Policy

Policy for Non Motorised Water Recreation Businesses and the interpretation of the Tweed Local Environmental Plan 2014 and the Tweed City Local Environmental Plan 2012.

Version 1.1

Adopted by Council at its Planning Committee Meeting on 9 April 2015

Minute No: P50 & 192

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Section: Development Assessment
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Policy for Non Motorised Water Recreation Businesses regarding the interpretation of the Tweed Local Environmental Plan 2014 and Tweed Local Environmental Plan 2012.

Policy Objective
This Policy will explain when a non motorised water recreation business needs development consent from Council.

The areas it covers are:

- The interpretation of development regarding non motorised water recreation businesses.
- Thresholds for triggering the need for development consent to be obtained for non motorised recreation businesses

Policy Background
With the adoption of Tweed Local Environmental Plan (TLEP) 2014 and zoning of the waterways, a review has been undertaken regarding how to administer and regulate the commercial use of waterways and public space regarding recreation involving non-motorised watercraft.

This Policy excludes the Jack Evans Boat Harbour precinct.
Policy
The main points to consider are:

- What triggers Development Consent?
- How is the use of the Waterway (Crown land) regulated?
- How is the use of Council owned/managed parks regulated?
- If Development Consent is triggered, what is the characterisation and extent of the assessment under TLEP 2014 or TCCLEP 2012?

Based on the legal advice received on the topic:

- The exchange of money is not a trigger for Development Consent i.e. the commercial activity (hiring or tours) associated with the recreation is not the trigger for a Development Application.
- The trigger for Development Consent is rather, which proposals constitute 'development' as defined by the EP&A Act and as interpreted by the Courts. What constitutes 'development' has been determined by the 'scale and degree of the use of the land' and whether the proposed use is deemed 'sufficiently regular'.
- If the use is deemed to constitute 'development' and requires development consent, characterisation is as per the attached Table A.

A suggested way of regulating this matter involves focusing on what triggers development consent which is, by determining if the activity constitutes 'development' and consequently setting standards or tests that Council considers to be the threshold.

A proposed test for whether the commercial recreational activity is above the threshold, (and therefore constitutes 'development') involves consideration of the following factors:

- Frequency of the activity at a certain site.
- Duration of the activity.
- The site area nominated for the activity.

The proposed thresholds for constituting 'development' are as follows:

- Business delivery or pick up of equipment and craft - maximum 30 minutes per visit, maximum 2 visits per day per site.
- Guided tours, instruction or transport - maximum 3 hours per visit, maximum 3 visits per week per site. Parking is required to be lawful and offsite.

If the threshold is not exceeded, land owner consent (and associated licensing) is required particularly if on Council owned/managed land.

If the threshold is exceeded, the proposal requires development consent and therefore will require landowner's consent for the lodgement of a Development Application with the proposal characterised as per the attached Table A. The assessment of the Development Application will involve the areas (i.e. land and/or waterway) involved in the 'development'.
Provision of Council landowner’s consent (and potential subsequent licensing) is dependent on advice from Council's Recreation Services Unit on a site by site basis and directed by any Plans of Management in place. Owners consent from the Crown will be required if Crown land is involved.

It should be noted that recreation facility (outdoor) and recreation areas are prohibited development in waterways zoned W1, W3 and SP2, as displayed in Table A.
<table>
<thead>
<tr>
<th>Use</th>
<th>Is it 'development' and therefore is Development Consent required?</th>
<th>If development consent is required, characterisation under Standard Instrument</th>
<th>If development consent is required, permissibility under TLEP 2014 or TCCLEP 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members of public using land or waterways (on privately owned or commercially hired craft)</td>
<td>No</td>
<td>-</td>
<td>-</td>
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<tr>
<td>Hiring of craft on public park</td>
<td>Yes, only if the activity is above the threshold</td>
<td>Retail Premises</td>
<td>Prohibited</td>
</tr>
<tr>
<td>Depositing or collecting craft in public parks</td>
<td>Retail Premises</td>
<td>Prohibited</td>
<td>Prohibited</td>
</tr>
<tr>
<td>Lessons and guided tours on waterways</td>
<td>Recreation area or recreation facility (outdoor)</td>
<td>Permitted with Consent</td>
<td>Permitted with Consent</td>
</tr>
</tbody>
</table>

**Table A** - Example proposals for the commercial use of public land and waterways for water recreation businesses. Please note that some Tweed Shire public boat ramps or jetties are located within road reserve which is zoned RU1, RU2 or RU5.
Related Legislation
NSW Environmental Planning and Assessment Act.
Tweed Local Environmental Plan 2014
Tweed City Local Environmental Plan 2012

Compliance
Not applicable

Forms
Not applicable

Review Period
The Policy should be reviewed after six months of operation.

Useful Links
Tweed Shire Council website
Division of Local Government
Version Control:

<table>
<thead>
<tr>
<th>Version #</th>
<th>Summary of changes made</th>
<th>Date changes made</th>
</tr>
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<tbody>
<tr>
<td>1.0</td>
<td>First Draft to Council for Public Exhibition</td>
<td>25/11/2014</td>
</tr>
<tr>
<td>1.1</td>
<td>Noted to exclude JEBH precinct upon adoption</td>
<td>9/4/2015</td>
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