

Upper Macquarie County Council

POLICY: UMCC_2019/09

MOTOR VEHICLE POLICY

Adopted by: Upper Macquarie County Council

Date: 8th February 2019

Review Date: Every 4 years or as required

Next Due: 8th February 2023

Policy Document Approved by:

David Young

David Young
General Manager

Date: 11th February 2019

1. POLICY PURPOSE

The purpose of this policy is to establish rules and guidelines for the use of Council's vehicle fleet, including any private use.

2. SCOPE OF POLICY

This policy is applicable to any vehicle owned (or leased) by the Council, and any employee or authorised person using such a vehicle.

3. POLICY CONTEXT

Upper Macquarie County Council requires a fleet of suitable commercial motor vehicles in order to undertake its core business of weed biosecurity inspections and associated weed control activities. The Council is committed to providing appropriate transport to enable employees to complete their duties properly. This policy provides the framework so that Council can maximise the effective use of its vehicle resources without compromising the safe and efficient execution of employees' duties.

4. VEHICLE PROCUREMENT

Council will procure vehicles by lease or purchase, and will replace those vehicles from time to time, as deemed most cost effective on a rotation that takes into account the purchase prices and resale values as well as any relevant legal, contractual and operational matters that may apply at any given time.

Generally only appropriate models of commercial 4WD dual-cab utility vehicles with 1 tonne or greater load capacity, that are fit for Council work purposes, will be included in the Council fleet. Standard equipment for such vehicles will include air-conditioning, driver's side airbag, power steering, and ABS brakes. Extras are subject to approval from the General Manager on a case-by-case basis and would normally include a tow-bar, tray back, winch, hands-free phone capability, and bull-bar.

Sedans and Wagons should not normally be required however, any new vehicle will be of a make and model determined from time to time by the General Manager (and approved in the Council's plant replacement program) as being the most appropriate vehicle for delivery of Council services at the time taking into account work requirements, taxation laws, capital cost and expected residual value.

5. PRIVATE USE OF VEHICLES

Council does not permit *'full private use'* of any vehicle in the fleet as all vehicles are designed as commercial vehicles and are primarily for work purposes. Consequently, when any private use of such a vehicle exceeds the FBT exemption limits set out by the ATO for Car fringe benefits, any right to use the vehicle for private purposes is considered a residual benefit for taxation purposes.

Council does permit limited private use of council vehicles subject to strict conditions and according to the terms of a signed agreement and completion of any declarations required by Council.

Limited private use is either (a) 'Limited Commuter Use', or (b) 'Limited After-Hours Use', and without exception, is only permitted on a *discretionary basis* and cannot be provided as a *condition of employment*.

The terms and conditions of limited private use will reflect the current legal requirements of the Australian Tax Office in relation to Fringe Benefits Tax (FBT) including residual FBT obligations, and further will be in accordance with the principles set out by the LGNSW Guidelines for Provision Of Cars 2018 in relation to the council recovering the full private use component of the annual operating cost for use of the subject vehicles.

Consistent with the provisions of Clause 16B of The Local Government State Award (2017) where a vehicle is provided to an employee for limited private use on a discretionary basis, the council will generally give a minimum of six (6) months written notice of termination of a limited private use arrangement. HOWEVER, council retains the right to terminate or suspend access to a limited private use vehicle immediately on termination of employment, loss of licence, serious breach of the limited private use agreement (refer to Clause 14 herein) or if the employee accepts a new position with the council that does not include access to a vehicle. Council may also terminate or suspend a limited private use vehicle arrangement where an employee is demoted, for the period of demotion (with two weeks notice).

5. VEHICLE USE

Council employees (and where permitted any other persons) are only authorised to drive a Council vehicle where they have a current NSW unrestricted Drivers Licence, and then only in any the following relevant circumstances:

1. Where a vehicle is allocated to an employee for the time being to allow them to complete the responsibilities of their position; or
2. Where a vehicle is required, and made temporarily available to an employee to allow them to complete the responsibilities of their position, or
3. Where the employee has entered into an agreement for the limited private use of a vehicle - on either a Limited Commuter Use arrangement or a Limited After-Hours Use arrangement as applicable.

Each Council vehicle remains the property of the Council at all times and is to be made available for use by Council (including other Council employees or agents of the Council approved by the General manager) during working hours. Council's requirements for use of the vehicle by employees for Council activities will have priority over any private use of the vehicle, during the time when the employee is rostered to work. If an employee has a Limited After-Hours Use arrangement with Council then the above requirement does not apply when the employee is on approved leave.

The employee (and any other authorised person) driving a Council vehicle shall comply with the instructions and rules for the general operation of the vehicle from time-to-time given by the General Manager or other Council Officers authorised to give instructions pertaining to the use of the vehicle by an employee or other authorised driver.

Council vehicles are not to be driven outside the State of NSW. In exceptional circumstances permission to drive outside the State of NSW may be given by the General Manager.

5. ALLOCATION OF VEHICLES

Generally a Council vehicle will be allocated to an individual employee and remain with that employee for an extended period where a core part of their duties involves travelling throughout the County area of operations.

Notwithstanding, for operational or any other reasons the Council may provide another vehicle, in place of the previously allocated vehicle at any time, and where applicable any such replacement vehicle shall be deemed to be the vehicle covered by any *Limited Commuter Use* or *Limited After-Hours Use arrangement*.

6. SURRENDER OF VEHICLES

A Council vehicle will be traded in, returned to the lessor, and or otherwise replaced as and when required at the sole discretion of the Council. Notwithstanding Councils normal procurement practices, a new vehicle or alternative may or may not be one similar to that traded, as Council's funding capacity or requirements for the vehicle may specifically alter or working conditions of employees may alter. Vehicles will in all cases be replaced or not replaced, or reallocated in accordance with Council's prevailing circumstances at the time.

7. INSURANCE & EXCESSES

The Council shall take out comprehensive insurance cover on each vehicle, including covering limited private use of the vehicle by an employee. If the employee or any person using the vehicle with his or her permission breaches any of the conditions of the insurance policy of Council, including drug use or consumption of alcohol beyond the prescribed limit, and Council's insurance company should fail or refuse to meet the claim for the accident, the employee shall be liable to Council for

1. Reimbursement of the cost of repair of the vehicle (and any other vehicle for which Council would be liable for repair), and
2. The cost for any other damage suffered by Council as a result of the accident not recoverable from the insurance company by virtue of the breach of the condition of the insurance policy

If an employee on a *Limited After-Hours Use* arrangement or any person using the vehicle with his or her permission has an accident that requires an insurance claim, then **[only when the accident occurs during non-work hours]** the employee will be responsible for paying the excess to the full value as required under the Councils Motor Vehicle Insurance Policy from time to time. If the accident proves to be the fault of a third party and the excess is subsequently refunded then it will be returned to the employee.

Failure by an employee to pay any expense required under this section, in a timely manner, is a fundamental breach of this policy.

8. PENALTIES, DEFECTS OR DAMAGE

The employee to which a vehicle is allocated or the driver responsible for the vehicle at the time any damage occurred or defect is noticed, shall promptly notify Council in writing of any defects or damage to the vehicle. A written memorandum to that effect shall be submitted to the Biosecurity Administration Officer for the attention of the General Manager

All infringement notices penalties are the responsibility of the employee to whom the vehicle was allocated or the driver responsible for the vehicle at the time of the infringement. It is the responsibility of the employee to whom a vehicle is allocated to nominate the driver responsible for the vehicle at the time of an infringement if they believe they are not the responsible driver.

Failure by an employee to pay any infringement notice penalty in a timely manner is considered a fundamental breach of this policy and also unsatisfactory conduct for the purposes of the NSW Local Government (State) Award (2017).

9. ACCIDENT RESPONSE

If an employee or other authorised person driving a Council vehicle is involved in an accident the following requirements must be followed:-:

1. The driver must not admit liability.
2. The driver should stop and lend assistance to injured persons, if possible. Call for an Ambulance and Police, if necessary.
3. The driver should, in accordance with the Motor Traffic Act, report any Accident to the Police within 24 hours. This can be done by either presenting at the police station or phoning the Police Assistance Line on 131 444.
4. The driver should obtain all particulars. Record the names of all persons involved including that of the Police Officer, position of vehicles involved, names and addresses of individuals involved, witnesses and any action taken.
5. The driver should (as soon as possible) report any accident to Council's Biosecurity Administration Officer who will then report the incident to the person within Council responsible for organisation of claims and repairs.
6. If a member of the public is injured/known to be injured, the driver should (as soon as possible) advise the General Manager.

10. VEHICLE EXPENSES, REPAIR AND MAINTENANCE

Council will fully maintain all vehicles in its vehicle fleet and is responsible for all vehicle running-expenses other than those outlined in Section 12 and 13 of this policy relating to commuter and limited private use of a Council vehicle.

The employee will be provided with a Fuel Card for the purchase of petrol and oil only. Use of the Fuel Card is subject to compliance with any: conditions of card use, logbook (e.g. for FBT purposes) or fuel purchase information requirements (e.g. providing odometer readings at each purchase etc) set by the General Manager from time to time.

The employee responsible for a council vehicle must keep the vehicle clean and tidy, in presentable condition, and in good repair and condition. This requires the employee to ensure that the vehicle is regularly cleaned and washed, and that regular vehicle safety and drivability checks are completed as required.

The employee allocated a vehicle and any other driver responsible for the vehicle for the time being shall comply with the warranty / guarantee requirements of the manufacturer of the vehicle.

Scheduled maintenance of a vehicle must be undertaken in a timely manner in accordance with the manufacturer's logbook. All vehicle servicing is to be organised in accordance with council procurement requirements.

11. WORK-ONLY COUNCIL VEHICLE

Where a Council vehicle is not allocated to a particular employee in order to undertake their normal duties, such vehicle will remain garaged in the Council yard at all time when it is not being used for work purposes.

Where a vehicle is required by a particular employee in order to undertake their normal duties, but it is not the subject of a limited private use agreement, then such vehicle will remain garaged in the Council yard at all time when it is not being used for work purposes.

12. LIMITED-USE COMMUTING COUNCIL VEHICLE

Employees that require a Council vehicle in order to undertake their normal inspectorial duties AND agree to commence work in the field most of the time as required by their work program, will be afforded the opportunity to take up a discretionary employment benefit that involves entering into a **Limited Commuter** private use arrangement with Council which permits use of the allocated vehicle for commuter transport to and from the daily work site (which is usually the field and sometimes the Council Offices).

If an employee does not want to enter into a *Limited Commuter* private use arrangement with Council then the vehicle will become a **Work-Only** vehicle and be garaged in the Council yard during non-work hours and the employee will need to make their own commuter arrangements to start and finish work each day at the Council Offices.

A Limited Commuter private use arrangement for a Council vehicle means that the vehicle cannot - for any reason - be used outside the prescribed spread of working and commuter hours on work days nor can it be used by a any person other than the assigned employee or other work-related person approved by the General Manager

During the prescribed spread of working and commuter hours on work days (as set out in the agreement) private or any other use of the vehicle is limited strictly to (a) travel between home and work, (b) travel in order to undertake the normal duties of the employee, and (c) non-work related (private) use within that time period that is minor, infrequent and irregular (e.g. shopping at lunch-time, stopping off to get something on the way home). At all times such non-work private travel must be incidental to travel in the course of duties of employment rather than compromising those duties.

A Limited Commuter private use arrangement is only available for a vehicle that is exempt from FBT. Currently this is a vehicle that it is not primarily designed as a passenger vehicle and is a commercial vehicle with a carrying capacity of more than one

tonne. The Limited Commuter private use arrangement **does not** attract the payment of a fee to Council - provided the employee afforded the discretionary benefit keeps the vehicle presentable, clean and tidy condition at his or her own expense.

Failure by an employee to pay any infringement notice penalty in a timely manner is considered a fundamental breach of this policy and also unsatisfactory conduct for the purposes of the NSW Local Government (State) Award (2017).

13. LIMITED-USE AFTER-HOURS COUNCIL VEHICLE

Employees that require a Council vehicle in order to undertake their normal inspectorial duties and also agree to commence work in the field most of the time as required by their work program, AND meet a satisfactory performance standard each year through an annual performance review, will be afforded the opportunity to take up a discretionary employment benefit that involves entering into a **Limited After-Hours** private use arrangement with Council.

A **Limited After-Hours** private use arrangement for a Council vehicle means that the vehicle can, within limits set out in the agreement, be used both within and outside the prescribed spread of working and commuter hours on work days and on weekends, and approved periods of annual leave. [Note: Use of a council vehicle during periods of Long Service Leave is subject to vehicle availability and prior approval from the General Manager]

During the prescribed spread of working and commuter hours on work days (as set out in the agreement) private or any other use of the vehicle is limited strictly to (a) travel between home and work, (b) travel in order to undertake the normal duties of the employee, and (c) non-work related private use within that time period that is minor, infrequent and irregular (e.g. shopping at lunch-time, stopping off to get something on the way home). At all times such non-work private travel must be incidental to travel in the course of duties of employment rather than compromising those duties. At all times outside the prescribed spread of working and commuter hours on work days, weekends, and public holidays, as well as when on approved leave, the vehicle may be used for limited private purposes as set out in this policy and the agreement.

A **Limited After-Hours** private use arrangement for a Council vehicle is only available for a vehicle that is exempt from FBT. Currently this is a vehicle that it is not primarily designed as a passenger vehicle and is a commercial vehicle with a carrying capacity of more than one tonne.

The **Limited After-Hours** private use arrangement **does** attract the payment of a private use fee. Employees afforded the discretionary benefit must also make sure the vehicle is kept presentable, clean and tidy at their own expense.

A private use agreement fee will be calculated and payable to Council on the basis of extinguishing any FBT liability by way of an employee direct contribution to Council from 'after-tax' salary in accordance with ATO residual FBT requirements, and further pay employees share of vehicle operating costs by way of salary sacrifice (pre-tax payment) according to the principles set out in the LGNSW Guidelines for Provision Of Cars 2018, for the private use of an exempt vehicle.

The specific terms and conditions that apply to an employee under a private use agreement for private use of a Council vehicle is provided as **Schedule 1** to this Policy.

Failure by a relevant employee or their authorised driver to strictly comply with the limitations set out in this policy for after-hours use of a council vehicle is considered a fundamental breach of this policy, the vehicle use agreement and also unsatisfactory conduct for the purposes of the NSW Local Government (State) Award (2017).

14. BREACHES

Any breaches of the provisions of this policy may as appropriate in the circumstances lead to the employee (i) losing private access to a vehicle, (ii) having commuter use of a vehicle withdrawn, and/or (ii) disciplinary action being taken.

Failure to strictly comply with the provisions or requirements of Section 7, Section 8, Section 10, Section 12, Section 13 and/ or Schedule 1 of this policy will be regarded as:

- a) A fundamental breach of this policy and will result in immediate termination of any limited commuter use or limited after-hours use arrangement as applicable, and
- b) Unsatisfactory conduct for the purposes of the NSW Local Government (State) Award (2017) and accordingly such failure will result in disciplinary action being taken, and that action may result in demotion, suspension or termination.

15. SALARY SACRIFICE

Council allows the use of salary sacrificing for the purposes of *Limited After-Hours* private use arrangements, subject to a written agreement between Council and the employee being entered into, and the authority of the employee authorising salary deduction for payment of the appropriate private use fee. *[Note: This is to comply with the Industrial Relations Act 1996 (NSW) requirement so as to allow for deduction to be made from salary before payment to the employee].* Salary sacrificing can only be used prospectively.

In the salary sacrifice model available under this policy, the employee pays a *private use fee* to Council for an amount including the sum of the vehicle cost components set out in **Schedule 1** attached hereto PLUS as much of the cost equivalent to the 'taxable value' (*i.e. residual FBT amount*) of the limited after hours private use of the vehicle as is necessary to completely negate council's *fringe benefits tax* liability.

In the event that the 'taxable value' is less than the sum of the vehicle cost components set out in **Schedule 1**, then the sum of the Schedule 1 components becomes the salary sacrifice amount. In the event that the 'taxable value' is more than the sum of the vehicle cost components set out in **Schedule 1**, then the 'taxable value' amount becomes the salary sacrifice amount. The salary sacrifice amount must be regularly paid, by salary deduction, from after tax salary.

16. AGREEMENT, RECORDS AND DECLARATIONS

Each employee that has entered into a **Limited Commuter Use** or **Limited After-Hours** private use arrangement with Council must:

- Enter into a simple form agreement acknowledging the terms and conditions of the arrangement.
- Authorise the Council (in the case of the **Limited After-Hours** private use arrangement) to deduct regular payments from the employee's after-tax salary to pay the required vehicle *private use fee*.
- Submit an ATO Declaration relating to residual fringe benefits tax, annually.
- Provide regular vehicle odometer readings in the required form and frequency.

Appropriate administrative documents, including the agreement and declarations will be available from, and are to be submitted as required to, the Biosecurity Administration Officer.

17. POLICY VARIATIONS

This policy may be reviewed periodically and the use of any vehicle will be in accordance with the adopted policy in force at the time. The policy will be amended automatically where Tax legislation relating to FBT changes.

Council reserves the right to revoke the policy and terminate all or any private use of vehicle arrangements where legal changes will cause unacceptable or unrecoverable costs to the Council.

Where significant changes are made to the policy that impact on the financial wellbeing of an employee, reasonable efforts will be made to phase-in or phase-out the impact of the change other than where the change is legally required, or where the change has been made due to a breach or other non-performance by an employee.

Schedule 1 LIMITED AFTER-HOURS PRIVATE USE OF A COUNCIL MOTOR VEHICLE

PRIVATE USE

"Private Use" for the purposes only of the Limited After-Hours private use agreement shall mean the travelling and conveyance of the employee or the employee's spouse, partner, family or friends on activities of that employee outside the employee's working hours on work days and on weekends, and approved periods of leave BUT DOES NOT INCLUDE the loan, rent, hire, sub-lease of that vehicle under any circumstance whatsoever.

The Employee shall not use or allow any other person to use the vehicle outside of the working hours of the employee other than for the private purposes of the employee as herein defined and permitted.

1. It is permissible for another member of the employee's immediate family over the age of 30 years old to drive the vehicle, provided the employee is in the vehicle at the time (excepting unforeseen emergency situations) and further, provided that the employee's spouse or partner may drive the vehicle unaccompanied by the employee.
2. Where a private use journey of more than two hours duration is being undertaken, or a genuine emergency situation exists, a suitably licenced non-family member may drive the vehicle provided the employee is in the vehicle at the same time.
3. Interstate travel is not permitted unless approved by the General Manager prior to it being taken. (Travel to the ACT is not considered interstate travel in the context of this policy.)
4. Employees in job share/part time or non-field based positions are not eligible for limited after-hours private use of council vehicles. This may be varied in exceptional circumstances but each individual request would be treated on its merit and would be only allowed with the approval of the General Manager.
5. All infringement notices are the responsibility of the employee to whom the vehicle has been allocated or the driver responsible for the vehicle at the time of the infringement. Failure to pay any infringement notice/s will be considered a breach of this policy.
6. The employee must not fit accessories that involve any physical intervention to the structure or fabric or configuration of the vehicle. Council only provides 'work' approved accessories on Council vehicles. Any 'non-work' approved accessories are to be fitted and in due course removed at the Employee's expense.

INSURANCE

In the event of an accident outside of the working hours of the Employee and whilst the vehicle is being used for private use the Employee shall be required to pay the excess provided in the Vehicle Use Agreement on demand by the Council to the Council provided that should the said excess be recovered by the insurance company and be reimbursed to Council, then the Council shall repay the excess to the Employee.

Council may vary the amount of the excess from time-to-time, in accordance with changes to Council's insurance policy arrangements with this amount to be notified to the Employee.

LIMITED PRIVATE USE FEE

A limited private use fee for the use of the vehicle will be paid by way of a fortnightly salary deduction. The fee will be calculated on the basis of ensuring that the costs that council should pass on to employee for the limited private use of the vehicle needs to take into account the net (i.e. exclusive of GST) operating costs attributable to the employee as well as the associated costs that Council may need to pay the Australian Taxation Office (ATO).

Accordingly (as per ATO guidelines), the cost payable by the employee will be calculated to include: (a) the Capital cost - This is assessed as 5.0% per annum of the net purchase price and maintained for each year the car is kept. (b) Depreciation - This is assessed as 18.75% per annum (diminishing value method) of the net purchase price. However, depreciation varies, as in the second and subsequent year the depreciation is based on the residual depreciated cost. (c) Fixed costs - This includes registration, CTP and insurance. Of these costs insurance and CTP are subject to GST, and (d) Running costs - These are to be calculated based on the Executive and Non-Executive Salary Packaging running costs as published by the New South Wales Department of Finance, Services & Innovation which are usually released in the first week of April each year.

FRINGE BENEFITS TAX (Residual FBT)

In order to satisfy Council's substantiation requirements in relation to residual Fringe Benefits Tax (FBT) on the limited private use of vehicles it is necessary that log-book records are used, such records being applied to produce soundly based estimates of the number of private kilometers travelled in determining the extent of private use of the vehicle.

While there are two permitted methods for valuing the FBT residual benefit, Council will only use the 'cents per kilometre basis' - this method can be used only where there is extensive business use of the vehicle. The current cents per kilometre rates, are provided by the ATO annually see Fringe benefits tax - rates and thresholds.

VEHICLE CARE AND EXPENSES

The employee party to the Limited After-Hours private use agreement shall:

- (a) Wash and clean the vehicle at least once per week and shall polish the vehicle at least once each six months; and
- (b) Properly secure the vehicle when left overnight and shall house the vehicle in a garage, if garage space is available, at the premises of the Employee and if no such garage space is available, then the Employee shall park the vehicle off the public road and on the private property of the Employee, if possible.

VARIATION OF LIMITED PRIVATE USE ARRANGEMENTS

Variation of any vehicle use agreement will not be inconsistent with the requirements of the Local Government (State) Award (2017), applicable to vehicles provided as a discretionary benefit, if and as applicable.