards of care and responsibility when using open space areas.

Consideration of the following implementation matters would need to be more fully explored when a policy position has been endorsed:

- communication and marketing;
- signage;
- enforcement; and
- administration.

These are currently being considered by Council staff.

Neighbouring Councils Mosman, Willoughby, and Lane Cove all require certain approvals/permits and charge fees to most commercial enterprises using their assets. This stance is likely to be attracting certain operators to the North Sydney Local Government Area (due to its accommodating approach to these matters), which ironically also suffers from a distinct deficit of open space as highlighted in the *Open Space and Recreation Strategy*.

Options

Council has the following options in relation to this matter:

1. Do nothing/take no action
2. Implement the Commercial and Group Use of Public Open Space Policy and associated Conditions of Use together with a fee structure (to be developed after community consultation).

These options are assessed in the table below.

Option	Finance/Resourcing	Risk/Opportunity	Consultation
1.	No changes required if status quo is kept.	Business enterprises are using Council assets to gain revenue without contributing to care and maintenance of the asset at a cost for maintenance that is borne by the wider community. Council continues to receive complaints about the commercial use of our open space areas. No income is derived from the commercialisation of our limited and highly valued areas of open	None required if no action is taken.

		space, which is at odds with our LG neighbours.	
2.	Some changes to the booking process will be required as fees will be collected and permits issued. A slight increase in the administrative management of this system will be required unless an on-line booking system can be procured. Signage will be required which will represent a modest cost.	There is likely to be movement away from the North Sydney area by those based in nearby LGAs who have taken the opportunity to operate in a free environment. This change will allow a significant improvement in the regulatory management of service providers using public open spaces through the application of a more regulated environment. Modest increase in income.	Community consultation will be required

Option 2 is recommended for the following reasons:

- It provides the tools to enable the enforcement of a more balanced and sustainable use of our open space areas.
- It addresses complaints from the community that businesses are using Council assets while not contributing to Council costs of maintenance.
- It provides for a modest and unrealised revenue stream.
- It provides a more consistent approach to the use of open space across local government boundaries.

Consultation requirements

Community engagement will be undertaken in accordance with Council's *Community Engagement Protocol*.

The engagement process will include:

- a clear and plain English summary of the proposed Policy and its likely implications;
- consultation with Council's precinct committees;
- content on Council's Yoursay web site content;
- Social media outreach; and
- e-newsletter content.

After the consultation period has been completed, a wider information and education campaign will be undertaken before any changes are implemented.

Financial/Resource Implications

All signs within parks and reserves will need to have a single line statement added that “All commercial activities in this reserve require the approval of North Sydney Council”. Cost for this is minimal.

The regulatory management of this change will not require any further investment as Rangers currently patrol all parks and reserves.

Legislation

The following legislation is relevant in managing the use of our open space areas:

- Local Government Act, 1993
- Public Spaces (Unattended Property) Act, 2021
- Protection of the Environment Operations Act, 1997
- Environmental Planning and Assessment Act, 1979.

COMMERCIAL AND GROUP USE OF PUBLIC OPEN SPACE

ADOPTED/READOPTED:

xxx

NEXT REVIEW:

2028

DOCUMENT TYPE:

Council Policy

POLICY OWNER:

Director Corporate Services

POLICY REFERENCE:

CORP/INT_POL_ECM**xxxxxxx**



1. PURPOSE

1.1 The purpose of this Policy is to:

- ensure the sustainable use of public open space while providing equitable access for general community use and commercial and organised activities
- reduce and manage the potential impact of commercial and organized activities on public assets
- encourage and support the utilisation of public open space for health and recreational pursuits

2. SCOPE

2.1 This Policy applies to:

- all public open space in the North Sydney Local Government Area
- the users of public open spaces who deliver products or services to the public for payment.
- Educational institutions that use public open spaces for operational purposes, excluding uses approved under the Sporting Facilities Booking Policy and emergency evacuation drills
- any user undertaking any commercial activity as defined in this policy, regardless of the number of participants,
- any private activity that requires exclusive use of a public open space, or where the number of participants exceed 21 persons.

2.2 This Policy does not apply to:

- Sports field bookings as covered by Council's Sporting Facilities Booking Policy
- Public events that may be attended by any member of the community and are covered by Council's Event's policy
- Filming as covered by Council's 'Filming within Council Area' Policy

3. DEFINITIONS

TERM	DEFINITION
3.1 Authorised Officer	Council Rangers and Parking Officers
3.2 Accredited user	A person, business or educational establishment authorised by the issuance of a permit by North Sydney Council to undertake an ongoing or repeated activity in Council's public open spaces.
3.3 Approved user	A person, business or educational establishment authorised by North Sydney Council to use public open space through a single use booking

3.4 Commercial Activities.	Includes all activities that require payment from customers or users to deliver their product or service. This includes: 3.4.1 fitness training (personal and group). 3.4.2 commercial aquatic activities including kayak hire and tours 3.4.3 picnics, celebrations and events organised by commercial providers 3.4.4 professional dog walking. 3.4.5 sale or hire of goods or services 3.4.6 promotions and advertising 3.4.7 any activities not mentioned above that are carried out in a public open space for payment
3.5 Private activities	Includes gatherings of persons with no services provided by commercial operators.
3.6 Public open space	Includes all land that is provided for the use of the community and administered through its representatives in government. Specifically, 'public open space' includes land designated as public parks and reserves, sportsgrounds, beaches, swimming pools, cycleways, shared pathways and footpaths within public parks/open spaces that are within the ownership of North Sydney Council or Crown Land vested in the care and control of North Sydney Council.
3.7 Fee or fees	An amount payable to North Sydney Council prior to the activity commencing.
3.8 Group	Any gathering of people where numbers exceed 21 individuals.
3.9 Educational establishment	Any non-government primary, secondary, tertiary or vocational education provider

4. PROVISIONS

- a) The use of public open space for any commercial activities or private activities within the scope of this policy requires written approval from Council.
- b) Use of public open space areas for commercial activities and private activities will not be exclusive, unless specifically referenced in the terms and conditions of the approval.
- c) Marquees, tents, jumping castles, amplified sound, confetti, uncooked rice, synthetic flower petals, coloured powders and drones are not permitted.
- d) North Sydney Council has discretion to refuse an application for the use public open space under this policy.
- e) An "Approved" or "Accredited" user must comply with the "Terms and Conditions of Use" for their relevant activity.
- a) Fees for the use of Public Open Space are payable for the activity in accordance with Council's adopted Fees and Charges schedule.

- b) Breaches of this policy or the "Conditions of Use" may result in the cancellation of any ability to undertake the activity in North Sydney Council public open spaces areas. Continued operation after withdrawal of authorisation will result in fines being issued by an authorised officer under the Local Government Act 1993.
- c) Persons carrying out commercial activities without authorisation from North Sydney Council may be fined and/ or prohibited from future use of North Sydney Council public open spaces for their activity.

5. ROLES & RESPONSIBILITIES

RESPONSIBLE	ACCOUNTABLE
5.1 Responsible Officer	The Service Unit Manager Public Presentation is the responsible officer for this Policy and is accountable for its currency and communication.
5.2 Mayor and Councillors	Endorse the Policy and ensure that the Community Strategic Plan/Appropriate Informing Strategy align with the Policy.
5.3 Chief Executive Officer	Council has delegated the Chief Executive Officer the authority to exercise the responsibilities detailed in this Policy.
5.4 Executive Leadership Team	ELT are responsible for ensuring their Divisions adhere to the requirements of this Policy and providing guidance in respect of the strategic objectives of the Policy within their Division and the organisation.
5.5 Employees	Employees must adhere to the requirements of this Policy and operate within its authorities.
5.6 Enforcement Officers	Council Authorised Officers (including Rangers) will monitor all public open spaces to ensure commercial users, schools and groups are approved or accredited for the space in which they are conducting their activity.

6. RELATED DOCUMENTS

DOCUMENT	LOCATION
6.1 Policies	Code of Conduct Outdoor Fitness training https://www.northsydney.nsw.gov.au/downloads/download/190/code-of-conduct---outdoor-fitness-training Fees and Charges https://portal.lgsolutions.net.au/Fees/Public/North%20Sydney%20Council
6.2 Plan published on website	Open Space and Recreation Asset Management Plan https://www.northsydney.nsw.gov.au/downloads/download/247/open-space-and-recreation-asset-management-plan North Sydney Community Strategic Plan 2025 – 2035 https://www.northsydney.nsw.gov.au/downloads/download/233/community-strategic-plan

	Plans of Management (for relevant Park or Reserve)
6.3 Strategy	Open Space and Recreation Strategy – Strategic Direction 4, (4.1, 4.2, 4.3, 4.4). https://www.northsydney.nsw.gov.au/downloads/file/3904/open-space
6.4 Guideline document	Open Space and Recreation Strategy – Strategic Direction 4, Conditions of Use for Commercial Activities in Public Open Space

7. RELATED LEGISLATION AND GUIDANCE

LEGISLATION/GUIDANCE	NOTES
7.1 Legislation	Local Government Act 1993 Public Spaces (Unattended Property) Act 2021 Protection of the Environment Operations Act 1997 Environmental Planning and Assessment Act 1979 Crown Lands Management Act 2016

8. VERSION HISTORY

Version	Date Approved	Approved by	Resolution No.	Review Date
1		Council		



CONDITIONS OF USE FOR COMMERCIAL ACTIVITIES IN PUBLIC OPEN SPACE

[REF]

Page 1 of 3

1. GENERAL CONDITIONS OF USE

- 1.1 These "General Conditions of Use" are applicable to all accredited and approved users of Public Open Space and are included with SPECIAL CONDITIONS as listed below.
- 1.2 Failure to comply with these Conditions of Use may result in termination of accreditation or approval. Penalties may also be applied for failure to comply with these conditions.
- 1.3 All applicants required to pay a fee for their activity, as listed in Council's "Use of Public Open Space for Commercial Activities" Policy, must have a current \$20,000,000 public liability insurance cover that is current for the time of the booking. Non-commercial bookings made by individuals (not companies) can pay a fee, as stated in Council's Fees and Charges, to join Council's cover.
- 1.4 The area used must be left clean and all rubbish removed, and the ground returned to the standard that it was prior to the event. Should Council be required to clean or reinstate an area, the costs of that action will be deducted from the bond held.
- 1.5 The use of amplified sound or use of microphones is not permitted (music or voice) for any function.
- 1.6 The soliciting of funds, sale of merchandise, advertising of goods or services (including use of banners, A-frame signs etc), or distribution of printed materials is prohibited.
- 1.7 Use of objects that mark out an area to imply exclusive use are not permitted.
- 1.8 Functions must finish prior to 10 PM.
- 1.9 Vehicles (including wedding vehicles and caterers' vehicles) are not permitted to be taken into or driven into any Council parks or reserves.
- 1.10 Horses and ponies are permitted in some Council parks or reserves.
- 1.11 Areas that have been booked are not permitted to be roped off nor are hired with exclusive rights.

Adopted [inset date]

2. SPECIAL CONDITIONS FOR FITNESS TRAINERS

- 2.1 The following areas are **not** to be utilised for outdoor fitness training:
- 2.1.1 Areas of high pedestrian activity e.g. shopping strips, footpaths etc.
 - 2.1.2 Facilities and areas booked by Council and other user groups for programs and events e.g. youth programs, corporate events and birthday parties.
 - 2.1.3 Within marked designated sports fields on sportsgrounds (unless conducted with an approved booking).
 - 2.1.4 Areas where training activities have a negative impact on neighbouring properties and other park users e.g. intrusive noise, aggressive language etc.
 - 2.1.5 Within 50m of residential properties before 7 AM.
 - 2.1.6 Within 20m of War Memorials, monuments and cemeteries.
 - 2.1.7 Within 10m of children's playgrounds.
 - 2.1.8 Within areas zoned as 'Bushland' unless on formed asphalt or concrete footpaths.
 - 2.1.9 Areas closed for renovation or upgrading.
 - 2.1.10 Park structures and furniture (e.g. buildings, shelters, fountains, walls, seats, picnic tables, signs, bubblers), trees, plants and garden beds etc must not be used for training or resistance training.
- 2.2 Equipment of any type must not be left unattended in public open space. Such equipment may be impounded by Council Rangers and fees applied for the release of that equipment.
- 2.3 Aggressive, intimidating or noisy training activities including military style squad training is prohibited.
- 2.4 Activities necessitating the use of large sized specialist resistance and load bearing training equipment such as bars or benches, logs, tyres, heavy ropes or other large pieces of equipment is not permitted.

3. SPECIAL CONDITIONS FOR PROFESSIONAL DOG WALKERS

- 3.1 All dog walkers must adhere to the requirements stated in the Companion Animals Act 1998 when in public spaces.
- 3.2 Each walker must not walk more than 4 dogs at the one time.
- 3.3 Faeces of any dogs being walked by a professional dog walker must be removed immediately by that dog walker.
- 3.4 Dogs being walked by professional dog walkers should not be allowed to run at, charge at, show aggression towards other dogs or people in the areas where they are walked off-lead.

Adopted [inset date]