

**SANPARKS: CAPE REGION AUTHORITY**

**THIS INCLUDES:  
TABLE MOUNTAIN NATIONAL PARK**

**COMMERCIAL OPERATOR PERMITS PROCEDURES & GUIDELINES**

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## 1 INTRODUCTION

SANParks is bound by a number of statutes with relevance to environmental and conservation management of Parks, including the National Environmental Management Act of 1998 (NEMA), Environment Conservation Act of 1989, Protected Areas Act of 2003 and National Water Act of 1998.

The purpose of this policy is to ensure that the management of commercial operator activities in the national parks within the Cape Region through the permit process is fair, consistent and clear to all those involved.

The policy aims also to ensure that the management of these activities in the parks is consistent with the objects of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003). (**"the Act"**)

### a) The Act and Regulations

SANParks manages the national parks in accordance with the Act.

### i. COMMERCIAL ACTIVITIES THAT MAY BE CARRIED OUT IN TERMS OF SECTION 50

Section 50 of the Act authorises SANParks to undertake or allow commercial activities in a national park.

## REGULATION 20 AUTHORISED ACTIVITIES

20.1 A person may not undertake any of the following activities in a special nature reserve, national park or world heritage site except pursuant to a license, permit or agreement and subject to the payment of the appropriate fees between that person, or some other person, and the management authority:

- (a) the filming and simultaneous transmitting of photographic images by the use of a webcam or other image recording or transmitting device; or
- (b) conducting tours; or
- (c) conducting any kind of competition; or
- (d) selling or hiring goods or offering goods for sale or hire; or
- (e) providing, or offering to provide, any service for a fee or reward; or
- (f) conducting speed trials; or
- (g) the conducting of research; or
- (h) an activity of any kind for the purpose of fund raising, personal gain or making a profit.
- (i) undertake any organized or special event, including sporting or cultural events without permission of management authority.
- (j) Visual imaging of animals for the purposes of any virtual hunting or other such activity without permission from management authority.

**ii. Operational Plans.** An operational plan is a scheme of operations that SANParks proposes to undertake or permit in national park. All functions of SANParks must be exercised in accordance with the operational plan for the national park.

**iii. The Park Management Plan is specific to each park within the Cape Region.** The Park Management controls the carrying out of commercial activities in national parks. Certain commercial activities cannot be carried out within a particular zone without the consent of the Park Management. Penalties will be applied to those who operate without a permitting license.

#### **iv. Zoning Plans**

The Park Management Plan includes zoning plans for each national park, and sets out the objectives for each zone, including commercial activities prohibited in each zone without consent.

#### **b) Permits.**

The Park Management provides the consent required to carry out a variety of commercial activities in the national parks. This consent is provided in the form of a permit.

A permit is required to undertake the following activities in a national park namely:

- o Activities inconsistent with a zone.
- o allowing any domesticated animal to enter into a national park
- o sampling species for research purposes
- o organised research
- o commercial activities
- o filming activities
- o organised sporting, educational or recreational activities
- o use of motorised vessels, vehicles, or equipment inconsistent with a zone
- o camping or residing
- o leaving floating device or structure unattended
- o lighting a fire on beach or emergent land

#### **c) Administrative Law Principles and Procedural Fairness**

The decision to grant or deny a permit is an administrative decision which requires the decision to be lawful, reasonable and procedurally fair. The principles of procedural fairness include an obligation to give a reasonable opportunity to the applicant to make a representation. The applicant should also be notified of the right to request reasons for a decision.

Other administrative law principles apply to decisions in respect of permits. These are:

- o Decisions must be made within the scope of authority
- o All statutory procedural requirements must be followed
- o Decision maker must have statutory power or delegated power to make the decision
- o Decisions must be made for proper purposes and in good faith and must be consistent
- o Decisions must not involve actual or apprehended bias

It is also important for the decision maker to consider each case on its merits, and not inflexibly apply policies or guidelines.

## **2 PERMIT APPLICATIONS**

### **2.1 Applications**

SANParks will make a list available advertising types of permits available which may be capped.

Persons seeking consent to carry on a regulated commercial activity in a national park need to apply to SANParks for the grant of a permit. All applications must be made on the form approved by the relevant Park Management.

Applications not on the approved form will not be processed. The following information should be provided by the applicant namely:

- Name of person or incorporated body
- Address, phone , fax number and email
- National park, zones and locations where activity proposed
- Details of the activity proposed
- Size, capacity and registration of vessels / vehicles/ people proposed for use in the activity
- Tax certificate
- Certificate of currency of public liability insurance

## **2.2 Eligibility**

Only legal entities are eligible for the grant of a permit. Applicants must be either:

- o a natural person (i.e. an individual) or
- o an incorporated body (i.e. a company, incorporated association).

An application made in a business name only (whether registered or not) will not be processed. The proprietor of the business name may apply in his/her/its own name and include the business name on the application (where provided) for identification purposes.

## **2.3 Further Information**

The Park Management may in writing request an applicant to provide further information in relation to the permit application to assist in consideration of the Application. Such a request should be made 21 days of receipt of the deficient application.

The request should afford the applicant 21 days to provide the required information. A longer time period may be specified if appropriate.

If the further information is not provided within the specified time period, the Park Management does not have to consider the application. In these cases, as a matter of policy, the Park Management would generally not consider the application.

## **2.4 Public liability insurance for commercial activities**

Where an application is received for commercial activities, the application must include a certificate of public liability insurance, covering the proposed activity, to a minimum cover of R5 million. This provision will be enforced for current existing permittees effective from (date) 2010.

Where a certificate of public liability insurance is not provided, then the application will be treated as insufficient, and a request for further information provided to the applicant as above.

## **3 ASSESSMENTS OF APPLICATIONS**

### **3.1 Minimal impact activities**

Assessment of a proposed commercial activity against the principal assessment criteria which is measured against the Conservation Development Framework (CDF) or zoning plans which are park specific, is not required where the Park Management considers that the commercial activity will have minimal impact on biodiversity, enjoyment or use of the national park.

Activities with minimal impact may include those with all of the following characteristics:

- o non-manipulative (i.e. no physical disturbance caused to the organisms or their habitat) **and**
- o do not include the use of structures **and**
- o do not exclude or significantly restrict access by other users of the national park.

Where a proposed activity is determined to have minimal environmental or social impacts, a brief statement of findings justifying the determination will be recorded by SANParks.

Conditions may be placed on a permit to ensure the activity has minimal impact.

### **3.2 Activities with greater than minimal impacts**

The Park Management must have regard to the principal assessment criteria when determining whether to grant consent to an activity with a greater than minimal impact on biodiversity, enjoyment or use of the national park.

The Park Management must also consider any other relevant matters.

### **3.3 Other requirements**

The principal assessment criteria include any other requirements that the Park Management consider appropriate to the proposed commercial activity.

This will depend on the nature of the proposed commercial activity and the zone(s) in which the commercial activity is intended. Other requirements may include, amongst other matters, the following:

- o whether the commercial activity could be conducted outside the national park
- o application of the "precautionary principle" where the potential impacts of a proposed commercial activity are unknown
- o the likely magnitude and duration of any effects of the proposed commercial activity on existing uses
- o the likely effects of the proposed commercial activity on adjoining and adjacent areas
- o whether proposed research activities have been endorsed by the National Parks Research Committee and have received appropriate research ethics clearance.

### **3.4 Consent must be refused**

Consent must be refused for a commercial activity if:

- o the activity is inconsistent with the objectives of the Act and SANParks' policies
- o the activity is inconsistent with the objectives of a zone
- o the activity is inconsistent with a restriction on the number of permits that may be issued in relation to a national park or zone.

### **3.5 Consent may be refused**

Consent may be refused for a commercial activity if:

- o The application was not made in the approved form;
- o The applicant has failed to respond, or has responded unsatisfactorily to a request for further information;
- o The applicant has been convicted of an offence under the Act, or any legislation relating to the protection, conservation or management of native species, ecological communities or heritage, or been issued with two or more penalty notices (not later dismissed by a court)
- o The activity is inconsistent with the principal assessment criteria (to the extent the criteria is relevant)

As a matter of policy, consent should normally be refused in the above circumstances.

### **3.6 Other approvals required**

Many commercial activities will require approval under other legislation in addition to a national parks permit. All national park permits are subject to a standard condition stating that the national parks permit is only valid while any other required approvals are granted and are current.

Where the application concerns a commercial activity of a type that is principally managed under another jurisdiction for land and waters, approval under that jurisdiction may be required prior to processing of the application for a national parks permit.

## **4 REVIEWS OF PERMIT DECISIONS**

### **4.1 Applicants review, acknowledgement & acceptance of permit conditions**

Where an application is to be approved, the applicant will be provided with a preliminary draft copy of the permit and an "acknowledgement and acceptance" form for signature

The applicant will be invited to provide comment within 21 days of receipt regarding the draft permit and its conditions.

Comments received within 21 days will be considered, and conditions of the permit amended if appropriate. A draft amended permit may be provided to the applicant for further comment if appropriate.

The Park Management may issue a final permit:

- o Where a signed "acknowledgement and acceptance of the permit conditions" form is received by SANParks; and
- o Following receipt of comments by the applicant and consideration of these comments by the Park Management.

### **4.2 Review of refusal**

Where a permit application is refused, the applicant will be notified in writing and advised that they can request written reasons for the decision or a review of the decision by SANParks within 21 days of the date of the notice.

SANParks may establish a panel to conduct such reviews, and may issue guidelines to assist the panel in its deliberations.

### **4.3 Third party appeal**

SANParks will not consider any appeal by a third party regarding the granting or refusal of permits.

## **5 FORMAT, CONDITIONS, PERIOD OF GRANT, CONTINUATION OF PERMITTED ACTIVITY AND RENEWAL OF PERMITS**

### **5.1 Format and content of permits**

The information set out in a permit will include:

- (i) an individual permit identifier
- (ii) the name of the legal entity to whom the permit is granted
- (iii) the address of the legal entity to whom the permit is granted
  
- (iv) the names or classes of persons to whom the permit extends (for example, the employees of or other persons acting on behalf of or at the direction of the legal entity to which the permit is granted)
- (v) the section(s) of the Act or clause(s) of the Regulations to which the activity the subject of the permit relates
- (vi) the national park to which the permit applies
- (vii) the zone(s) of the national park to which the permit applies
- (viii) if the permit grants access only to specific locations, the identity of the locations
- (ix) the commercial activity for which consent is given by the grant of the permit
- (x) the dates that define the period during which the permit is valid
- (xi) conditions or restrictions, consistent with the Act, that apply to conduct of the approved commercial activity
- (xii) mode of transport permitted, passenger capacity, vehicle/vessel registration numbers (where relevant e.g. permits relating to commercial tourist activities)

## **5.2 Standard conditions**

Permits will include the following standard conditions:

- o non-transferability of the permit
- o automatic repeal of the permit upon repeal of the zoning plan, or withdrawal of the area as a national park ,the provisions of which are incompatible with the continued conduct of the permitted activity
- o availability of permit for inspection
- o requirement to inform employees, participants, agents and contractors of the conditions
- o provisions for variation, suspension and revocation
- o other required approvals have been granted.

## **5.3 Specific conditions**

Permits may include the following specific conditions:

- o insurance conditions
- o reporting conditions
- o park, zone and/or site specific conditions

## **5.4 Permits issued prior to commencement of a zoning plan**

Where a permit is granted prior to the commencement of a zoning plan for a national park, the permit will include a warning advising that the permit will be subject to zoning plan requirements and that the permit holder should be aware that once the zoning plan is in place, a new permit may not be granted and/or the permit conditions may be varied to ensure that the approved commercial activity is consistent with the new zoning plan.

## **5.5 Period for which permits may be granted**

The maximum period for which any permit may be granted is one year.

## **5.6 Continuation of permitted activity**

If, at the date of expiry of a permit, the permit holder has lodged an application on the approved form for the permit to be re-issued, the life of the permit may be extended until:

- o a new permit is granted; or
- o the application is refused.

## **5.7 Renewal of permits**

A permit to carry on regulated commercial activities in a national park is not automatically renewable.

Permit holders must lodge applications on the approved form, which will be assessed by the Park Management in the same manner as an application for a new permit.

Where there is no change to the previously approved activity; the environment of operations; or relevant legislation or policy, the original assessment may be considered sufficient for reconsideration of the proposal.

# **6 SURRENDER, TRANSFER, VARIATION, SUSPENSION AND CANCELLATION OF PERMITS**

## **6.1 Surrender**

A permit holder may voluntarily surrender a permit by giving notice in writing to the Park Management and there will be no refund.

Any obligations (such as reporting requirements) imposed by conditions of the surrendered permit cease to have effect from the date upon which the Park Management accepts notice of surrender. However, surrender does not provide a defense to prosecution for non-compliance with conditions (including reporting conditions) that were current during the life of the permit.

Upon notice of surrender of a permit, SANParks will provide notice in writing requiring attention to any outstanding requirements within 21 days or such other time as is negotiated between SANParks and the permit holder.

## **6.2 Transfer**

National park permits are not transferable.

When a commercial activity (the subject of a permit) is to be transferred, the process requires the existing permit to be cancelled and a new permit to be issued. The issue of the new permit is subject to the same application and assessment processes as was the existing permit.

If a permit holder proposes to transfer control or ownership of any commercial activities, for example by selling a business, then:

- o the person/s or entity intending to take over the commercial activities (that is, the intended purchaser or transferee of the business) should lodge an application for a permit on the approved form before the business transfer arrangement proceeds; and

- o the application is to be signed by both the existing permit holder and the intended purchaser of the business.

The Park Management will assess the application in accordance with this policy (see Part 7.2 of this policy in respect to capped permits).

If the Park Management approves the grant of a permit to the transferee, the permit will come into effect from the day the business is transferred. The existing permit will also be cancelled effective from that date. A new admin fee will have to be paid.

## **6.3 Variation, suspension and cancellation**

The Park Management may vary a permit, including by adding conditions, at any time by notice in writing.

The Park Management may suspend a permit, at any time by notice in writing.

The Park Management may cancel a permit, at any time by notice in writing.

Prior to any cancellation, suspension or variation of a permit, the Park Management should notify the permit holder in writing and invite the permit holder to show cause why the permit should not be varied, suspended or cancelled within 21 days of the date of the notice. The permit holder should also be notified of its right to request reasons for a decision to amend, suspend or cancel a permit. Any representations made by the permit holder will be considered by the Park Management in determining whether to vary, suspend or cancel a permit.

If there are urgent reasons requiring an immediate suspension of commercial activities pending a review (for example where the commercial activity has resulted in damage or an imminent threat of damage to the physical environment or the living resources of the national park), the notice period above ( 21 days) may be shortened. However the permit holder should be notified and given an opportunity to comment prior to the decision being made wherever possible. A permit should be suspended pending a review of commercial activities rather than cancelled in these circumstances.



## **7 PERMIT CAPPING**

### **7.1 Capped permits**

From time to time the Park Management may determine that:

- o the number of permits granted for particular activities in particular national park, zones or sites of national parks should be restricted or "capped" ; and
- o priority be given to a particular class of applicants for a capped activity

In determining whether to cap the number of permits, and whether to prioritize a class of applicants, the Park Management must consider the following:

- o any existing use within the national park or zone at the time the national park or zone came into question;
- o the environmental, cultural or social impacts caused by these existing uses;
- o whether the use is inconsistent with the objectives of the Act, , the objectives of the zone, or other matters specified in the principal assessment criteria

### **7.2 Allocation of limited access**

Where the number of permits is capped, the Park Management will determine the allocation of permits according to an equitable process.

Where the control or ownership of commercial activities is transferred, any cap imposed on permits for that activity will not restrict the grant of a new permit to the transferee provided that the number of permits or amount of activities will not increase, and the application is made in accordance with this policy (see section 6.2). This is because the grant of a new permit to the transferee of the business will be nullified by the cancellation of the existing permit held by the transferor of the business. This allows operators of commercial activities to gain access to capped activities through commercial avenues.

Where particular activities in particular parks or zones are capped, any residual capacity at the time of capping, and capacity validly arising as a result of cancelled or expired permits, will be publicly advertised by SANParks through an "expression of interest" process on an annual basis.

The public advertisement will invite applications, detail all assessment criteria, and specify the address and closing date for applications. A minimum of 21 days from the date of the advertisement will be provided for lodgment of applications.

Assessment criteria will include demonstrated capacity to conduct the activities in question at the subject location in accordance with all the laws in force, including compliance with conditions of previous permits.

Eligible applications will be ranked according to an assessment of the specific proposal against the assessment criteria. Consideration will be given to any measures proposed to enhance appreciation, understanding and enjoyment of the national park and to ameliorate impacts.

A ballot, a fair and equitable process, will be conducted by the Park Management where applications outnumber capacity, and two or more applications have equal ranking.

Permits will be allocated according to their ranking or results of the ballot as appropriate.