

Norfolk Island National Park

Permit Conditions for the Conduct of Commercial Tours

Interpretation

1. In these conditions, unless the context requires otherwise:
 - Act** means the *Environment Protection and Biodiversity Conservation Act 1999* and management plans and instruments made under it, and includes all Acts that amend or replace it;
 - Director** means the Director of National Parks and includes the Director's delegates and successors;
 - Indemnity** means the release and indemnity attached to these conditions;
 - management plan** means the management plan in force from time to time for the Park under the Act;
 - Park** means Norfolk Island National Park and Botanic Gardens;
 - Permit** means the permit issued, subject to these conditions, to the Permittee by the Director in relation to commercial tours;
 - Permit Period** means the period for which the Permit applies, as specified on the Permit;
 - Permitted Activity** means the activity specified on the Permit;
 - Permittee** means each person to whom this permit is issued, and includes the Permittee's Clients and Permittee's Staff;
 - Permittee's Clients** means all persons, other than the Permittee and the Permittee's Staff, who take part in the Permitted Activity;
 - Permittee's Staff** means the Permittee's employees, contractors, agents and representatives who take part in, or are otherwise involved with, the Permitted Activity;
 - person** includes individuals, companies, and other commercial entities;
 - Ranger** means a person appointed as a ranger under section 392 of the Act;
 - Regulations** means the *Environment Protection and Biodiversity Conservation Regulations 2000* and includes all regulations that amend or replace them;
 - Vehicle** means the vehicle used by the Permittee to carry out, or otherwise used in connection with, the Permitted Activity;
 - Warden** means a person appointed as a warden under section 392 of the Act.
2. In these conditions, unless the context requires otherwise:
 - (a) the singular includes the plural and vice versa;
 - (b) if a word or phrase is defined, other grammatical forms of that word or phrase have corresponding meanings;
 - (c) the words 'without limitation' are taken to follow words of inclusion, including 'include', 'including' and 'includes';
 - (d) where the word 'must' requires a person to do or not do something, the obligation is taken to mean that the person must take all reasonable steps to do or not do the thing;
 - (e) a reference to a regulation is to that regulation of the Regulations.

General conditions

3. The Permittee must not conduct the Permitted Activity before the start of, or after the end of, the Permit Period.
4. The Permittee must, before commencing the Permitted

Activity, properly execute the attached acknowledgment and the Indemnity, and forward to the following address:

Park Manager
Norfolk Island National Park Telephone 22695
PO Box 310 Facsimile 23397
Norfolk Island
South Pacific (Australia) 2899

5. The Permittee must give the Park five working days' notice of its intention to commence the Permitted Activity, by contacting the Park Manager on 22695.
6. The Permittee must carry a copy of the Permit and these conditions, or keep a copy in its Vehicle, at all times whilst the Permittee is engaged in the Permitted Activity, and must produce it when requested by a Ranger or Warden.
7. The Permittee must hold all licences and authorities required by law are held for the conduct of the Permitted Activity.
8. The Permittee must comply with the Act and Regulations, and all other Commonwealth, State or Territory laws relating to the Permitted Activity and incidental or ancillary activities.
9. The Permittee must comply with all signs, notices, information, guidelines, codes of conduct, protocols and directions relating to the Park issued by, or under the authority of, the Director.
10. The Permit cannot be transferred by the Permittee to another person except in accordance with regulation 17.11.
11. The Permittee must notify the Director in writing within seven days of the following occurring:
 - (a) the Permittee sells a business to which the Permit relates;¹
 - (b) the Permittee ceases to conduct the Permitted Activity for any reason;
 - (c) if the Permittee is a company, there is a change in ownership of the majority of the issued shares in the company.
12. The Permittee must not:
 - (a) allow the participation of;
 - (b) use directly in the conduct of the Permitted Activity the services of;
 - (c) if the Permittee is a company or other incorporated body, have as a director or office holder, a person who has been convicted² within the previous five years³ of an offence:
 - (d) against the Act or the Regulations;
 - (e) against another law of the Commonwealth or a State or Territory relating to the protection, conservation or management of native species, ecological communities or heritage.⁴

¹ In this case the Permittee may apply to transfer the Permit to the purchaser in accordance with regulation 17.11, or the purchaser may apply for a new permit.

² A person is taken to have been convicted if the person has been charged with, and found guilty of, the offence but discharged without conviction, or has not been found guilty of the offence but a court has taken the offence into account in passing sentence on the person for another offence. Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

³ That is, five years from the date of conviction, not five years prior to the grant of the Permit.

⁴ Including, in relation to offences under those laws, *Crimes Act 1914* section 6 and *Criminal Code* sections 11.1, 11.4 and 11.5 offences (that

13. The Permit does not give the Permittee any rights to the exclusive use, enjoyment or occupancy of the Park or any part of it, unless expressly provided for in the Permit.
14. The Permittee must ensure that the Permittee's Staff are fully informed of, are familiar with and understand these conditions before they commence taking part in the Permitted Activity.
15. The Permittee must ensure that its supervision of the Permittee's Clients is reasonable in the circumstances of the Permittee's Clients' differing levels of fitness, experience and abilities.
16. The Permittee is responsible at all times for the safety, well being and behaviour of the Permittee's Clients and Permittee's Staff.
17. If a member of the Permittee's Staff contravenes these conditions, the Director may:
 - (a) notify the Permittee of the contravention;
 - (b) direct the Permittee to cease using the services of that person within the Park for a specified time, and the Permittee must immediately comply with that request.⁵
18. These permit conditions may be varied or revoked, or new conditions imposed, in accordance with regulation 17.09, and must do so if it is necessary to ensure that the matters or circumstances about which the Director is required to be satisfied when issuing the permit continue to apply. The Director will, so far as circumstances allow, consult with the Permittee before taking action under regulation 17.09.

Commercial tours conditions

19. The Permittee must maintain appropriate training, qualifications and experience to competently conduct the Permitted Activity, including ensuring that the Permittee's Staff each holds a current first aid qualification of at least Level 2 Senior First Aid Certificate or equivalent.
20. The Permittee must maintain for the Permit Period a public liability policy of insurance with an insurer approved by the Director sufficient to cover all liabilities the Permittee may have to third parties or the Director under the Indemnity, but in any case, for an amount of not less than \$10 million for each claim.
21. The Permittee must provide to the Director a certificate of currency for the insurance specified in condition 20, evidencing that the policy covers all activities of the Permittee in the Park:
 - (a) before the Permittee commences the Permitted Activity;
 - (b) on each occasion when the policy is renewed or a new policy is taken out;
 - (c) other times as requested by the Director.
22. The Permittee must not engage a contractor or agent in relation to the Permitted Activity unless:
 - (a) the activities of that person are covered by the

is, offences relating to being an accessory after the fact, attempting to commit offences, inciting to or urging the commission of offences, and conspiracy to commit offences), and equivalent provisions under State and Territory laws.

⁵ In this case the Director must give written notice of the decision to the relevant person in accordance with regulation 14.16, including a statement that the person may apply to the Director to reconsider the decision and that, subject to the *Administrative Appeals Tribunal Act 1975* the person may subsequently apply to the Administrative Appeals Tribunal for review of the reconsideration.

- insurance required under condition 20;
- (b) the person holds a permit that authorises them to provide services to the Permittee in connection with the Permitted Activity, and holds a policy of public liability insurance that satisfies the requirements of condition 20.

23. The Permittee must keep the Park Manager informed of all locations and times at which the Permitted Activity is to be conducted.
24. The Permittee must ensure that it has in place appropriate risk management systems, strategies and procedures to minimise foreseeable risks to the Permittee's Staff, Permittee's Clients, other members of the public, and the environment and heritage values of the Park.
25. The Permittee must provide to the Director evidence of its risk management systems, strategies and procedures upon request.
26. For the purposes of evaluating tour operations the Permittee will, subject to availability of space, allow a representative of the Director to accompany tours from time to time at no cost to the Director.
27. For planning purposes the Permittee must provide to the Director annual returns showing the numbers of adults and children under 16 carried into the Park on each tour carried out under the Permit. Annual returns must be provided to the Director within 28 days of 30 June each calendar year that the permit is valid.

Note: The Permittee's annual returns will be treated by the Director as having been received in confidence and will not be disclosed unless required by law.

28. For the purpose of accuracy, the Permittee must submit all promotional material relating to the Permitted Activity to the Park Manager prior to publication.
29. The maximum size of Vehicles the Permittee is allowed to operate in the Park is:
 - (a) Length: 7.0 metres
 - (b) Width: 2.3 metres
 - (c) Height: 2.8 metres
 - (d) Tare Weight: 3,500 kg
30. The Permittee must ensure that all Vehicles are identified as being used by the Permittee, by signwriting, magnetic stickers or a signboard visible through the windscreen.
31. The Permittee must use its discretion and judgment when conducting the Permitted Activity, and must take special care in the Forestry Zone of the Park. In particular the Permittee must not cause the tracks to become deeply rutted.
32. The Permittee must comply with all signs and directions of Park staff and officers of the Norfolk Parks and Forestry Service as to the condition of tracks or access conditions in the Forestry Zone.

Park specific conditions

33. The Permittee must provide a means of communication, either radio or telephone (or both), at all times when conducting the Permitted Activity in the Park, including Phillip Island.
34. The Permittee must ensure the Permittee's Staff are fully informed of, are familiar with and understand the safety information contained in the Park visitor guide, so they can be accurate in their answers to questions asked by the

Permittee's Clients.

35. The Permittee must, before each tour commences, explain to the Permittee's Clients, in both oral and written form in a language understood by the Permittee's Clients, the safety information in the Park visitor guide, and all foreseeable hazards and conditions they may encounter during the Permitted Activity.⁶
36. The Permittee must ensure that each of the Vehicles contains a comprehensive first aid kit that is suitable for the types of incidents that may occur during the Permitted Activity.
37. The Permittee's Staff must carry a basic first aid kit at all times when leading the Permittee's Clients in activities away from the Vehicle.
38. If one or more of the Permittee's Clients is injured, becomes ill, or goes missing in the Park, the Permittee must immediately notify Park staff by emergency radio or telephone, giving as many details as possible and complying with all requests made by Park staff.
39. The Permittee must not interfere with, handle, disturb or feed animals, and must not pick fruits, flowers, or otherwise damage native plants in the Park.⁷ In particular, no seabirds or nests on Phillip Island may be interfered with in any way in the course of or in relation to the Permitted Activity.
40. The Permittee must not damage or remove buildings or other structures, natural features or cultural heritage places or objects in the Park.
41. The Permittee must not litter in the Park or bring firewood, weeds or animals into the Park.
42. The Permittee may drive, ride or tow a vehicle only on a road that is not designated as a restricted access road by an "Authorised Persons Only" or "Service Road – Walkers Only" sign, or on a designated public access track, or in a designated parking area.

⁶ This might include dangerous animals, plants and insects, heights, unstable and slippery rocks, extreme weather conditions, high winds, and fast-flowing water.

⁷ Section 354(1)(a) of the Act makes it an offence "to kill, injure, take, trade, keep or move a member of a native species in the Park except in accordance with the management plan".

The Permittee must execute the following acknowledgment and Indemnity and forward to the Park Manager along with:

- the completed Application Form;
- a copy of the Permittee's Public Liability Insurance Policy or Certificate of Currency;
- a copy of all current printed promotional material (e.g. pamphlets, brochures, tour guides); and
- a copy of all proposed promotional material for approval prior to going to print.

The Permittee fully understands and agrees to abide by these Permit conditions.

Signed..... Dated..... Permit No.....

Name of Person signing:

(The acknowledgment must be signed by the Permittee or, if the Permittee is a company or other body, by its duly authorised officer)

In the presence of Dated.....

RELEASE AND INDEMNITY

THIS DEED made the day of 20

WITNESS as follows:

In consideration of the permit issued to the Permittee, the Permittee agrees:

- (a) to release the Commonwealth of Australia, the Director of National Parks and their servants and agents (**released parties**) from all claims that the Permittee might at any time have or have had against the released parties, in respect of injury, loss or damage that may be suffered by the Permittee in the course of the Permitted Activity, except to the extent that an act or omission involving fault on the part of the released parties caused or contributed to the relevant injury, loss or damage; and
- (b) to indemnify and keep indemnified the Commonwealth of Australia, the Director of National Parks and their servants and agents (**indemnified parties**), against all actions, proceedings, claims and demands brought against the indemnified parties, in respect of injury, loss or damage arising out of:
 - (i) a breach of the permit conditions by the Permittee or the Permittee's Staff; or,
 - (ii) an act or omission of the Permittee or the Permittee's Staff in the course of the Permitted Activity, except to the extent that an act or omission involving fault on the part of the indemnified parties contributed to the relevant liability, loss or damage.

SIGNED SEALED AND DELIVERED

by or on behalf of the Permittee:

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(The Indemnity is to be signed by the Permittee or, if the Permittee is a company or other body by its duly authorised officer)

in the presence of:

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