

5. **PROPOSED POLICY FOR THE GRANTING OF LICENCES TO COMMERCIAL RECREATION PROVIDERS WISHING TO OPERATE UPON COUNCIL OWNED OR ADMINISTERED PARK AND RESERVE LAND**

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PURPOSE OF REPORT

1. The purpose of this report is to enable the Board to comment on the proposed attached policy, for the licensing of commercial recreation providers, who wish to operate regularly on Council owned or administered park and reserve land. These comments will be included in a final report which will be placed before Council to adopt the attached draft policy, as Council policy. This policy does not apply to the occasional one off events, which may be organised by a commercial recreation provider, these applications being processed by the Community and Recreation Unit. A commercial recreation provider as identified in this report is a person, company or organisation (including an educational institution), who provides a recreational opportunity for the public to partake of for which a specific payment is made to cover costs, including wages or profit. Organisations with paid instructors, who are instructing people in a recreational pursuit, as part of a formal program are included in this definition. This report is being placed before the City's Community Boards for comment, prior to being considered for adoption by Council.
2. The Council's objective behind the proposed policy is to ensure that the recreational resource is protected for future generations to enjoy, and that private individuals are still able to use the resource, while at the same time providing the maximum opportunity for commercial recreation providers to provide the recreation added value component to the park or reserve for the general public using the reserve, at no cost to the Council.

Benefits for Licensees

3. The benefits for commercial recreation providers who have a licence to operate their business on Council owned, or administered park or reserve land are as follows:
 - (a) They have a legal right to operate their business on Council controlled, or administered land.
 - (b) There is a formal relationship between the licence holder, and the Council, ensuring that both parties are aware of their individual responsibilities in the relationship.
 - (c) The licence holder will be supplied with a vehicle/logo sticker indicating that the licence holder has a licence to operate on Council owned or administered park and/or reserve land.

EXECUTIVE SUMMARY

4. The Council is legally able to licence commercial recreation providers wishing to operate upon Council owned or administered park and reserve land.
5. Commercial recreation providers undertaking their business activities on Council owned or administered land, without authorisation are in breach of occupation law, and may expose the Council to risk.
6. Recently there has been an increase in the number of commercial recreation providers using, or wishing to use, Council owned or administered park and reserve land.

7. There is also a need for the Council to put in place a policy, the adherence to which will ensure that:
 - (a) The resource will be protected for future generations to enjoy.
 - (b) That clients of the commercial recreation providers will receive a quality experience.
 - (c) That the Council is protected from any liability arising from the activities of the commercial recreation providers who operate on Council owned or administered land.
 - (d) Other park users or potential users are not adversely affected by the activity, and their access to the recreational resource is maintained.
 - (e) That the commercial activities are aligned to the vision, purpose, and management objectives for the park or reserve.
 - (f) That the commercial activities are aligned to the Council's goals and objectives, City Plan, bylaws, and other pertinent Acts of Parliament.
8. The proposed policy sets out the methods by which commercial recreation providers' activities

(a) **Recreation Reserves as set out in Section 54 of the Reserves Act 1977**

A licence can be granted for the use of a recreation reserve by a business if the licence is necessary to enable the public to obtain the benefit and enjoyment of the reserve or for the convenience of persons using the reserve. The Minister of Conservation (the Minister) must consent to the licence unless the reserve is vested in the Council to administer and the proposal is contained within the reserve's approved management plan.

Public notice as specified in section 119 of the Reserves Act 1977, must be given prior to the granting of the licence. However, this is not necessary where the proposal is contained in the approved management plan or where a resource consent has been obtained.

(b) **Scenic Reserves as set out in Section 56 of the Reserves Act 1977**

It is possible to grant a licence for the use of a scenic reserve by a business if the licence is necessary to enable the public to obtain the benefit and enjoyment of the reserve or for the convenience of persons using the reserve. The Minister must consent to the licence. Public notice must be given prior to the granting of the licence, this can be avoided where the proposal is contained within the approved management plan for the reserve, or if a resource consent has been obtained.

(c) **Historic Reserves as set out in Section 58A of the Reserves Act 1977**

It is possible to grant a licence for the use of a historic reserve by a business with the consent of the Minister. Public Notice must be given prior to granting the licence, this can be avoided where the proposal is contained in the approved management plan, or if a resource consent has been obtained.

(d) **Local Purpose Reserves as set out in Section 61 of the Reserves Act 1977**

The Council may grant a licence for the use of a local purpose reserve by a business if this is necessary or desirable for the proper and beneficial management, control and use of the reserve for the purpose specified in its classification. No public notice, or the Minister's consent, is required prior to granting a licence under this section of the Act.

The Act makes no provision for licensing a business to use a nature or scientific reserve. The Council however owns or manages very few of these types of reserve.

Under Section 59A of the Reserves Act 1977 the Minister is granted powers to grant a concession for the use of a reserve.

Section 94 of the Reserves Act 1977 provides that it is an offence to carry on within any reserve vested in an administering body any trade, business, or occupation without authorisation obtained from the Minister of Conservation or the administering body, as the case may require.

13. There are currently a number of commercial operators who use Council owned or administered land without formal agreements in place. Their activities include mountain bike rides, parapentes, paragliders, rock climbs, horse treks and other recreational pursuits. Officers are aware of only four such organisations that do have the required agreements in place. The only other legalised commercial recreation activity occurring on parks are the single one-off events, which are required to be booked through the Call Centre, or the Major Events Co-ordinator. A fee is charged for this type of event.
14. Some commercial recreation providers may require resource consent to operate their businesses in certain areas of the city, as defined in the City Plan. Officers are of the view that Council consent for business activities on Council controlled land should be obtained, prior to the applicant applying for Resource Consent, if required by the City Plan.

15. Some coastal land and some of the Port Hill Reserves (including the Summit Road Scenic Reserves) are not vested in the Council. In these cases a concession may be issued by the Department of Conservation (usually done in consultation with the Council). The processing fees are paid directly to the Department of Conservation. Where the Council has a management role under the Reserves Act (ie where the Council is appointed to control and manage such land), then subsequent licence payments will be paid to the Council.
16. In the case of the foreshore, the Council will need to take into account the requirements of The Coastal Regional Plan that is governed by Environment Canterbury. The foreshore below mean high water springs is within the coastal marine area, covered by the plan.
17. It is also necessary for all applications to be assessed against the requirements of the Reserves Act 1977, the management plan for the park or reserve if there is one, City Plan requirements, other pertinent bylaws, and Acts of Parliament where appropriate eg Summit Road Protection Act. Where no management plan exists, the application needs to be assessed for alignment to the vision, purpose, and management objectives for the park or reserve. The recreational experience should also be aligned with the Council's goals and objectives.
18. Officers require all businesses operating on Council owned or controlled land to have a minimum of \$1,000,000 public liability insurance to protect themselves against claims from a third party in relation to damage to the third party's property, caused by the businesses' activities on Council land. The Council also requires businesses operating on Council owned or controlled land to indemnify the Council against any actions and suits that may be taken against the Council because of the businesses' activities on the land.
19. A number of commercial recreation providers' activities take place in rural fire districts, which are prone to being high fire risk areas in the summer, for example Bottle Lake Forest Park and the Port Hill Reserves. It is prudent that commercial operators operating in these areas have insurance to protect themselves against claims made against them under the Forest & Rural Fires Act 1977, should their activities start a fire. It is not uncommon for the cost of controlling and extinguishing a fire in these areas to cost more than \$100,000. If the licensing policy is adopted, it will be a requirement of commercial recreation providers, operating in these areas, to have a minimum of \$250,000 rural fire insurance, which some insurance companies provide as an extension to their companies' public liability policy. This amount could be increased to \$500,000 if deemed appropriate by the Principal Rural Fire Officer.
20. The Council also has responsibilities under the Health & Safety in Employment Act as the owner of the land, and with it being a work place. To discharge its obligations, it would generally need as a minimum to ensure that any operator has a Health & Safety Management Plan. Applicants will be required to include an externally audited Health & Safety in Employment Plan, when they make application for a licence.
21. Schedule 7, Part 1, Section 32 of the Local Government Act 2002 allows the Council to delegate any of its responsibilities to an officer of the Council unless it is expressly stated otherwise in any other Act. Sections 54(1)(d), 56(1)(b), 58A(1), 59A and 61 of the Reserves Act 1977 are silent on the delegation matter, and therefore Council is able to delegate these responsibilities to an officer of Council. Council Officers are therefore recommending that responsibility for administering the policy once adopted by Council, where an application received should be processed in accordance with the policy to the Greenspace Manager.

BACKGROUND ON PROPOSED POLICY FOR THE GRANTING OF LICENCES TO COMMERCIAL RECREATION PROVIDERS WISHING TO OPERATE UPON COUNCIL OWNED OR ADMINISTERED PARK AND RESERVE LAND

22. The Council's past approach, when dealing with a commercial recreation provider's request or application, was to take into account the benefits to the general public, while trying to balance the effects of the proposed activity on the environment, and other park users. In the past a number of commercial recreation providers operated under informal arrangements discussed with Council officers. Although these discussions and arrangements took place while the business was gradually evolving, a formal arrangement should have been put in place once the business became viable and established. On the other hand, there were some instances where Council officers have not been consulted at all by a commercial recreation provider who has been operating on Council owned or controlled land. If the land is held under the Reserves Act 1977, these unknown Commercial Recreation Providers are committing an offence under Section 94 of the Reserves Act 1977.
23. The Council has in the past allowed commercial recreation providers to operate for a trial period on Council owned or administered park and reserve land, for the following reasons:
- (a) Where the impact of the proposed activities on the park and/or reserve are difficult to assess. The terms of the temporary licence granted to the commercial recreation provider will allow the Council to place conditions on the activity during the trial period as the impacts of the activity become better understood, and the necessary mitigation requirements are identified.
 - (b) Where the returns from a new business venture that requires a significant capital investment are difficult to assess.
24. The trial period allows for a detailed evaluation and assessment of the operation to be undertaken at the end of the period, enabling further conditions to be placed upon the operation to mitigate any adverse effects of the operation upon the environment, and to assess the future viability of the operation, before committing to a full licence.
25. During the last few years, the use of Council parks and reserves by commercial recreation providers has increased, partly because many ventures that were previously run as amateur non-profit making activities have evolved into commercial businesses as individuals have sought to make a livelihood out of their interest. A number of the areas used, such as Bottle Lake Forest Park (mountain bike activities), and the Port Hills (paragliding, parapenting, hang gliding, rock climbing), are under pressure from competing commercial operators. Officers are of the view that this competition at certain sites has reached a stage where ordinary public use is sometimes being jeopardised. Officers are therefore recommending that the Council adopt the draft policy as set out later in this report as Council Policy thereby ensuring:
- (a) That the recreation experience, which is derived from the activity, is what the participants should reasonably expect.
 - (b) That there is the ability to manage activities to minimise conflict with other users and access to the area is protected for members of the general public who wish to use these areas at the same time.
 - (c) That the natural resource that the recreation is taking place upon is protected for future generations to enjoy.
 - (d) That the commercial recreation experience being promoted is aligned to the vision, purpose, and management objectives for the park, or reserve, and Council.
 - (e) To ensure that health, safety, and other legislative requirements have been properly addressed by the commercial recreation provider, before the recreation experience is delivered.

Present Situation

26. The main areas being used for commercial recreational activities are Regional Parks, more specifically Bottle Lake Forest Park, The Groynes, and the Port Hill Reserves, although there are some commercial recreation providers operating in urban parks, for example South Brighton Domain, Hagley Park, and on the Foreshore.
27. Examples of some of the issues, which have given rise to the necessity for such a licensing policy, are outlined below:
 - (a) The Council has recently received complaints about the activities of wind powered vehicles (land yachts) using the South New Brighton foreshore. The complaints focus on the danger that the use of these land yachts, which speed along the beach, pose to other beach users. This activity raises issues of public safety, which need to be addressed.
 - (b) A number of bolts have been fixed in the past into the rock faces in the same area of particular climbs on the rocky outcrops on the Port Hills. If this practice is left unchecked it will result in the degradation of the rock faces. The problem has arisen from the fact that it is a cardinal rule that climbers should not use someone else's bolt, unless they are sure that it is safe, hence the possible proliferation of bolts in the same area. No bolting or removal of existing bolts should be undertaken without the permission of the Port Hills Area Head Ranger first being obtained.
 - (c) Recently, three commercial mountain bike operators applied to hold night races on the same night in Bottle Lake Forest Park. Officers viewed this with concern because, in their opinion, only one such race should be held at one time during the night, for safety reasons.
 - (d) During recent investigations, it was found the one unlicensed parapenting operator had no public liability insurance. All commercial recreation providers need to have adequate public liability insurance. In this particular case, the issue has been addressed.
 - (e) Recently a temporary sign, measuring 6x1 metres in size, was placed near the top of Evans Pass Road, advertising that the owner, a parapenting operator, was operating about 1km down Godley Head Road. This sign did not comply with City Plan requirements.
 - (f) Some of the areas where commercial recreation activities take place are also home to rare indigenous plants, for example on the rocky outcrops of the Port Hills. These sites need to be assessed by the Council Botanist to ensure that any significant indigenous plant groupings are protected, before any licences are issued for activities in these areas.
 - (g) Enquires have been received in the past to operate a motorised skateboard concession and an off road cross-country vehicle in Bottle Lake Plantation and on the Port Hills. As a general policy, these types of motorised activities should be limited to areas specially set aside for this purpose, for example Ruapuna Park, and Maryland's Reserve. The reason for this requirement is because of the effect of the noise on other park users, the increased maintenance requirement to maintain the parks infrastructure, and the increased fire danger associated with these types of vehicles. ECan also have endowment and vested land, some of which may be more suitable for this type of activity.
28. Council officers are strongly of the view that it is necessary for Council to take a pro-active stance when dealing with existing and intending concessionaires, to ensure that the recreation resources are protected for future generations to enjoy. Recently, officers of the Greenspace Unit wrote to all known commercial operators informing them that they will be required to enter into licences with the Council to undertake their activities on Council owned and controlled land. It was also indicated to them that they would need to have adequate public liability insurance and a health and safety plan in place for their activities.

29. The Council may need in some cases to reduce the intensity of use or control activities of a number of commercial providers using a particular park or reserve, to ensure that those licensed commercial recreation providers are able to provide a quality experience to the community, while at the same time ensuring that the right of the general public to recreate upon these areas is maintained, and that the recreational resource is protected. This can be achieved by the Council limiting commercial operations upon a particular site, by tendering out, balloting, or extending the period of existing licences for permitted commercial activities on identified parks or reserves that are subject to a high intensity of use. Areas of high use can be identified by perusal of the Community and Recreation, and Greenspace Customer Service Centre booking records, Park Ranger Service surveys, and other monitoring strategies.
- (a) Where a tendering process is used, the successful tenderer will be chosen using the following criteria using the weighted attribute system of selection:
- (i) The tenderer's experience in the activity being offering to the customer.
 - (ii) The quality of the service that the tenderer is prepared to provide to the customer.
 - (iii) Measures the tenderer is prepared to take to minimise the activity's effect on the environment
 - (iv) That the commercial recreation experience being promoted, is aligned to the vision, purpose, and management objectives for the park, or reserve.
 - (v) The tenderer's monetary offer made to the Council to undertake the activity upon Council owned or controlled land.
- (b) It is envisioned that the successful tenderer would be issued with a licence for a finite period after pre-payment of a processing fee and annual licensing fee. Officers consider a licence term of between three and five years would be appropriate, this being dependent upon the site applied for and the amount of capital investment required by the applicant to set up their particular business.

Delegation

30. The philosophy behind the proposed policy, is to ensure that the recreational resource is protected for future generations to enjoy, while providing the maximum opportunity for commercial recreation providers to provide the recreation added value component to the general public using the reserve, at no cost to the Council. A licence does not confer an exclusive right to the land, as a lease does. Where the Acts of Parliament allow, officers are recommending that Council delegate its responsibilities for administering the proposed policy once adopted by Council to the Greenspace Manager.

Consultation Procedure

31. The public, (using advertisements placed in the public notices column of the newspapers), existing known commercial recreation providers, all lessees who lease Council owned or administered park and reserve land, Canterbury Chamber of Commerce, Summit Road Society, and Summit Road Protection Authority, have been invited to comment on the draft policy for the granting of licences to commercial recreation providers, who wish to operate on Council owned or administered park and/or reserve land, during the month of October last year. Thirty six submissions were received to this process, 12 from Council staff, six from commercial recreation providers, 11 from sports clubs, three from professional organisations, and four from the general public. Where appropriate, the proposed policy has been altered to take into account their suggestions. The main suggestions not included in the proposed policy are elaborated upon below:
- (a) It was suggested by two submitters that a bond be required from commercial recreation providers, to cover the cost of rectifying any adverse effects that the commercial recreation activity may have on the environment, which were not envisaged when the activity was approved, or resulting from the commercial recreation provider not complying with the conditions of their licence.

Officers did consider this issue, believing it better to include a trial licence period where the effects upon the environment of the proposed activity are not easily ascertained. During this trial period alterations to the licence will be able to be made at any time by the Council to mitigate the activities' effects upon the environment. It is also proposed in the policy to delegate to the Greenspace Manager the right to limit, or shift a commercial activity from one site to another site, if in their opinion the activity is causing damage to the environment, infrastructure of the park or reserve, or affecting the general public's rights to use an area. Where a commercial recreation provider has breached the conditions of their licence, the Council will have the right to withdraw the licence, should it decide to do so.

- (b) Four submitters, some of whom operate under a charitable trust deed, argue that they make little or no profit from their activities and therefore should not have to pay a licence fee.

This situation however, does not provide commercial equity with another entity that is trying to run a business providing the same or similar activities because this entity will be at a cost disadvantage. The reality of the situation is that the Council is legally able under the Reserves Act 1977, and under the powers of general competency of the Local Government Act 2002, to licence commercial operators where the service that is being provided is being paid for by the client. Commercial recreation providers undertaking their business activities on Council owned or administered land, without authorisation are in breach of occupation law and may expose Council to risk. In fact Section 94 of the Reserves Act 1977 expressly provides that it is an offence to carry on within any reserve vested in an administering body any trade, business, or occupation without authorisation first being obtained from the Minister of Conservation or the administering body, as the case may require.

There is a need for the Council to satisfy itself that all commercial recreation providers, operating on Council owned or managed land, where the clients are paying a fee for the service provided, have the appropriate insurances, health and safety plans in place, and that they have the appropriate experience and qualifications to ensure that their customers receive a good value experience. There is also the need for the Council to adequately balance the use of the resource by commercial recreation providers, which includes profit, and non profit motivated organisations, and educational institutions, with the rights of the general public to use the resource. There is also an equity situation that the non-profit organisation should not have a cost advantage over a profit motivated organisation who provide a similar service to the general public. It should be noted that officers are recommending that a Council cost recovery licensed based fee system be put in place, not a profit based system.

This reworked report was re-submitted to submitters, one indicating that they were still not happy with the definition of whom is included in the commercial recreation providers definition, requesting to be heard on the matter. This hearing will be set up shortly.

OPTIONS

General

32. Officers have examined the methods used by the Department of Conservation and the Auckland Regional Council to charge for commercial concessions on land under their control. In many cases, concessionaires are charged a percentage of their gross profits, accrued from their activity on the land, which in the case of the Department of Conservation is approximately 7%.
33. The costs of putting the licence in place for the benefit of the commercial recreation provider would be paid by the applicant in accordance with Council's policies relating to charging/quotations for the compilation of leases, licences, and easements as confirmed at the Council meeting of 28 June 2001. These costs would include the application processing costs (report preparation and meeting attendance), public advertising fee, hearing preparation and attendance costs if required, Minister of Conservation approval fee, Council legal and valuation fees if required.

Apply a formal licensing process with the fees set at a level to cover Council costs only (the preferred option).

34. Using this system will enable the commercial recreation provider to offer their activities to the general public at a lower price, this being of benefit to the public. The advantage to the licensee is that they will retain the maximum benefits of their endeavours. The licence fee will still need to be reviewed annually, to ensure that costs involved in administering the licence are properly covered in the fee, and that any additional costs incurred by Council for maintaining the Council owned asset for the direct benefit of the licensee are recovered. There are two exceptions to this being:
- (a) Where there are more applicants wishing to operate upon a particular site than the site can accommodate, in which case a tender or ballot process will be used, the price offered for a licence over the site being taken into account together with all the other requirements.
 - (b) Where there are commercial recreation providers providing a similar service on private land in the vicinity of Council managed or controlled park and reserve land, there will be a need to charge a similar fee.
35. Officers are of the view that while Council has the responsibility to maintain reserves for the purpose for which they are held, that as a general guide it is not the Council's responsibility to provide the added value recreational component, which may expose the Council to a greater financial risk. This area of activity is seen as the domain of the private recreational provider, who is willing to take on the financial risks that such a venture entails. Sports Clubs also provide this service, but of course are not included in the definition of Commercial Recreation Provider. Consequently, officers are of the view that in the majority of cases, the costs associated with private enterprise providing this extra value, and accepting the financial risks involved should be minimal, covering the costs of Council, with a small percentage of this cost for profit, to ensure that no burden is placed upon the ratepayer. These costs should include, where possible, the additional expense incurred by Council to maintain the public facility, where this additional expense can be directly attributed to the licensee's activities, for example, mountain bike track maintenance.
36. The only exceptions to this rule should be when the provision of this added value by a commercial recreation provider is in direct competition with private recreation providers supplying the same recreation service on private land, where higher rentals are often paid, or where there are competing interests for a particular site. In these situations a fair rental for the use of the resource should be arrived at, using independent valuation methods, or tendering the opportunity to use the site.
37. Such a Council policy would be seen as business friendly by the business community.

Maintain the status quo (no formal licensing process).

38. With this option there is no control over the commercial recreation providers activities on Council owned, or managed park and reserve land. Congestion at some sites may mean that the general public are not able to use the resource at times, dangerous congestion situations may occur, eg on rock climbing resources etc.
39. The recreational resource may be damaged through over-use, or unique habitat damaged because of its presence in the area not being known, or understood.
40. Council maintenance costs may be increased by commercial recreation providers use of the resource, without the Council being able to recoup these additional costs from the commercial operators.
41. Council not being aware of commercial recreation providers use of sites which may be culturally sensitive to Maori.

Apply a formal licensing process with fees charged as a percentage of gross profit.

42. Officers are of the view that percentage-based payments are more difficult to police. It is acknowledged that while the Council may miss out on some revenue using a cost recovery rent system, the system will afford the licensee the maximum opportunity to establish their business, at no cost to the Council. This option will not be seen as business friendly as the recommended option.

Apply a formal licensing process with two levels of licence fees charged. Organisations who operate for profit are charged a percentage of gross profit, while organisations operating on a cost recovery basis only are charged at a level to cover Council costs only.

43. The Commercial Recreation Provider who is offering their services for profit will be at a cost disadvantage to other providers because they will need to charge customers more to cover costs.
44. This option does not provide for commercial equity between operators operating for profit, and those that operate to cover costs only.
45. Because of how different applicants' organisations are constituted, it is likely to be difficult to ascertain which category some of these organisations should fit into.
46. This option will not be seen as business friendly as the recommended option.

Apply a formal licensing process with no fee or cost recovery.

47. This option was not considered for the following reasons:
- (a) These applicants are commercial recreation providers, and therefore these costs are a legitimate cost the applicants should expect to pay when setting up their businesses that should not be subsidised by the ratepayer.
 - (b) Council has approved a policy based on a processing quotation/estimate being given to the applicant for the recovery of Council costs for processing commercial type applications to use Council owned or managed park and reserve land (28 June 2001).

PREFERRED OPTION

48. Apply a formal licensing process where the fees are set at a level to cover Council costs only.

STAFF RECOMMENDATIONS

That the Board recommend to Council:

- (a) To approve the proposed "Policy for the Granting of Licences to Commercial Recreation Providers Wishing to Operate on Council Owned or Administered Park and Reserve Land" as set out in the attached policy.
- (b) Where the Acts of Parliament allow, Council delegates its responsibilities for administering the proposed policy once adopted by Council to the Greenspace Manager.

CHAIRPERSON'S RECOMMENDATION

That the staff recommendations be adopted.