

Standard Requirements for Public Liability Insurance for Approval Holders

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1. PURPOSE

As a part of its business processes, Council may enter into formal agreements and arrangements with other parties (collectively referred to herein as 'approval holders').

The purpose of this document is to outline the public liability insurance requirements for approval holders during the period of currency of any approval.

2. SCOPE

This policy applies across Council and to the public.

3. POLICY STATEMENT

The requirement to hold public liability insurance indemnifying Council

The requirement to hold public liability insurance will apply to any applicant seeking a lease, licence, permit or other approval involving Council owned or controlled land or property.

Public liability insurance provides protection for an approval holder in a situation where failure to have any, or any adequate, cover could result in an approval holder being rendered bankrupt when the approval holder cannot meet an award of damages.

Public liability insurance additionally provides protection for an injured party/parties (affected person/s). Where an affected person is injured because of the negligence of the approval holder, the affected person may be entitled to compensation. However, where the approval holder has little or no money, then the affected person may be forced to bear the full cost of having their injuries treated, including costs associated with treating any long term effects of an injury such as in circumstances of permanent disablement.

Furthermore, public liability insurance held by the approval holder provides a measure of protection for Council. Since the insured activity of the approval holder involves the use of Council owned or controlled land or facilities, Council is potentially open to litigation in the event that loss, damage or injury occurs as a result of the activity being conducted.

A standard indemnity clause example serves to illustrate this indemnity protection:

The (hirer/approval holder) agrees to indemnify, and keep indemnified, and to hold harmless the Council, its servants and agents, and each of them from and against all actions, costs, charges, expenses and damages

whatsoever which may be brought, or made, or claimed against them, or any of them, arising out of, or in relation to the (hiring arrangement/conduct of the activity for which the approval has been granted).

Accordingly, all approval holders must hold appropriate public liability insurance.

Types of approvals for which public liability insurance is required

Applications for approvals made under Council local laws must be accompanied by documentary evidence (Certificate of Currency) of sufficient current public liability insurance for the following activities:

- Commercial Use of Local Government Controlled Areas and Roads:
 - Goods on Footpath
 - Sandwich Boards
 - Outdoor Dining
 - Approved Furniture
 - Busking
 - Roadside Vending
 - Conduct of Commercial Activities on Reserves
 - Other Commercial Use of Local Government Controlled Areas, facilities or roads
 - Filming in a Public Place
- Erection or installation of structures on Local Government Controlled Areas or Roads or the carrying out of works within a road reserve or the interference with roads:
 - Applications to install a gate, grid or pipeline in, on, under or across a Council road
 - Installation of driveways/crossovers within Council road reserves
 - Tradesmen/others carrying out work on a footpath, for example; a builder renovating a shop front and utilising part of the footpath to undertake the works
 - Contractors engaged by Council to carry out work on roads or footpaths
 - Transport of large, oversize objects along a Council road, for example; house removal
- Conduct of events on Council roads or in parks, reserves, buildings or other facilities owned or controlled by Council, for example; festivals, shows, sporting events or activities
- Erection of signage or installation or display of advertising devices on or within Council controlled road reserves or on property that are visible from a road or other public place
- Lessees of Council facilities, for example; swimming pools, sporting fields, caravan parks, vacant land or reserves

Public liability insurance levels

The amount of Public Liability insurance cover required will vary between \$5M and \$20M depending on the nature of the approval being sought and the activity to be conducted. The minimum of \$5M and maximum of \$20M may be varied by Council from time to time depending on advice from its public liability insurers and the quantum of damages awards being made by the Courts in public liability cases.

The level of cover applicable is determined following Council conduct of a risk assessment. The risk assessment will explore the potential risks to Council of granting a lease, licence, permit or other approval. The likelihood of an incident occurring and the consequences of an incident determine the level of risk.

For example, where it is very likely or almost certain that the conduct of a particular activity has the potential to create a situation where death or serious injury could occur, then the level of risk would be considered to

be extreme and would require the maximum Public Liability cover of \$20M. On the other hand, if the conduct of an activity results in a situation where it is highly unlikely to give rise to an incident, the consequences of which would be insignificant or minor, the level of risk would be considered Low and would require the minimum cover of \$5M.

The following tables will be used to assess the level of risk and the appropriate sum insured. As a guide, activities assessed as Low or Moderate risk will require the minimum cover of \$5M and activities which are assessed as having a High or Extreme risk will require cover of \$20M.

Refer to the attached Risk Assessment table which display various activities for which public liability insurance is required and required level of cover.

Insurance contracts and policies for public liability insurance

Council must be indemnified against liability arising from acts of negligence by persons conducting events or activities on Council owned or controlled property.

Insurance companies will generally utilise one of three main options for how Council appears named on an insurance contract, these being:

- a) As a Named Insured - this enables Council to actually make a claim in its own right under the policy;
- b) As an Interested Party - Council is not deemed a party to the insurance contract but can still make a claim under the policy; and
- c) With Interests Noted on Policy - Council has an insurable interest only but no "right to claim" under the policy.
- d) With nil named reference - Council is not named or referred to in accordance with options a) to c) above.

Council's preference is to be included as a Named Insured on any policy (option a) above) and applicants for public liability insurance should advise their insurance company of this when negotiating the policy.

Council may, at its sole discretion, accept naming as an Interested Party (option b) above), with Interests Noted (option c) above) or with nil named reference (option d) above) and such will be dependent upon the type of activity being conducted and the assessed level of potential activity risk involved.

Where an approval holder for a policy is advised by their proposed insurer that the company will not allow Council to be added to the contract or policy (possibly more relevant to global insurance companies), the approval holder should make efforts to shop around and negotiate with companies who have cover with insurers who will meet Council's requirements for insurance as aligned with Council's assessed level of risk for the proposed activity. Where an applicant or approval holder is unable to secure insurance to the satisfaction of Council having regard to the assessed level of potential activity risk, the approval application or renewal may be refused.

Exemptions

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

- **Where Council is prepared to accept full responsibility for public liability insurance:**

- Lease arrangements for Council owned facilities such as swimming pools and caravan parks where Council's responsibility for Public Liability insurance cover is negotiated as part of the lease agreement
 - Public events where Council partners with an external organisation in the running of the event and has some control of the activities taking place and the arrangement is approved by Council's Public Liability insurer
 - Contractual arrangements where the Council agrees to indemnify a contractor engaged by Council for the contractor's negligence and the contract is negotiated on this basis
 - Use of privately owned land or facilities by Council for public purposes where Council has some degree of operational control, for example; use of land owned by another party for a public carpark
- **Where a permit is required to be obtained under a local law, but the activity takes place on private property**

An example might be where a permit is required to erect advertising signage, but the sign is located on private property. The main objective of Council in requiring a permit to erect the sign might simply be to retain some sort of control of the aesthetic/visual aspects to avoid 'visual pollution'—a proliferation of unsightly advertising devices and landscape clutter. However, if the permit is granted and the sign is erected on private property in accordance with approved construction standards, then ongoing responsibility for public liability issues associated with the sign rests with the property owner.

The situation differs where a sign is erected on a building or awning that encroaches over a Council footpath or other public space and the sign is therefore suspended above Council owned or controlled land. In this instance, persons using the public space could potentially be injured if the sign fell on them and the requirement to indemnify Council would apply.

- **Where a person is a Casual Hirer of a Council facility, for example; a hall or meeting room**

Council holds appropriate Casual Hirers Cover, which provides liability cover to the users of Council facilities, as part of its own public liability insurance policy. The cover is available to natural persons who are non-commercial, not incorporated, not for profit, and irregular users of Council facilities.

No cover is provided for not for profit groups or activities, incorporated bodies, sporting clubs or associations of any kind. If a fee or charge is imposed then there is no cover, regardless of any profits made or where all profits are donated to a charity.

The rationale behind these restrictions is that these bodies are, in most cases, engaged in other activities that would warrant prudence in obtaining public liability insurance. As well, some of these bodies are required by law to have public liability insurance.

4. REPORTING

Nil reporting required

5. DEFINITIONS

Casual Hirer — means Third Parties who hire Council facilities no more than a total of 10 days over a 12 month period.

Council — means the Mareeba Shire Council including all elected representatives, employees, contractors, volunteers, a Standing or Joint Standing Committee, committee members and any entity under direct Council ownership, management, sponsorship or financial control.

6. RELATED DOCUMENTS AND REFERENCES

Civil Liability Act 2003 (Qld)

Local Law No. 1 (Administration) 2018 (MSC)

Local Law No. 2 (Animal Management) 2018 (MSC)

Local Law No. 3 (Community and Environmental Management) 2018 (MSC)

Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2018 (MSC)

7. REVIEW

It is the responsibility of the Manager Development and Governance to monitor the adequacy of this policy and implement and approve appropriate changes. This policy will be formally reviewed every two (2) years or as required by Council.

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APPENDIX

RISK ASSESSMENT - ACTIVITIES FOR WHICH PUBLIC LIABILITY INSURANCE REQUIRED

Activity	Potential Risks	Likelihood	Consequence	Risk Level	Recommended level of cover
Goods on Footpaths (this could include tables set up on footpaths to sell raffle tickets etc)	° Someone could walk into the goods or trip on them	D	3	Moderate	\$5.0M
	° Could partially block footpath and force some pedestrians out onto roadway to get around them - potential to be hit by a car	E	4	High	
	° A strong wind might pick up some items and cause them to strike pedestrians or vehicles or other property	E	2	Low	
Sandwich Boards/Temporary & Portable Advertising Devices	° Someone could trip on them or walk into them	D	3	Moderate	\$5.0M
	° A strong wind might pick them up and cause them to strike a pedestrian or vehicle or shop front	E	2	Low	
	° They may cause a distraction to drivers and cause an accident	D	4	High	
Outdoor Dining & Approved Furniture	° Someone could walk into, or trip on, the tables and chairs	D	3	Moderate	\$10.0M
	° Could potentially block footpath and force some pedestrians out onto the roadway to get around them - potential to be hit by a car	E	4	High	
	° A strong wind might pick up the tables and chairs and cause them to strike pedestrians, vehicles or other property	E	2	Low	
	° A vehicle might mount the footpath and strike diners seated at the tables	D	4	High	
Busking	° Someone may trip over the busker's equipment	D	3	Moderate	Covered by Busker's policy taken out by Council (except for acts involving knives and fire). \$1.0M for dangerous acts such as fire eating and knife throwing, although these types of acts will generally not be approved
	° Depending on the act being performed by the busker eg juggling, fire-eating, someone may be injured if a mistake is made by the busker	D	2	Low	
Roadside Vending	° Potential for vehicle accident if vendor's vehicle or stall is parked/placed too close to carriageway	D	4	High	\$10.0M
	° Vending activity may cause a distraction to drivers, causing an accident	D	4	High	
	° Risk of food poisoning from foodstuffs sold by vendor	D	4	High	
Filming in a Public Place	° Someone could walk into the camera crew and equipment or trip on cables or camera equipment	D	3	Moderate	\$10.0M
	° Could partially block footpath and force some pedestrians out onto roadway to get around them - potential to be hit by a car	D	3	Moderate	
	° They may cause a distraction to drivers and cause an accident	D	3	Moderate	
Gates/Grids	° Missing signage warning of gate or grid - vehicle accident	D	5	Extreme	Licensed Gate \$10.0M Grid \$10.0M
	° Grid may be damaged causing vehicle accident	D	5	Extreme	
	° Approaches to grid not maintained causing vehicle accident	D	5	Extreme	
	° Approaches may not have correct gradient causing vehicles to become airborne at speed	D	5	Extreme	
Pipelines	° Trenching in which pipe is laid may subside causing vehicle damage or accident	D	3	Moderate	\$10.0M
	° Piping laid across unsealed road may become exposed over time causing damage to vehicles	E	1	Low	
	° Pipe may burst under the road causing damage to the road, precipitating an accident	D	4	High	
Installation of Driveways and Crossovers	° Trip hazard for pedestrians using footpath	D	3	Moderate	Only required for non-compliant driveways and crossovers: Urban \$5.0M Rural Pipe/Culvert \$10.0M
	° Incorrectly installed pipe crossover may cause drainage/flooding issues	D	2	Low	
	° May cause vehicle damage or accident if not installed or signed properly (eg pipe crossovers in rural location)	D	3	Moderate	

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Tradesmen utilising Footpath	° People tripping or walking into equipment or materials being used on job	D	3	Moderate	Minor Works \$10.0M Major Works \$20.0M
	° Injury caused by tools and equipment being used	D	2	Low	
	° People being hit by falling objects eg wall/awning collapse	D	2	Low	
	° People being forced to use roadway to bypass works being carried out on footpath - potential to be hit by car	E	4	High	
Contractors engaged by Council carrying out works on roads or footpaths	° Injury to member of public by machinery, tools, materials, equipment etc being used on the job	C	4	Extreme	Minimum cover of \$20.0M or such other higher amount as determined by the Director Infrastructure Services depending on the works being undertaken
	° Damage to vehicles or property as a result of works being carried out	C	2	Moderate	
	° Vehicle accident caused by conduct of works	C	4	Extreme	
	° Services (eg water mains) being damaged and causing problems (eg flooding) for properties in vicinity	D	1	Low	
	° Impact on businesses where works prevent ready access to business premises - economic loss	D	3	Moderate	
Transport of large objects eg House Removals	° Damage to Council infrastructure eg bridges, roads, signage	C	3	High	\$20.0M
	° Load shifting/falling causing damage to other vehicles/injury to people	D	5	Extreme	
	° Vehicle accident caused by motorists trying to pass wide load at inappropriate opportunity	D	5	Extreme	
Conduct of Events on Council controlled land or property	° Slip or trip hazards	C	3	High	Minor Events \$10.0M Major Events \$20.0M
	° Injury to member of public by event activities being conducted eg fireworks, horse riding, machinery and vehicle movements	C	4	Extreme	
	° Injuries caused by amusement rides, jumping castles and similar equipment	D	4	High	
	° Injury caused by animals taking part in event - biting, chewing, trampling, poisoning etc	D	2	Low	
	° Food poisoning	D	4	High	
	° Electrical hazards, leads running across ground etc	D	4	High	
	° Inadequate traffic control where road closures involved resulting in injury	D	4	High	
	° Injury from environmental hazards: standing water, unshielded drops or falls, tree hazards, hazardous substances, fire, building or structure collapse etc	D	4	High	
Erection of signage/advertising devices on Council roads or property	° Signage could fall, be blown over or picked up by a strong wind, causing injury or damage to persons or property	D	2	Low	\$5.0M
	° Signage could distract motorists or obscure vision, causing an accident	E	4	High	
Lessees of Council facilities	° Risk of drowning (pools) and failure to provide adequate supervision	D	4	High	<u>Commercial Leases:</u> Pools or any facility with a Pool \$20.0M Other \$10.0M - \$15.0M <u>Community Leases</u> - \$5.0M
	° Injury from slip and trip hazards eg slippery or wet floors, uneven surfaces etc	C	3	High	
	° Inadequate signage re No Diving, Shallow Water etc at pools and injury/death caused by diving into shallow water	D	4	High	
	° Inadequate water treatment or plant/equipment failure causing illness from water not being properly treated	E	2	Low	
	° Injury caused by activities of lessee - eg mowing of grounds	C	2	Moderate	
	° Food poisoning from foodstuffs sold by lessee at a kiosk operated by the lessee	D	4	High	
	° Faulty equipment causing injury to patrons/users of facility	D	2	Low	

Table 1 - Qualitative measures of consequence or impact

Level	Descriptor	Example detail description
1	Insignificant	No significant injuries, low financial loss, negligible damage to, or loss of, assets/property
2	Minor	Small number of injuries, first-aid or out-patients treatment required, medium financial loss, minor property loss/damage - some repairs may be required
3	Moderate	A number of injuries - medical treatment and hospitalisation required - may also require long-term treatment, high financial loss, moderate to high property damage requiring repair or replacement
4	Major	Extensive injuries requiring hospitalisation and long-term treatment - small number of fatalities, major financial loss, significant/permanent damage to assets and/or infrastructure
5	Catastrophic	Potentially large numbers of serious injuries and fatalities, huge financial loss, widespread substantial/permanent damage to assets and/or infrastructure

Table 2 Qualitative measures of likelihood

Level	Descriptor	Description
A	Almost certain	Is expected to occur in most circumstances, say a number of times a month - >90% chance of occurring
B	Likely	Will probably occur in most circumstances, say about once a year - 50-90% chance of occurring
C	Possible	Might occur at some time, say once every 2-5 years - 20-50% chance of occurring
D	Unlikely	Could occur at some time, say once in 10 years - 1-20% chance of occurring
E	Rare	May occur only in exceptional circumstances - <1% chance of occurring

Table 3 Qualitative risk analysis matrix - level of risk

Likelihood	Consequences				
	Insignificant 1	Minor 2	Moderate 3	Major 4	Catastrophic 5
A (almost certain)	H	H	E	E	E
B (likely)	M	H	H	E	E
C (possible)	L	M	H	E	E
D (unlikely)	L	L	M	H	E
E (rare)	L	L	M	H	H

Legend:

- E: extreme risk, immediate action required
- H: high risk, senior management action needed
- M: moderate risk, management responsibility must be specified
- L: low risk, manage by routine procedures