

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

Division:
Section:
File Reference:
Historical Reference:

Planning and Regulation
Development Assessment
N/A
N/A

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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.

Use	Is it 'development' and therefore is Development Consent required?	If development consent is required, characterisation under Standard Instrument	If development consent is required, permissibility under TLEP 2014 or TCLEP 2012							
			RE1 - Public Recreation	W1 - Natural Waterways	W2- Recreational Waterways	W3 Working Waterways	SP2 Water Supply System	RU1 - Primary Production	RU2 - Rural Landscape	RU5 - Village
Members of public using land or waterways (on privately owned or commercially hired craft)	No	-	-	-	-	-	-	-	-	-
Hiring of craft on public park	Yes, only if the activity is above the threshold	<i>Retail Premises</i>	Prohibited	-	-	-	Prohibited	Prohibited	Prohibited	Permitted with Consent
Depositing or collecting craft in public parks		<i>Retail Premises</i>	Prohibited	-	-	-	Prohibited	Prohibited	Prohibited	Permitted with Consent
Lessons and guided tours on waterways		<i>Recreation area or recreation facility (outdoor)</i>	Permitted with Consent	Prohibited	Permitted with Consent	Prohibited	Prohibited	Prohibited	Permitted with Consent	Permitted with Consent

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:

Version History		
Version #	Summary of changes made	Date changes made
<i>1.0</i>	<i>First Draft to Council for Public Exhibition</i>	<i>25/11/2014</i>
<i>1.1</i>	<i>Noted to exclude JEBH precinct upon adoption</i>	<i>9/4/2015</i>