

COMMERCIAL ACTIVITIES ON COUNCIL MANAGED LAND PROCEDURE

1. INTRODUCTION

The aim of this procedure is to support the Management of Public Open Spaces Policy. This procedure has been developed in response to the increasing number of commercial activities being conducted and proposed for beaches, headlands, parks, gardens and public spaces under the care, control and management of Port Macquarie-Hastings Council.

2. PROCEDURE STATEMENT AND SCOPE

This procedure is designed to:

1. Manage commercial and recreational activities on Council-managed land while not detracting from the amenity and natural environment enjoyed by both visitors and residents.
2. Establish an application and approval process for the sustainable use of public land for commercial purposes.
3. Provide equitable access for the general community and commercial activities.

This procedure applies to all beaches, headlands, parks, gardens and public spaces under the care, control and management of Port Macquarie-Hastings Council, excluding the Port Macquarie Entertainment Precinct.

Commercial Activities Covered by this Procedure

A Licence is required under the Management of Public Open Spaces Policy if a commercial or business activity is proposed or being undertaken on Council-owned or Council managed land that Council actively manages.

Activities may include but not limited to:

- Beach or water operators including surf schools, stand up paddle board hire, kayak or canoe hire.
- Personal trainers, group trainers, boot camps.
- Adventure tour operators or visitor attractions.
- Semi-permanent food or mobile food vendors with the reserve - to be considered in conjunction with Mobile Food Vendors Policy.

This procedure does not apply to wharf leases, fishing tours or similar activities on open waters that Council does not manage. Activities on waterways may require an aquatic licence through Transport NSW.

Activities not requiring a Commercial Activities on Council-managed Temporary Licence that require Other Approvals

The following activities do not require a Commercial Activities on Public Land Licence but require approval under another Council procedure:

- Filming
- Markets
- Special and major events
- Weddings, parties or private functions.

Activities which involve a temporary or permanent structure will require Development Approval.

Commercial Activities Permitted on Council-managed Land

The following activities can be carried out on public land without obtaining a Licence:

- Any activity of a non-commercial, passive nature.
- Any activity coordinated by a not-for-profit organisation for not-for-profit purposes.
- Any activity by sporting or social groups on a not-for-profit basis.
- Any activity performed by a recognised emergency service organisation.
- Any activity of a social, informal nature.

Note: Special conditions may apply to these activities.

Number and Type of Commercial Activities Permitted

There is generally no limit to the number of Licences which Council may issue, excluding surf schools.

The number of commercial activities approved at a particular location may be reviewed if:

- Public areas are becoming overused and/or capacity is reached.
- Complaints are received relating to level of activity in a specific area.
- Public assets or the environment are being damaged by multiple users.
- Commercial harmony within the space is untenable.
- Public safety is compromised.

Surf Schools

Location	Maximum Surf School Licences to be Issued
North Wall	2
Town Beach	2
Flynns Beach	2
Tacking Point	1
Lighthouse	1
Shelly Beach	1
Lake Cathie	2
Bonny Hills	3
Pilot Beach	1
North Haven	2
Dunbogan	1

Surf schools will be expected to operate with a teacher/student ratio that is consistent with industry standards.

Council may amend the number of Licences issued at the above beach locations as part of any review process.

General Provisions

A Commercial Activities on Council-managed Land Temporary Licence:

- Is not transferable. In the event a business operating under a Licence is sold, the new owner must apply for a new Temporary Licence and under these circumstances the issue of a Licence is not guaranteed.
- Must be operational or in use on a regular basis. A Temporary Licence cannot be dormant, non-operational or unused, for a period exceeding three (3) months.
- May cover multiple locations.

Application Procedure

The application for a Commercial Activities on Council-managed Land Temporary Licence must be on the prescribed form.

The Licence, if granted, shall include the following provisions:

- a) The duration of the agreement.
- b) That the Licensee must secure public risk liability insurance, for cover in the amount specified by Council, in respect of the use of the prescribed area and must provide evidence to Council's satisfaction that such insurance has been obtained.
- c) The Licensee shall fully indemnify Council, and where appropriate, the Minister for administering the Crown Lands Acts, against any claim for damage that may arise out of the conduct of the activity proposed.
- d) Any specific conditions relating to the activity or approval including approved locations.

Assessment Criteria

In considering an application, Council shall take into account:

- a) Whether the proposal is ancillary to normal public activities and enjoyment of the public reserve;
- b) Whether the proposal provides suitable additional facilities or services at that location to enhance the safety or variety of recreational activities without undue intrusion into or interference with those other recreational activities;
- c) All other activities, including existing approved licensed enterprises, are carried out on or adjacent to that particular part of the public land under consideration, to avoid excessive or conflicting commercial use of that area and undue interference with the public's use and enjoyment of that area;
- d) The area within which the activity should be restricted;
- e) Whether the purpose requires the public reserve land as an essential part of its operations and cannot reasonably be carried out elsewhere;
- f) The relevant sections of the *Local Government Act 1993* and the *Crown Land Management Act 2016*;
- g) The proposed commercial and/or recreational activation of the public space;
- h) The integrity, professionalism and ethics of the proposed activity;
- i) The best use and enhancement of the location;
- j) The appropriateness of the product/service, design and appearance of the proposal.

Application Assessment

All applications will receive an initial preliminary assessment to determine if any additional information is required. All new applications will be assessed by the Commercial Activities on Council-managed Land Temporary Licence Review Panel consisting of staff representatives from various sections of Council.

Applications may be assessed by Council's Executive Group if exceptional circumstances exist.

The Temporary Licence Review Panel may consider preliminary Temporary Licence proposals with the view to providing feedback prior to the formal application process.

Review of an Assessment

An applicant may request a review of a Temporary Licence decision by making a request in writing to the Chief Executive Officer within 7 days of being notified of a decision.

Licence Period and Renewal

Temporary Licences will be issued for a period that is permissible under the State legislation. The current maximum period is for twelve (12) months and this may be increased when the relevant Plans of Management have been adopted.

A Temporary Licence may be issued for 6, 9 or 12 months to meet the needs of seasonal businesses and will be charged on a pro rata basis.

Licence Conditions

Council will assign conditions to the Commercial Activities on Council-managed Land Temporary Licence as warranted.

The issue of a Temporary Licence does not imply the exclusive use of an area of public land. A Licence must be furnished on request by a Council official. Other users of the space must be given due consideration and the activity must not be detrimental to other users or the public land.

Temporary Licence holders acknowledge that from time to time public events or activities may impact on the business and or Licence conditions and no compensation for loss of trade is claimable. A Temporary Licence holder may request or be allocated a Licence extension to cover an alternative location during public events or activities. Temporary Licence holders are responsible for regularly checking Council's website for any events or activities that may potentially be impacted upon by this activity.

The Temporary Licence holder cannot erect any permanent signs or advertising material, excluding the Council approved identification piece and business promotional flag, within the nominated public space. A frame signs are permitted, subject to the appropriate approvals, however must not cause an obstruction to other users of the space. Any equipment used must not present a danger to other users of the space.

Temporary Licence holders must only use fixed equipment specifically related to the activity e.g. exercise equipment. Other community assets such as benches, tables and chairs must not be used for commercial purposes.

Licence Breaches and Revocation

Where there is a breach of a Temporary Licence Council will take all necessary steps to remedy the breach. This may consist of:

- a) Written or verbal warning;
- b) Notice to cease the activity;
- c) Notice to amend the activity.

Legal proceedings

Council reserves the right to revoke a Commercial Activities on Council-managed Land Temporary Licence and a Licence may be terminated under the following circumstances:

- a) If all applicable fees are not paid in advance.
- b) If evidence of a current public liability insurance policy (Certificate of Insurance) is not provided in advance of the Licence commencement.
- c) If there is a breach of the Licence, Licence conditions or the requirements of any other relevant authority.
- d) If the Licence is non-operational or unused for a period exceeding three (3) months.

The Commercial Activities on Council-managed Land Temporary Licence Panel will assess any Licence breaches and has the power to revoke a Temporary Licence.

Any breaches of the Temporary Licence agreement will be advised in writing. A Licensee has the right to provide a written response to a notice of breach within 30 days.

Enforcement

All commercial operators utilising public land must have a Commercial Activities on Council-managed Land Temporary Licence. Failure to hold a Licence or take reasonable steps to obtain a Licence when instructed will result in the issue of a notice to cease the activity or the issue of a fine under *Section 626 of the Local Government Act 1993* for failure to obtain approval.

All commercial operators must clearly identify themselves as Licence holders either by displaying their approved operator sign or producing the approved operator card on request.

Licence Fees and Charges

- a) Council will determine the fees and charges applicable to a Licence in adopting the Annual Port Macquarie-Hastings Council Schedule of Fees and Charges.
- b) An application fee, as per the Schedule of Fees and Charges, applies to the annual Temporary Licence application.
- c) Licence fees can be charged on a pro rata basis.
- d) The Temporary Licence application fee must be paid when an application is submitted to Council. The application fee is non-refundable.

Activities, such as fitness businesses, which pass through multiple locations can nominate and pay for a single location being that area where the session begins.

Should the Temporary Licence application remain predominately unchanged from year to year a renewal fee will apply instead of the full application fee. This does not imply the guaranteed continuity of a Temporary Licence.

The annual Licence fee will be invoiced following the execution of the Licence. All revenue, excluding application fees, will be reinvested in the maintenance and improvement of public spaces impacted by the Management of Public Open Spaces Policy and Council will communicate the expenditure plan on an annual basis.

In return for the payment of the Temporary Licence fee Licence holders will:

- Be entitled to operate in the nominated location/s.
- Have the nominated location/s maintained in a safe condition.
- Have permission to use the "Approved Operator" logo in advertising or promotional materials.

3. RESPONSIBILITIES AND AUTHORITIES

The Group Manager Community is responsible and accountable for the implementation of this procedure.

The Group Manager Regulatory & Environmental Services is responsible for ensuring compliance with this procedure.

A business which operates on Council-managed land is required to comply with this procedure by holding a temporary Licence.

4. REFERENCES

Management of Public Spaces Policy
Commercial Activities on Council-managed Land Temporary Licence Application
Council Fees and Charges
Port Macquarie Entertainment Precinct Event

5. DEFINITIONS

Council officer: A member of Council staff.
Director: A 1st tier management position and titled as such.
Group Manager: A 2nd tier management position and titled as such.

6. PROCESS OWNER

Property & Leasing Coordinator.

7. AMENDMENTS

Minor amendments to staff titles and responsibilities to reflect current organisational structure.