

5.6. PUBLIC LIABILITY INSURANCE FOR FACILITY HIRE AND PRESCRIBED ACTIVITY APPROVALS GENERAL POLICY

REPORT AUTHOR Sara Roberts, Coordinator Environmental Health and Local Laws

MANAGER Paul Hoyer, Manager Environment and Planning

DEPARTMENT Environment and Planning

RECOMMENDATION

That Council adopts the Public Liability Insurance for Facility Hire and Prescribed Activity Approvals General Policy.

EXECUTIVE SUMMARY

Community members who require an approval under Council's local laws must provide a certificate of currency for public liability insurance. This protects Council's interests and any members of the public that may be participating in the approved activity.

This policy also addresses the liability issue for users of Council facilities, including causal hirers, who may not require approval under the local laws.

Appendix A attached to the policy has risk-assessed activities for which approval is commonly sought under the local laws, and Appendix B provides an indemnity clause for inclusion

BACKGROUND

When the local laws were reviewed and adopted in 2020, a value for public liability insurance was not set on any approval conditions. However, the conditions referred to a Council policy. This was intended to future proof the local laws and ensure that if limits change, in line with industry standards, Council can easily adjust its position by amending the policy through a Council resolution.

There are historical examples of industry standards increasing limits, while Council continued to be "locked in" to inadequate levels of cover, through old local laws.

COMMENTS

The process of formulating a policy has resulted in risk assessments being conducted on several activities, including outdoor dining and the display of portable advertisements e.g., sandwich boards. The policy provides a clear guide to the level of cover Council should be requiring and does not impose a higher, more expensive "catch all" level of coverage, improving outcomes for small businesses.

PROPOSAL

That Council adopts the Public Liability Insurance for Facility Hire and Prescribed Activity Approvals General Policy.

FINANCIAL/RESOURCE IMPLICATIONS

Nil.

RISK MANAGEMENT IMPLICATIONS

Council must ensure that it limits its liabilities with respect to activities it allows on and/or in public assets.

The policy ensures that clear levels of public liability insurance cover is required for the use of Council facilities and for prescribed activity approvals, while also providing that an authorised person may, through a risk assessment, prescribe an alternative level of cover.

Wherever the need arises for a level of cover to be over and above an amount stipulated in the policy, this will be included as a non-standard condition on the approval, with reasons provided to the applicant for the decision.

SUSTAINABILITY IMPLICATIONS

Economic: Risk assessments have been completed on a number of activities, requiring approval under local laws. This will assist applicants who are undertaking low risk activities, by only requiring the amount of cover that is reasonable.

Environmental: Nil

Social: Council facilities, including parks and reserves, are provided for, and intended to be used by all members of the public. Council must balance its risk while ensuring that the use of public areas and assets is achievable for members of the public. The policy seeks to achieve this result.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

Goal 1 - *We will conduct Council business in an open and transparent manner with strong oversight and open reporting.*

Goal 2 - *We will put the customer at the centre of our service delivery and process improvement as we deliver efficient and appropriate services based on community expectations.*

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Regulator Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.

CONSULTATION

Internal: Management Team

External: JLT Risk Solutions Pty Ltd

ATTACHMENTS

1. Public Liability Insurance for Facilities Hire and Prescribed Activity Approvals Policy
[5.6.1 - 8 pages]

88. PUBLIC LIABILITY INSURANCE FOR FACILITY HIRE AND PRESCRIBED ACTIVITY APPROVALS POLICY

Purpose

This policy outlines the public liability insurance requirements for Council facilities hire and prescribed activity approval holders during the hire period or the period of currency of any approval.

Scope

This policy applies across Council and to members of the public and entities who engage with Council to hire facilities or require approval to undertake an activity under the local laws or Local Government Act 2009.

Principles

Public liability insurance provides protection for an approval holder/hirer and provides a measure of protection for Council, in the event of an adverse incident resulting in an injured party/parties.

Where the insured activity of the approval holder/hirer involves the use of Council owned or controlled land or facilities, Council is potentially vulnerable to litigation in the event that loss, damage or injury occurs as a result of the activity being conducted.

Public Liability Insurance Levels

The amount of public liability insurance cover will vary depending on the nature of the approval and the potential risks to Council.

The level of cover applicable is determined by Council conducting a risk assessment, with the likelihood of an incident occurring and the consequences determining the level of risk. The attached Appendix A displays common activities for which public liability insurance is required. These activities have been risk assessed by Council's Workplace Health and Safety Advisor and an authorised person, and provides a guide for the necessary level of cover an approval holder will need to provide.

Council as an Interested Party

Persons conducting events or activities on Council owned or controlled land or facilities must ensure that Council is indemnified against liability arising from acts of negligence.

It is a requirement that Council is noted as an interested party on any contract or policy taken out by an approval holder/hirer.

Douglas Shire Council as an Interested Party – Council is not deemed a party to the insurance contract but can still make a claim under the policy.

Where an approval holder/hirer for a policy is advised by their proposed insurer that the company will not allow Council to be added to the contract or policy, the approval holder/hirer will need to seek an alternative contract or policy with an insurer who will add Council as an Interested Party.

Exemptions

In certain circumstances, Council may waive the requirement to hold Public Liability insurance.

These circumstances include:

- **Where Council is prepared to accept full responsibility for public liability insurance:**
 - Use of privately owned land or facilities by Council for public purposes where Council has some degree of operational control e.g. use of privately owned land for a public carpark.
- **Where a permit is required to be obtained under local law, but the activity takes place on private property** e.g. Where a permit is required to erect advertising signage on private property. In this instance, ongoing responsibility for public liability issues rests with the property owner.
- **Where a person is a Casual User of a Council facility or public land e.g. hall, park, road reserve**
Council's own policy covers natural persons who are defined as a Casual User.

A casual hirer is defined to be an individual or a group who enters into an agreement for use of a Council facility or Council-controlled area, where that individual or group:

- Is non-commercial;
- Is not incorporated,
- Is not involved in high-risk sports; and
- Hires a Council facility no more than 12 days per year.

Cover is not provided for incorporated bodies, sporting clubs or associations of any kind.

Casual users will agree to Council's release and indemnity clause which is included on all application forms.

See Appendix B for Council's release and Indemnity Clause and Casual User Agreement.

Related Legislation

Civil Liability Act 2003 (QLD)
Douglas Shire Council Local Laws 2020

Policy Review

This policy is to be reviewed whenever legislation changes, or every 4 years if no changes have been required to be enacted, at the direction of the Chief Executive Officer.

Policy Details

Policy Name	Public Liability Insurance for Facility Hire and Prescribed Activity Approvals Policy
Policy Number	88
Policy Version	1
Document Number	
Endorsed by	Chief Executive Officer
Policy Type	Council
Approval Authority	Council
Date Adopted	
Time Period	4 Years
Review Date	
Policy Department	Environment & Planning
Link to Corporate Plan	Robust Governance and Efficient Service Delivery
Revoked/Superseded	

This policy is to remain in force until otherwise determined by Council.

Appendix A

		Consequences				
		Insignificant (1) No injuries / minimal financial loss	Minor (2) First aid treatment / medium financial loss	Moderate (3) Medical treatment / high financial loss	Major (4) Hospitalable / large financial loss	Catastrophic (5) Death / massive financial loss
Likelihood	Almost Certain (5) Often occurs / once a week	Moderate (5)	High (10)	High (15)	Catastrophic (20)	Catastrophic (25)
	Likely (4) Could easily happen / once a month	Moderate (4)	Moderate (8)	High (12)	Catastrophic (16)	Catastrophic (20)
	Possible (3) Could happen or known it to happen / once a year	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
	Unlikely (2) Hasn't happened yet but could / once every 10 years	Low (2)	Moderate (4)	Moderate (6)	Moderate (8)	High (10)
	Rare (1) Conceivable but only on extreme circumstances / once in 100 years	Low (1)	Low (2)	Low (3)	Moderate (4)	Moderate (5)

Risk Assessment – Activities for which Public Liability Insurance is Required

Risk Level	Required Level of Cover
Low/Moderate	\$10 Million
Moderate/High	\$20 Million
Catastrophic	Activity not permitted

Activity	Potential Risks	Risk Assessment	Risk Level
Hiring a Council owned facility (Halls)	<ul style="list-style-type: none"> Slip or trip hazard Injury to member of the public by event activities Electrical hazards Injury from environmental hazards e.g. fire, branch falling, wind etc. 	Low (2) Moderate (6) Low (3-4) Low (3)	Low/Moderate
Portable Advertising Devices	<ul style="list-style-type: none"> Trip hazard Strong wind – cause pedestrian or vehicle strike Driver distraction hazard 	Low (2) Low (2) Moderate (6)	Low Moderate
Goods on Footpaths	<ul style="list-style-type: none"> Trip hazard Strong wind – cause pedestrian or vehicle strike 	Low (2) Low (2)	Low/Moderate
Outdoor Dining and ancillary items e.g. planter boxes	<ul style="list-style-type: none"> Trip hazard Strong wind – cause pedestrian or vehicle strike Vehicle mount footpath and strike diners 	Low Low (2) Low (2) Moderate (5)	Low/Moderate
Roadside Vending	<ul style="list-style-type: none"> Driver distraction hazard Potential for vehicle accident if parked too close to the roadway 	Moderate (6) Moderate (6)	Moderate/High

Activity	Potential Risks	Risk Assessment	Risk Level
<p>Low Impact Filming Activity</p> <ul style="list-style-type: none"> No more than 6 cast and crew; and/or No significant disruption is caused to stakeholders, retailers or motorists or other events in the vicinity of activities; and/or Activities are contained to footways or public open space areas only and no road closures or traffic diversions are required; and/or Public safety is maintained at the locations at all times; and/or <p>Vehicles associated with the activities are legally parked at all times and are not driven onto footpaths or parks.</p>	<ul style="list-style-type: none"> Trip hazard Driver distraction hazard Potential for vehicle accident due to changed traffic conditions 	<p>Low (2) Moderate (6) Moderate (5)</p>	Low/Moderate
<p>Medium/High Impact Filming Activity</p> <ul style="list-style-type: none"> 7 or more cast and crew; and/or Restriction of general public access in vicinity of filming; and/or Road or footpath closures or diversions either whole or part either for filming, vehicle parking or equipment placement/storage; and/or Construction of sets or erection of infrastructure; and/or Equipment / lighting other than hand held equipment; and/or Unit base(s) are required; and/or <p>Special access is required to any proposed filming location to which public or private vehicle access is usually not permitted (locked gates, special permits, permission or passes required).</p>	<ul style="list-style-type: none"> Trip hazard Driver distraction hazard Accident due to road closure or traffic management On-set accident due to temporary set building On-set accident due to special effects/stunts Injury to crew and/or public due to on-site vehicles 	<p>Low (2) Moderate (6) Moderate (5)</p> <p>Moderate (6)</p> <p>High (10)</p> <p>Moderate (9)</p>	Medium/High
<p>Gates/Grids</p>	<ul style="list-style-type: none"> Missing signage – vehicle accident Damaged grid – vehicle accident Approaches to grid not maintained – vehicle accident 	<p>Low (1) Moderate (6) Low (4)</p>	Low/Medium
<p>Tradesperson using footpath</p>	<ul style="list-style-type: none"> Trip hazard Injury caused by tools or equipment being used Pedestrians being hit by falling objects Pedestrians being forced onto roadway – potential to be hit by a car 	<p>Low (2) Moderate (4) Moderate (4) Moderate (6)</p>	Low/Medium (short term) Medium/High (long term with scaffolding)

Activity	Potential Risks	Risk Assessment	Risk Level
Events on Council controlled land or property	<ul style="list-style-type: none"> • Slip or trip hazard • Injury to member of the public by event activities e.g. fireworks etc. • Injuries caused by amusements • Injury caused by animals taking part in event • Electrical hazards • Injury from environmental hazards e.g. fire, branch falling etc. 	<p>Moderate (4) Moderate (5)</p> <p>Moderate (6)</p> <p>Low (2)</p> <p>Moderate (6) Moderate (6)</p>	<p>Low/Medium (wedding receptions and other small events)</p> <p>Medium/High (festivals including staging/lighting/fencing)</p>
Fireworks	<ul style="list-style-type: none"> • Public entering exclusion zone • Fire 	<p>High (12)</p> <p>Moderate (8)</p>	Medium/High
Helicopter Landing	<ul style="list-style-type: none"> • Public entering exclusion zone 	High (15)	Medium/High

Appendix B

1. RELEASE AND INDEMNITY

In consideration of Douglas Shire Council ("Council") issuing me/us with *The Approval* for the purpose described or allowed under *The Approval* ("the activity/activities"), I/we:

1. release and discharge Council and Council's agents, servants, officers and insurers ("the Related Parties") from and in respect of all liability, claims, losses, damages or proceedings which I/we may have (either now or accruing in the future) against Council and/or the Related Parties in respect of, or arising out of, or in connection with the activity/activities;
2. agree that the release and discharge given under clause 1 may be pleaded by Council and the Related Parties as a bar to any action, suit or proceeding commenced now or taken at any time by Council and/or the Related Parties, against Council and/or the Related Parties, or to which Council and/or the Related Parties is or are joined as a party or parties, in respect of, or arising out of, or in connection with the activity/activities; and
3. agree that I/we am/are liable for and shall indemnify Council and the Related Parties against any liability, claim, loss, damage or proceeding in respect of, or arising out of, or in connection with the activity/activities.
4. The release and indemnity provided by you under 1-3 is, however, reduced to the extent that the Council and/or any of the Related Parties have caused or contributed to the relevant liability, claim, loss or damage.

The covenants given under this document are binding upon me/us and my/our heirs, executors, successors and permitted assigns.

2. CASUAL USER OF COUNCIL FACILITIES LIABILITY INSURANCE ACKNOWLEDGEMENT AND DECLARATION

<p>I _____ of _____</p> <p style="text-align: center;"><i>Applicant's/Hirer's Name</i> <i>Applicant's/Hirer's Address</i></p> <p>acknowledge that Douglas Shire Council (herein referred to as "Council") has in place a liability insurance cover with a \$2,000 policy deductible (excess per claim) and limit of indemnity of \$10,000,000 for casual users of Council facilities at no cost to the casual user.</p> <p>I further acknowledge that I have read the following clause, which provides an understanding of what constitutes a casual user for the purpose of this insurance cover.</p> <p>What is a 'Casual Hirer'?</p> <p>A casual hirer is defined to be an individual or a group who enters into an agreement for use of a Council facility or Council controlled area or road, where that individual or group:</p> <ul style="list-style-type: none"> • is non-commercial; • is not incorporated; • is not involved in high risk sports; and • hires a Council facility no more than 12 days per year. <p>Cover is not provided for incorporated bodies, sporting clubs or associations of any kind.</p> <p>I advise that upon reading this and having received independent advice (legal or otherwise) to satisfy my needs, I believe this definition extends to include myself in the circumstances I will be using the Council facility and I will avail myself of the cover.</p> <p>I understand and acknowledge that Council is not representing the insurer and/or myself in respect to this insurance and is not in a position to grant or confirm cover in my particular instance other than to confirm that the liability insurance policy is current.</p> <p>I understand that in the event of an incident occurring that could possibly result in a claim under this policy that I must advise Council as soon as possible thereafter so that guidance can be provided on the appropriate action to take to ensure the insurer is advised as in accordance with the policy conditions. I also understand that it will be my responsibility to pay the \$2,000 policy deductible (excess per claim).</p> <p>I also understand and acknowledge that if for some reason, I may not be indemnified under this insurance that I would be personally liable for any claims arising out of my use of this facility.</p>	<p style="text-align: right;">Date of Event/Activity/Hire:</p>
<p>Venue/Location:</p>	<p style="text-align: right;">Date:</p>
<p>Signed:</p>	<p style="text-align: right;">Date:</p>

1. *The Insurance Policy wording is held by Council and is available for perusal at the Council Administration Building, 64-66 Front St, Mossman, upon request.*
2. *For the purpose of this acknowledgement "I" is construed to read "I" or "we" and "myself" is construed to read "myself" or "ourselves" to represent one or more persons.*
3. *Douglas Shire Council strongly recommends that you seek professional independent advice before deciding to avail yourself of this insurance cover.*