Best Practice Management Guideline

for Commercial Use of Public Open Space

1 OVERVIEW

The Cairns community enjoys an enviable lifestyle. With more than 600km of footpaths and cycleways, extensive tropical botanic gardens and parklands, beaches and an expansive open space network coupled with the warm climate of the tropics, makes Cairns an outdoor and adventure destination. Council plays an integral role in creating and sustaining this lifestyle, having responsibility for the provision and maintenance of parks and supervised foreshores within its jurisdiction.

Council acknowledges the primary purpose of public open space is for the community to enjoy. With increasing population, more infrastructure and high-density living, public open space is important for several reasons, including but not limited to (*Council's Public Open Space Policy, 2017, p. 14):*

- used for informal, unstructured activities;
- a place to celebrate culture;
- encourages biodiversity by retaining existing vegetation and preserving places of environmental significance; and
- places that encourage social interaction within the population critical in developing social cohesion and a sense of community.

This document details how to balance the value the community places on public open space with the increasing demand from small businesses to utilise the public open space for commercial activity that achieve positive health outcomes. This can be achieved through sound policy, regulation and management of these areas.

This *Best Practice Management Guideline (BPMG)* will assist Council to respond in a strategic way to existing constraints and future demand for commercial recreation use of Council owned or controlled land as defined in *Local Law No. 1 (Administration) 2016,* p 47, ensuring a fair and transparent approach to permitting commercial recreation activities on Council controlled land.

1.1 Why is a Best Practice Management Guideline required?

Council are experiencing increasing demand to use public open space for commercial activities. Finding a balance between providing public open spaces for commercially organised activities and maintaining open space that encourages a lifestyle for the community to enjoy at their preferred time, can be achieved through sound policy, regulation and management of these areas.

Commercial activity, if unregulated, can become overbearing in popular outdoor areas and potentially create safety hazards. This increases the risk of complaints from park users and

nearby residents who feel they are now competing for space and become annoyed by the noise from loud music or large groups of people.
Council needs to be fully informed of the unique operations of each commercial recreation provider, to ensure they are utilising the space in an appropriate manner and not detracting from the primary purpose of what the land is originally intended – community use. Increasing competition amongst commercial recreation vendors has caused disruption within heavily utilised localities, having an adverse impact on surrounding businesses and members of the public.
Council aims to ensure all requests to utilise public open space for commercial recreation activities are assessed transparently, fairly and equitably. This process will align the proposed guiding principles for commercial use of public open space with Council legislation. The ultimate goal is to provide opportunities for commercial recreation activities while preserving the space for the broader community to enjoy.

1.2 Purpose of the BPMG

The purpose of this *BPMG* is:

- To determine those commercial recreation activities suitable for beaches, parks and other public open spaces owned or controlled by Council. The use of the land by the community remains the primary priority for Council, while allowing commercial activities that provide a demonstrated benefit to the community.
- To provide an effective, transparent and equitable process to manage community and business proposals for the commercial use of Council owned or controlled land.
- To ensure a consistent assessment and regulation framework for commercial activation of public open space sites.
- To ensure activities conducted on public open space are consistent with the intended use while protecting the natural assets and visual amenity of public open space.
- To ensure there is a focus on the quality and professionalism of the business/ service utilising the public open space.

1.3 Stakeholders

- Leisure Services: Asset owner
- Regulatory services: Permit administration and management

2 SCOPE

3.1 Inclusions

All Council owned parks and foreshores (including Lake Morris/ Copperlode Dam). City wide destination parks will require a *Site Specific Management Plan.*

3.2 Exclusions

- Munro Martin Parklands.
- Fitzroy Island and associated commercial uses operate on the island.
- National parks, or on land and waterways controlled by the State (i.e schools) that Council does not control

- Council controlled land where a lease authorises use of that land.
- Commercial activities in National Parks or on land or in waterways controlled directly by the State Government.
- Commercial uses or activities dealt with in other local laws, policies or guidelines such as:
  - advertising signs
  - outdoor dining
  - roadside vending (mobile food vendors)
  - community events/major events (temporary entertainment events)
  - markets
  - filming
  - busking / street performances.
- Passive recreation activities, informal social gatherings provided for by Council's park booking process.
- Group activities that fall within the terms of the intent and purpose of public open space, including community use, not-for-profit activities and government use.

4 Guiding Principles

Guiding principles are a set of values that establish a framework to aid decision making.
The *BPMG* will adopt the following six (6) guiding principles that reflect Council's overall goals regarding the ongoing management of public open space.

4.1 Guiding Principle 1 – Community Use Precedence

Council acknowledges that the primary purpose of public open space is for the community to use and enjoy. To ensure the continued community use and appreciation, the visual and scenic amenity of the natural environment must be protected. Where a proposed commercial activity conflicts with this Guiding Principle or the activity cannot be accommodated without detriment to the primary purpose of the land, a proposal for commercial activity will not be approved.

4.2 Guiding Principle 2 – Alignment with Council Strategic Direction

Applications for commercial use of public open space must align with Council's vision and strategic directions as outlined in the Corporate Plan.

4.3 Guiding Principle 3 – Community Benefit and Impact

The benefit to the community must be clearly articulated in the application and applicants must demonstrate how the commercial activity will not have an adverse effect on free and equitable access to the land. Applications for commercial use of public open space should detail the benefits to the community. Applications must also demonstrate how the activity will not impact primary users of the land, nearby residents or businesses, the environment, or adversely affect Council assets and/ or maintenance regimes.

4.4 Guiding Principle 4 – Allocation of Space

In accordance with the Public Open Space Policy and to assist in defining what constitutes acceptable impact, unless otherwise determined by a *Site Specific Management Plan*, a benchmark of 10% of a site will be allocated to commercial use. The *Site Specific Management Plan* will determine appropriate locations within a site where commercial use is permissible. A permit holder does not have the right to restrict the general public access to the land or land adjoining an area where an approved permit exists.

4.5 Guiding Principle 5 – Compliance with other Regulations

Some commercial activities may require special conditions or have a requirement to meet specific standards. It is an expectation that all permit holders will conduct their business safely and in compliance with all relevant licenses/ certifications/ qualifications, as prescribed by legislation across all levels of Government. Applications for commercial activities may be subject to community consultation.

4.6 Guiding Principle 6 – No automatic renewal or exclusivity

Except for where specifically designated under an Exclusive Commercial Activity Permit, permits do not grant exclusive use to land or adjoining land and do not constitute an ongoing occupation right. Council reserves the right to conduct a market approach to assess the community and market demands for commercial activity at any site.

Permits are not automatically renewed and at the end of each permit term, a new application must be submitted. Council reserves the right to revoke a permit in circumstances where the permit holder has not complied with the permit conditions. In accordance with Local Law 11, all Prescribed Activity Permits are non-transferable.

5 PERMIT TYPES

This BPMG introduces a two permit category management approach:

(1) Exclusive Commercial Activity permit (new).
(2) General Activity Permit (existing).

Each has a different application process. Additionally, bookings for not-for-profit groups are available at each location via Council's venue booking process.

5.1 Exclusive Commercial Activity Permit

Activities that have a high intensity of use (e.g. operate business between the hours of 7am and 6pm, seven days a week), operate their business from the same location every day, and/or operate in a high profile area that cause a greater impact on the use of public open space due to high patronage for other purposes.

Each location of an Exclusive Commercial Activity Permit must have a *Site Specific Management Plan* approved by the Chief Executive Officer.

An Exclusive Commercial Activity Permit will generally only be issued after Council has undertaken an approach to market and must be supported in the *Site Specific Management Plan*. These permits will generally be issued for a period of five (5) years as prescribed by the Local Laws.

Permits to conduct exclusive commercial activities on public land do not guarantee future approval of an application for the same activity. These permits will be actively monitored.

5.2 General Activity Permit

General Activity Permits (non-exclusive) are currently in use and required for prescribed activities to utilise Council managed land or facilities. A prescribed activity is defined in Local Law 1 – Administration as:

- an activity described as a prescribed activity in a local law; or
- an activity for which a Local Government Act authorises the local government to grant an approval or permit but does not make any other provision, except a provision that is consistent with this part, about the process for the local government to grant the approval or permit.

As the commercial activity pertains to this document, the prescribed activities will generally not occur for longer than four hours consecutively, and not more than 3-4 days per week and may be seasonal in nature. If an activity exceeds this guideline then a review of the site use should be considered to determine if an exclusive permit is more suitable.

The prescribed activities should take place per the *Site Specific Management Plans* (where applicable) and should not encroach on the space of an exclusive commercial activity permit holder and a bathing reserve as prescribed in the permit conditions. Locations such as, local parks, will not have a *Site Specific Management Plan,* and the applicant will be required to provide a site map of where activities will be conducted.

There is high demand for fitness providers to use public open space. Examples of fitness activities include, but are not limited to the following (refer DM#5190946 Management of Commercial Fitness Activities on public space):

- Fitness sessions (with or without minor, ancillary equipment such as hand weights, fit balls, skipping ropes, foam mats/rollers etc.);
- Boxing pad training;
- Organised aerobic activity and running groups;
- Circuit training;
- Relaxation, meditative, balance and strength activities such as Yoga, Pilates and Tai Chi; or
- A combination of any of the above.

Fitness activities generally take place in parks. Activities undertaken in locations within high residential areas will be subject to noise restrictions. As a general preference, activities should

not begin earlier than 7am. Activities that begin before 7am will be asked to find a new location if residents complain about excessive noise.

6 APPLYING FOR AN EXCLUSIVE COMMERICAL ACTIVITY PERMIT

6.1 Who can apply?

Businesses that provide commercial activities that complement the location per the site specific management plan, can apply for an Exclusive Commercial Activity Permit.

6.2 Application Process

An approach to market will be undertaken for exclusive commercial activities at specific locations.

Applications will be assessed against the guiding principles of this *BPMG* and the provision of required documentation at 6.3. A panel will select the successful applicant and provide recommendations to the Chief Executive Office and Mayor in consultation with the respective divisional Councillor.
Applicants notified of decision regarding their submission and new permits will be issued for a period of 5 years.

6.3 Required Documentation

Applicants must supply the following planning documentation:

- Completed application form.
- Proof of the company and business registration certificates showing the company name, ACN, ABN and business name.
- Public Liability Insurance policy, noting Council's interest, in the amount of $20million at a minimum in respect to any single occurrence. Public liability insurance must remain current for the life of the permit.
- Form of indemnity to indemnify the Council against claims, of any kind, arising from any negligent act either by the permit holder or the permit holder's agents and users.
- Business Plan – must detail how the area will be used, number of consumers expected.
- Risk management plan – (foreshore locations must consult Surf Lifesaving Qld with the risk management plan, and have it signed off).
- Proof of compliance with relevant authorities and regulations outside of Council.
- A site plan indicating exact size of impact on the public open space.
- Compliance with relevant industry best practice standards (e.g. staff must hold required qualifications, licenses and permits to conduct the activity safely).
- Environmental Management Plan.
- Sketch plan of the proposed location.

6.4 Permit Period

Permits will be approved for a period prescribed in the Local Law. Council may, at its sole discretion, consider it appropriate to permit an activity for less than five (5) years or on a trial

basis. Council will determine if a location available for exclusive commercial activity permits via the regular monitoring and review of the relevant Site Specific Management Plan.

6.5 Other Approvals

Further approvals may be required by State Government departments and other regulatory authorities. Evidence of compliance to be requested as part of the application process. Applicants will be expected to provide detailed business and risk management plans as part of their application.

7 APPLYING FOR A GENERAL ACTIVITY PERMIT FOR COMMERCIAL RECREATION

7.1 Who can Apply?

General activity bookings for commercial activities have lesser intensity and not considered high use. The permits will be in accordance with the current criteria for bookings. These activities include fitness classes, tours and activities by not-for-profit organisations. Will generally not go longer than 3-4 hours consecutively, have low impact on the area and may be seasonal in nature.

Commercial operators who seek to use Council owned or controlled land and/or facilities for the provision for commercial activities that the public can access for a fee payable to the service provider.

Applications may be considered at any time in accordance with Council's Local Laws and any other relevant legislation and in addition from feedback from the Divisional Councillor.
Permits are considered on a case-by-case basis at any time without an approach to market.
Permits will include strict conditions to ensure public safety and protection of Council's assets.
Organisers may be required to submit a Risk Management Plan, Waste Management Plan and a Public Liability Certificate prior to a permit being issued.

7.2 Activities which may be conducted

There are a range of commercial activities that would be eligible for a General Activities Permit. Some of the activities may have a separate policy/ guideline including. Activities include but are not limited to):

- Personal training and fitness activities
- Recreational health and fitness classes
- Tours
- Stage events
- Markets
- Hire of equipment such as paddle boats and canoes
- Festivals
- Concerts
- Fundraising

- Goods for sale on footpath outside the CBD.

Due to the high demand for permits from fitness providers, the following activities are deemed acceptable:

- Fitness sessions (with or without minor, ancillary equipment such as hand weights, fit balls, skipping ropes, foam mats/rollers etc.)
- Boxing pad training
- Organised aerobic activity and running groups
- Circuit training
- Relaxation, meditative, balance and strength activities such as Yoga, Pilates and Tai Chi.

7.3 Activities which are not permitted (some exceptions may apply)

Generally, the following activities are not to be permitted within Council parks and foreshores:

- Aggressive or intimidating activities including combat/fighting or training.
- Amplified music, microphones or use of amplified audio (voice) equipment.
- Organised sporting activities.
- The setting up of gym based equipment such as weight benches, stationary bikes, treadmills or large plate weights.
- The offering for sale of clothing, merchandise, equipment, refreshments, goods, services or products.
- Horse-drawn carts or similar.
- Activities that block and/ or impede community access on roads or cycleways.

7.4 Permitted Locations

Locations to be determined by Council and align with location specific master plans or site specific management plans. Council has the right to change these locations based on community feedback or at their own discretion. Permit holders are to adhere to the approved areas and are to rotate locations within the approved areas on a regular basis to manage wear and tear if so, directed by Council.

7.5 Specific Locations EXCLUDED for use:

Some Council owned areas will not have a *site specific management plan,* including:

- Playgrounds
- Fitness equipment
- Picnic and BBQ facilities
- Garden beds, vegetation and fencing
- Park furniture and structures
- Memorials, shrines and public art
- Environmentally sensitive areas
- Cemeteries
- Stairways, footpaths, pedestrian and cycle ways
- Areas that conflict with exclusive commercial activity permit holders

- Sporting grounds
- Citywide (destination) parks in accordance with Council's Public Open Space Policy:
  - Munro Martin Park
  - Cairns Esplanade (Northern Events Lawn is accepted)
  - Botanic Gardens/Sugarworld Gardens
  - Cattana Wetlands
  - Crystal Cascades
  - Babinda Boulders.

7.6 Required information with application

- Completed application form.
- Proof of the company and business registration certificates showing the company name, ACN, ABN and business name.
- Public Liability Insurance policy, noting Council's interest, in the amount of $20million at a minimum in respect to any single occurrence. Public liability insurance must remain current for the life of the permit.
- Form of indemnity to indemnify the Council against claims, of any kind, arising from any negligent act either by the permit holder or the permit holder's agents and users.
- Business Plan – must detail how the area will be used, number of consumers expected.
- Risk management plan – (foreshore locations must consult Surf Lifesaving Qld with the risk management plan and have it signed off).
- Proof of compliance with relevant authorities and regulations outside of Council.
- A site plan indicating exact size of impact on the public open space.
- Compliance with relevant industry best practice standards (e.g. staff must hold required qualifications, licenses and permits to conduct the activity safely).
- Environmental management plan.
- Sketch plan of the proposed location.
- Any other mandatory licenses, permits and qualifications to conduct the activity as prescribed by the relevant industry.

Due to high demand from fitness providers, it is considered best practice for the applicant to provide the documentation listed below and must be provided to be eligible for a permit to provide Commercial Health and Fitness Activities on Council managed land or facilities:

- Certificate III or IV or higher equivalent;
- Current First and CPR;
- Registration with Fitness Australia;
- Certified copy of registered business name and ABN;
- Certified copy of Public Liability insurance which indemnifies Council to a minimum of $20 million. The policy must be current for the entire permit period;
- Certified copy of Professional Indemnity Insurance which indemnifies Council to a minimum of $5 million. The policy must be current for the entire permit period.

Other industry standards and regulations may apply dependent on the activity.

7.7 Approval Process

Upon application, each operator will be required to provide a schedule of sites, days and hours for which it intends to conduct activities. A General Activities Permit will be issued in the name of the business to use the specified areas for health and fitness activities that:

- Details the conditions governing the approved activities;
- Is valid for a given financial year or part thereof;
- Is non-transferable or refundable; and
- Must be on hand at all times when conducting the approved activities and be presented upon the request of authorised Council officers.

Applications may be considered at any time in accordance with Council's Local Laws and any other relevant legislation and in addition from feedback from the Divisional Councillor.

8 LOCAL LAW

The permit holder is liable for any breach of the conditions set out in this Cairns Regional Council local law, including those committed by their staff or patrons.
Commercial Recreation permits (both exclusive and general activity are administered within:

- LL No. 1, Administration.
- LL No. 11, Local Government Controlled Areas and Roads.
- LL No. 13, Bathing Reserves and Foreshores and Subordinate LL 13.

9 AMENDMENTS AND/ OR TERMINATION OF PERMIT

9.1 Amendments to a permit

Permit holders must submit an application in writing, using the required application form, for any amendments to their existing permit.
Cairns Regional Council reserves the right to amend permit conditions to ensure compliance.

9.2 Changes to permit location

Council reserve the right to cancel permits and bookings due to a conflicting major event, overuse of the location, essential maintenance to be undertaken and any other reason the Council deem necessary at the time.

Council may restrict use of approved sites with short notice due to inclement weather conditions, ground conditions or other matters that may compromise safety or increase risk of damage to the site.

Maintenance work undertaken on the approved site by Council takes priority and should maintenance crews arrive during allocated hours, permit holders are required to relocate within the site if requested.

9.3 Termination of a Permit

Council reserves the right to terminate a permit at any times for management reasons including, but not limited to environment protection, public safety, changes in policy and/or legislation or is Council determines that another use requires the land for any period.

All permit holders must uphold the Council code of conduct and adhere to the permit conditions and relevant Local Law/s.

9.4 Transfer of ownership

Permits are not transferable.

9.5 Renewal of an existing permit

- Permits are not automatically renewed.
- Exclusive Commercial Activity Permits will go to market every 5 years.
- General Activity Permits will need to reapply for the permit at the end of the agreed permit duration.
- Cairns Regional Council reserves the right to reassess and amend permit conditions to ensure compliance with current policy. The permit holder is liable for any breach of the conditions set out in this Cairns Regional Council local law, including those committed by their staff or patrons.

10 FEES AND CHARGES

All permits will be issued in accordance with Council's adopted Schedule of Fees and Charges.

11 SIGNAGE AND PROMOTIONAL MATERIAL

The display of advertising signage including banners or 'A' Frame signs is permitted for the approved hours of operation only. Information presented on the sign must be strictly related to the approved activity (i.e no sponsorship or other commercial advertising is permitted).

12 MANAGEMENT AND RESPONSIBILITIES

12.1 Permit Holder Responsibilities

The management of the activity is the responsibility of the permit holder. To ensure appropriate management, permit holders are required to:

- Operate in accordance with the conditions of the permit, endorsed plans and the requirements and objectives as outlined within this *BPMG.*
- Observe all local law and legislative provisions relating to commercial recreation activity, including noise, responsible serving of liquor, and health and amenity.
- Uphold the cleanliness of the area, ensuring equipment and litter is removed. All equipment to be removed from the site at the conclusion of each day/ close of business unless agreed to by Council.

- Adhere to the instructions of any approved officer in a respectful manner.
- Show proof of permit when requested by a Council authorised officer.

12.2 Council Responsibilities

- Maintenance - Council manages the maintenance of the area and reserves the right to reclaim access of areas that require maintenance work.
- Compensation and Loss of Trade - No compensation is provided for any problems, inconvenience or loss of trade resulting from activities or works carried out by the Council or its contractors at, or adjacent to, a permit holder's area.
- Monitoring and Compliance with Approved Permit
    - Council's Licensing and Approval Officers will actively monitor the operation of permits and ensure the conditions of the permit are met.
    - Following a complaint or observation of a breach of a permit, a Council officer will contact the permit holder and take appropriate enforcement action. This may be in the form of verbal instructions, a written notice or an infringement notice.
    - In the case of a serious breach, an officer may act immediately to resolve the situation. A serious breach is one where the officer considers there is an immediate public safety risk.
    - Each breach will result in a compliance notice or an infringement notice depending on the seriousness of the offence. Cases where there are three breaches within a 12-month period will be referred to the Manager of Regulatory Services for advice with a view to cancelling or varying the permit.

13 RELATED DOCUMENTS

The following Council policy documents directly impact the commercial activity on public open space.

- Public Open Space Policy
- Cairns Regional Council Corporate Plan 2017-2022
- Cairns Council Economic Development Strategy 2018-2022.

14 BPMG OWNER

It is the responsibility of the Manager Community Development in consultation with the Manager Licensing and Approvals and Manager Regulatory Services to review and update the *BPMG* as required.

15 DEFINITIONS

- Commercial Recreation: Commercial Recreation Activity: Is the supply of experiences and services of outdoor activities available to the public for a fee, for the purpose of leisure and improvement of health, fitness and well-being, which turns a profit or commercial gain is obtained. Activities such as, promotional events one-off events for a business, are not considered a commercial recreation activity".

- Site Specific Management Plan: is a blueprint of how Council wish to conduct commercial recreation activities at identified locations.

- Not-for-profit organisation: Any local association, club, state or national organisation, who holds incorporated status under the *Associations Incorporation Act 1981* or is a company limited by guarantee under the *Corporations Act 2001* and does not operate for the profit or gain (either direct or indirect), of its individual members, either from ongoing operations or on its winding up.

16 SUPPORTING INFORMATION

The following documents have been compiled as part of the review to form the recommendations.

- Executive Summary: DM# 6240511
- Background Report: DM# 6199494
- Best Practice Review: DM# 6199702
- Summary and Site Specific Management Plans. The following sites will have an exclusive commercial activity permit space available:
    - Northern Foreshores: DM# 6211782
        - Palm Cove, page **Error! Bookmark not defined.**
        - Clifton Beach, page **Error! Bookmark not defined.**
        - Trinity Beach, page **Error! Bookmark not defined.**
        - Yorkeys Knob, page **Error! Bookmark not defined.**
        - Holloways Beach, page **Error! Bookmark not defined.**
        - Machans Beach, page **Error! Bookmark not defined.**
    - Centenary Lakes, Nature Play: Page **Error! Bookmark not defined.**, DM# 6229892
    - Goomboora Park: Page **Error! Bookmark not defined.**, DM# 6227541
- All other sites will have recommendations for use or require further planning and community consultation.
    - Sugarworld Parklands: Page **Error! Bookmark not defined.**, DM# 6228250
    - Cattana Wetlands: Page **Error! Bookmark not defined.**, DM# 6227560
    - Babinda Boulders: Page **Error! Bookmark not defined.**, DM# 6231072
    - Mt Whitfield: Page **Error! Bookmark not defined.**, DM# 6230204
    - Flecker Botanic Gardens: Page **Error! Bookmark not defined.**, DM# 6229163
    - Crystal Cascades: Page **Error! Bookmark not defined.**, DM# 6228170
    - The Cairns Esplanade: Dependent on the Esplanade Master Plan - DM# 6231557