

# Policy

## Commercial Recreation Activities on Public Open Space Version 3.1

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## Definitions and Acronyms

For the purposes of this Policy:

**‘Commercial Recreation Activity’** means recreation and sporting activities conducted outdoors on beaches, foreshore areas, parks and other public places, and for which a fee is charged or other commercial gain is obtained. The activity must have a recreation use as its core element. Activities such as promotional events for a business are not considered a commercial recreation activity.

**‘Commercial Recreation Activity Licence’** or **‘Licence’** means a licence issued by Tweed Shire Council or the Tweed Reserves Trust, which provides approval to operate a commercial recreation activity on or across a public open space within the Council area.

**‘Council’** means Tweed Shire Council.

**‘CLA’** means *Crown Lands Act 1989 (NSW)*.

**‘LGA’** means *Local Government Act 1993 (NSW)*.

**‘LGA Reg’** means *Local Government (General) Regulation 2005 (NSW)*.

**‘Passive Recreation’** means activities undertaken by any person for enjoyment in their own free time, and which are not based on formal competition or organised administration. Traditionally these activities have centred on such activities as informal play, picnic and social activities, swimming, walking, jogging and the like.

**‘Public Open Space’** means public land that is accessible by the general public, that is under the care, control or management of Council and that is included in the land listed below, but excludes land occupied by community halls, libraries, civic centres, art galleries and the like.

- Crown Reserves under trusteeship or control of Council.
- Council owned Community Land, and any Operational Land that contributes to the open space network.
- Other land managed by Council as parkland, such as parks on unformed road reserves.

**‘Sports Fields’** means buildings and grounds licensed by Council for use for sporting activities.

**‘Trust’** means the Tweed Reserves Trust.

# Commercial Recreation Activities on Public Open Space

## Part 1 Background to the Policy

### 1.1 Need for the Policy

In recent years there has been an increase in the number of commercial recreation activities seeking approval to operate on Tweed Shire parks, beaches and other public open space. As a result Council is experiencing conflicting demands and expectations from the community for the use of public open space.

The traditional function of Tweed's public open space network is to provide for visual amenity, informal recreation, play, picnic, social activities and the like. For sports fields, the traditional use is club based sporting competition.

Commercially based recreation, fitness and tourist activities are placing increased pressure on Council's popular open space areas. Examples of possible commercial uses of public open space include:

- personal fitness trainers and boot camps
- surf schools
- circuses
- commercially arranged weddings
- conference team building activities
- fishing and canoe tours
- commercially based sports competitions or coaching programs
- commercial markets
- camel and horse rides
- beach equipment hire
- other large scale commercial activities

Community responses to this commercial use are varied. Some appreciate the opportunity to participate in fitness, yoga or other recreation activities. Some are concerned that such activities affect their ability to use open space for more traditional uses. Some question why individuals and companies are able to run commercial activities on public land maintained by Council. Some consider public open space an opportunity to generate economic benefits for the community or to generate income to manage the public asset.

### 1.2 Public Land Management

Council manages parks, reserves and sports fields that are classified as either Community or Operational Land. Council also manages areas of Crown Land on behalf of the State Government under a trustee arrangement. Additionally, Council manages some parks and reserves on land designated as road reserve or leased from other authorities such as NSW State Rail.

The legislative authority for this Policy is to be found in:

- *Local Government Act 1993* (NSW) ss 46 and 68
- *Local Government (General) Regulation 2005* (NSW) cl 116
- *Roads Act 1993* (NSW)
- *Crown Lands Act 1989* Pt 4 Div 4 and ss 102, 103 and 108

Section 68 of the LGA requires approval from Council for a person to engage in a trade or business on Community Land.

Section 6 of the CLA requires that Crown Land must be occupied, used or licensed in accordance with the Act.

Section 45 of the CLA specifies that a licence may authorise the use or occupation of Crown land for such purposes as the Minister sees fit.

Under S35 of the LGA community land is required to be used and managed in accordance with:

- This Division of the Act
- The Plan of Management applying to the land and
- Any law permitting the use of the land for a specific purpose or otherwise regulating the use of the land. Crown lands that is under the care and control of Council should be managed in accordance with any applicable requirements of the CLA and, where appropriate, in consultation with the Crown Lands Division, NSW Department of Trade and Infrastructure.

Section 116 of the Local Government (General) Regulations 2005 provides that:

**"116 Leases, licences and other estates in respect of community land**

(1) *For the purposes of section 46 (1) (b) (iii) of the Act, the use or occupation of community land for the following events is prescribed as a purpose in respect of which a council may grant a licence in respect of community land on a short-term, casual basis:*

- (a) *the playing of a musical instrument, or singing, for fee or reward,*
- (b) *engaging in a trade or business,*
- (c) *the playing of a lawful game or sport,*
- (d) *the delivery of a public address,*
- (e) *commercial photographic sessions,*
- (f) *picnics and private celebrations such as weddings and family gatherings,*
- (g) *filming sessions,*
- (h) *the agistment of stock."*

This Policy sets out:

- how approvals for commercial recreation activities on public open space managed by Council are to be managed, and
- which activities may be undertaken without Council approval.

### **1.3 Issues the Policy Must Address**

Commercial recreation activities undertaken on public open space have led to a number of issues which Council must address.

#### **1.3.1 Impact on neighbours**

Residential areas adjoining public open space experience increased levels of noise which some residents perceive as a nuisance. Many complaints per year are received, primarily

from people living adjacent to public open space used by fitness groups. The primary concern is noise, particularly in the early morning. Use of amplified music and trainers using public steps adjacent to private houses has also been a source of complaint.

After careful review of the nature of public open space in the Tweed and the complaints received by Council, it is considered that:

- large scale commercial recreation activities with higher impact on residents, park users and the environment;
- small scale activities that involve amplified music or loudspeaker use or;
- any activity that is installed for more than two weeks;

should not ordinarily be undertaken within 100m of any neighbouring residential property, tourist accommodation, or similar unless special and particular circumstances warrant a departure from this distance.

Low impact commercial recreation activities which do not have amplified music eg. fitness classes, yoga classes, tai chi groups or dog walking, will be considered appropriate at a distance greater than 50m from any residential property, tourist accommodation or similar unless special and particular circumstances warrant a departure from this distance.

### 1.3.2 Impact on other users

Use of public open space for a commercial recreation activity can inhibit other's enjoyment of the same area. Council receives complaints from such park users, with concerns including:

- group activities occupying areas of a park to the exclusion of others
- the impact of the activities extending beyond the actual space occupied by the activity
- equipment spread across a park area, blocking paths and preventing use of park facilities
- occupation of park shelters and seating areas
- a perception by park visitors that an organised group activity may have the 'right' to the area, and the imposing nature of such groups makes it difficult to challenge them
- why are businesses allowed to operate on land maintained by Council without approval or paying a fee.

In addition, as a result of taking groups through residential and commercial areas using footpaths and steps, commercial recreation activities can have an impact beyond the boundaries of the public open space used for such activities.

### 1.3.3 Impact on the environment, public assets and open space maintenance

Organised group activities increase the impact on the assets in public open space, including:

- impact on seats, tables and other park infrastructure, and potential wear on turf
- using and leaving items in the park, creating problems for mowing and maintenance schedules
- activities in natural areas causing erosion and other environmental impacts, particularly in coastal dunes
- reduced availability of car parks for traditional recreation users
- personal trainers taking groups running on footpaths and stairways in residential and business areas

### 1.3.4 Economic benefits

Economic benefits may accrue from commercial recreation activities, and the flow on effect to the local economy may be significant. Further benefits can be derived through income generated to manage the public asset. Issues can arise where the social or environmental impact of a commercial recreation activity may outweigh these economic benefits.

## 1.4 Qualifications and Disclaimers

1. Nothing in this Policy implies that approval will be granted even if the proposed activity appears to meet all relevant criteria. Council takes a conservative approach and will consider impacts before determining the suitability of an activity.
2. Council is not responsible for the operation of a commercial recreation activity for which it grants a licence, or for the qualifications and abilities of licensee undertaking the activity. The licensee is responsible for managing the risks associated with activity and its location.
3. Depending on the activity, development consent pursuant to the Environmental Planning and Assessment Act (1979) may be required.
4. Exposure of Council to public liability  
Use of Public Open Space by an unapproved commercial recreation activity exposes Council to possible litigation for injury or loss resulting from such activities. Examples of issues include: whether the appropriate qualifications, skills and insurance are held by commercial operators; a presumption that the area used for the commercial activity is suitable, safe use of private equipment; and possible injury through use of such equipment while on public land. The practice of leaving these items between sessions also presents the risk of an incident while the equipment is unsupervised.

## Part 2 – The Policy

### 2.1 Policy Objectives

Council manages an extensive public open space network which includes beaches, parks and other public places. These are not only significant community assets for residents and visitors, but also a major element in defining the character of the Tweed. This Policy provides for management of commercial recreation activities on this open space network.

The objectives of the Policy are:

1. To determine those commercial recreation activities suitable for beaches, parks and other public places administered by Council and provide an effective, transparent, equitable and efficient framework for their management.
2. To optimise the equitable and sustainable use of beaches, parks and other public places for recreational, cultural, social and educational activities that contribute to the well-being of the Tweed community.
3. To ensure activities conducted on public open space are consistent with the intended use of the space.

4. To protect the natural and physical assets of public open space in Tweed Shire.
5. To ensure the safety of users of public open space.
6. To manage risks to Council as the agency responsible for managing the open space.

## **2.2 Guiding Principles**

The range of commercial recreation activities that could be undertaken on public open space is broad and diverse. The natural and social values of these areas are highly valued by the community and while commercial recreation activities can provide positive social benefits, they can threaten these values if not managed properly.

Therefore in managing the use of public open space in respect of commercial recreation activities Council will seek to achieve a number of significant social and environmental outcomes:

1. The use of public open space must contribute to the development of a healthy, happy and inclusive community.
2. Public open space must continue to retain its natural and social values. Any commercial recreation activity must be considered in the context of possible threats to these values.
3. Public open space must continue to be maintained for use by the public. It cannot be annexed by individual groups or commercial interests in a way that discourages use by other members of the community.

Unless otherwise stated, specific locations will not be licensed for individual activities. Exclusion areas such as not within 50m of a residence will generally apply to low impact activities and not within 100m of a residence for higher impact activities, and commercial operators will be expected to share the area with other operators and the general public. Exceptions to this may arise, such as the non-motorised hire of aquatic equipment where the activity is tied to a specific location.

Social and economic benefits to the community are considered when assessing a proposed activity. Some activities such as personal training or yoga classes provide clear social benefits. Some activities such as wedding ceremonies provide a social benefit and can also have significant flow on economic benefits. Other commercial activities such as a circus or horse rides provide primarily entertainment and economic benefits. Council takes a conservative and carefully considered approach to any proposed commercial recreation activity on public open space and will consider the social and environmental impacts of an activity as well its economic benefits. Commercial operators should not presume they will gain approval for a proposed activity.

## **2.3 Land this Policy applies to**

This Policy applies to all public open space under the care, control and/or management of Council including the following.

- Crown Reserves under the trusteeship or control of Council.
- Council owned Community and Operational Land.
- Other land managed by Council as parkland, such as parks on unformed road reserves.
- Other public areas that may be used for a commercial recreation activity, such as stairways or other facilities on public land.

This Policy does not apply to the following land.

- Holiday Parks on public land managed by Council.
- Land occupied by community halls, libraries, art galleries and the like.
- Land on which there is recreation related infrastructure that traditionally operates under a commercial framework, such as swimming pools.
- Waterways under the control of the NSW Department of Roads and Maritime Services or other agencies.

## 2.4 Activities to which this Policy applies

A commercial recreation activity on Council-managed public open space must be approved by Council in accordance with LGA S68 or CLA Pt 4 division 4 and ss102 and 108. This includes any commercial recreation activity that involves crossing council managed public open space.

### 2.4.1 Activities involving aquatic equipment hire at nominated locations

Council has approved non-motorised aquatic hire operations at locations such as Jack Evans Boat Harbour and coastal estuaries at Kingscliff and Hastings Point. These hire operations provide canoes, stand-up paddle boards and similar non-motorised aquatic recreational craft. This Policy provides for the hire operations at such locations to continue.

From time to time Council may identify additional locations for aquatic equipment hire which will be subject to the requirements of this Policy.

### 2.4.2 Activities which may be considered for a Licence

Without limiting the specific activities requiring a Licence, the categories of commercial recreation activities for which Council may grant a Licence are as follows.

- **Organised health and sport related activities** – personal trainers, sports coaches, water based activities on adjoining water bodies (eg. surfing, canoeing), cycling events organised by commercial companies, yoga and the like.
- **Outdoor tour style activities** - eco-tours, kayak tours, fishing competitions and the like which rely on the particular environment.
- **Other commercial recreation activities** – established commercial recreation/leisure activities such as a circus or music festival, which require use of an extensive area. Other possible activities could include commercial dog training and walking, horse and camel rides.
- **Other Commercial Activities** – occasionally key community information programs that don't involve recreation or park related activities may be run by private or commercial operators. Council will make a determination on the broad community benefit derived from such information programs when considering any approval.

### 2.4.3 Assessment of proposed activities

Proposed activities will be assessed in the following manner.

- Activities that are consistent with this policy and considered to have a significant social benefit with minimal social or environmental impacts will be assessed under delegation by Council officers. These will generally include the organised health and sport related

activities and guided outdoor tourism activities described in 2.4.2. Certain activities with a primarily economic or entertainment benefit, such as a circus, are regular existing uses of public open space and will be assessed by Council officers.

- Activities that are consistent with this policy, and are considered to provide primarily economic rather than social benefits, and where the social or environmental impacts are considered significant, will be referred to Council for determination.

#### 2.4.4 Activities for which Council will not require a Licence application

Pursuant to SS 46 and 68 of the LGA, and clause 116 of the LGA Reg, an operator will be deemed to have the approval of Council for a commercial recreation activity in the following circumstances, and a Commercial Recreation Activity Licence will not be required.

1. A personal trainer, yoga instructor or the like with five or less participants.
2. Use of a sports field by a member of a sporting club licensed to use the sports fields who wishes to train for profit five or less club members at any one time, and for which either the club or the individual has appropriate public liability insurance.
3. Activities that involve only crossing council managed public open space and no other activity.
4. Use of council managed jetties is subject to a separate management protocol and is not the subject of this policy.

The operator will be responsible for ensuring the activity is conducted in a safe manner with a risk assessment undertaken and suitable insurances held. The operator must meet all legislative and industry requirements for the safe and appropriate conduct of the activity.

Anyone operating under these circumstances must ensure the activity:

- does not include any element detailed in section 2.4.5
- does not occur within any area detailed in section 2.4.6
- is consistent with all other requirements established by this policy and supporting guidelines

If an operator wishes to operate contrary to any of these requirements they must seek specific approval of Council.

#### 2.4.5 Activities which will not be considered for a Licence

Not all commercial recreational activities (or uses ancillary to such an activity) are appropriate on public open space. Activities which will not ordinarily be supported include:

- use of amplified music, megaphones and the like
- competitive sports, unless conducted on designated sports fields
- commercial catering unless associated with an approved community event
- activities not considered appropriate for public areas. Council will determine these on a case by case basis.

Certain commercial activities may claim a link to recreation based activities but will not be supported by Council. Examples include:

- conferences, other than team building activities that traditionally require open space
- wedding receptions and the like
- business social functions

Council may consider a Licence for a commercial recreation activity which includes the above elements if the applicant is able to demonstrate to the satisfaction of Council that:

- there are special circumstances that are in the community interest and the benefit is seen to exceed the cost
- the activity has traditionally been accommodated on public open space

Before granting a Licence in such circumstances, Council will take into account the following additional factors.

- The scale of the proposed activity.
- Any social, public health, safety or environment impacts the activity may have.
- Council's ability to assess and monitor the activity.

### 2.4.6 Public open space where a Licence will not be granted

A Licence will not ordinarily be granted for any Commercial Recreation Activity within:

- an area of cultural or natural significance
- an area that is environmentally sensitive or where there is an unacceptable risk to flora or fauna
- a cemetery
- any designated sports oval without the prior agreement of the sports body holding the sports field licence for the oval
- within 50m of a neighbouring residential property for low impact activities or within 100m of a neighbouring residential property for higher impact activities. Noise impacts on neighbouring residents are an important consideration, particularly early in the morning. These distances are a guideline, and may be influenced by mitigating circumstances such as an intervening road or in a location that would amplify the noise such as between structures or on water. Council will consider noise related issues when considering the suitability of any location for a Commercial Recreation Activity:
- within 10m radius of:
  - memorials
  - playgrounds
  - toilets, shelter sheds or BBQ facilities
- roadways including roadside footpaths
- any other area that Council deems unsuitable for the proposed activity.

### 2.4.7 Activities to which this Policy does not apply

#### **General commercial activities**

This Policy makes no provision for any commercial activity other than recreation based commercial activities. Cafés, shops and similar activities in parks are not covered by this policy.

Council has made provision for the following commercial uses of public open space in other policies.

## Commercial Recreation Activities on Public Open Space

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- Footpath dining within a road reserve (refer to Footpath Trading Policy).
- Film production on Council land (refer to NSW Local Government Filming Protocol).
- Mobile food vendors (refer to Vending of Food on Public Reserves Policy).
- Markets (refer to Markets Policy).

### **Recreation and community activities**

This Policy concerns commercial recreation activities on public open space. Accordingly it does not apply to the following uses.

- Passive recreation activities, informal social gatherings and activities provided for by Council's Casual Park Hire application process.
- Commercial tours of a transitory nature by bus companies or similar tour operators stopping for lunch, site seeing and similar activities.
- Group activities which fall within the terms of the intent and purpose of public open space, including:
  - community events as described in the Tweed Shire Events Strategy (2016 – 2020)
  - not-for-profit small group activities where no participation fees are charged
  - emergency service activities, including training days, conducted by emergency service organisations as defined within the *State Emergency and Rescue Management Act 1989* (NSW), and surf lifesaving clubs
  - activities performed by local schools under the supervision of a teacher
  - Australian Defence Force activities (such as training drills)

### **Use of a sports field or associated facilities**

This Policy does not apply to the following uses.

- A sporting club operating in accordance with a Sports Facility Licence Agreement issued by Council for use by that club for the specified sporting activity
- A not for profit organisation operating in conjunction with the sporting club for a community event
- A school in respect of a sporting activity for the pupils of that school

### 2.4.8 Use of Council Jetties and Boat Ramps

Management of Council jetties and boat ramps is excluded from this policy.

### 2.4.9 Use of Clarrie Hall Dam

The primary function of Clarrie Hall Dam is water supply. However, as a secondary function Council may consider controlled recreation use of the water body and adjacent public land. In addition to the requirements of this Policy any Commercial Recreation Activity at the Dam must also meet the requirements of the Clarrie Hall Plan of Management.

### 2.4.10 Use of Jack Evans Boat Harbour

In addition to the requirements of the Policy any commercial recreation activity at the Jack Evans Boat Harbour (JEBH) must also meet the requirements of the JEBH Park Usage and Event Guidelines and the JEBH Plan of Management.

### 2.4.11 Use of Council Community Halls for Commercial Recreation Activity

Council's Community Halls are not subject to this Policy. These halls are managed by separate management committees with their own hiring procedures. All enquiries concerning

commercial recreation activities at these halls should be addressed to the relevant Hall Management Committee.

#### 2.4.12 Activities which will be the subject of a tender process

Notwithstanding the provisions in this Policy Council will undertake a tender process for any commercial recreation activity which:

- Requires sole use of an area of public open space for a period exceeding 30 days whether continuous or in total over a year.
  - Regular or recurring activities requiring exclusive use of an area for less than 30 days will require special consideration as to whether or not tenders will be required.
- Other situations as determined by Council.

## **2.5 What type of Licence may Council grant?**

Council may grant a Licence:

1. For a single event.
2. For a specified short term period or for a series of events.
3. For a general period of 12 months.
4. For any period allowed for in the legislation and determined by Council.

## **2.6 Licence Fees**

Council will determine the fees applicable to a Licence as part of the annual Fees and Charges determination. The basis of the fees charged will be the recovery of costs for the implementation and administration of this Policy. Equity in the fee structure between the various potential commercial operations will be an important consideration.

Council will determine the following fees:

- Licence Application Fee to be paid when an application is submitted to Council. This Application Fee will not be refunded should the application be refused.
- Licence Activity Fee to be paid in advance in a timeframe consistent with the period of the license. The fee structure may differentiate between infrequent or casual users, and higher frequency activities.

## **2.7 The process for obtaining a Licence**

### 2.7.1 Making an Application for a Licence

An application for a Licence shall be in writing on the approved form, shall set out the proposed activity in detail and include all necessary information required by Council. The application shall be assessed under this Policy by the General Manager or his delegate with consultation with the community and government agencies where appropriate.

The application must be received by Council at least 30 days prior to commencement of an activity or the date of a one-off event. Council reserves the right to require a longer period should an application raise complex issues requiring further consideration.

### 2.7.2 Determination of an application for a Licence

An application for a Licence will be determined by Council officers taking into account the following:

1. The requirements of this Policy.
2. Consistency with the reserve purpose and/or any relevant management objective, requirement or the like as set out in a Plan of Management for the particular land the subject of an application.
3. Suitability of the site to accommodate the type of commercial recreation activity proposed, and the potential impact on:
  - i. other users and neighbouring residents during the times requested,
  - ii. infrastructure and site management, and
  - iii. the natural environment.
4. The type of commercial recreation activity proposed to be undertaken, its frequency and proposed operating arrangements (in particular safety measures).
5. In respect of a major commercial recreation activity (measured by such factors as numbers attending, area required, duration of the activity or level of infrastructure involved) consideration will be given to:
  - i. the accessibility of the activity to the general public, and
  - ii. the physical, cultural or intellectual benefits of the activity.

### 2.7.3 Renewal of a Licence

In addition to the requirements of section 2.7.2 the renewal of a Licence will be dependent on the licensee satisfactorily meeting the terms and conditions of the Licence.

Council reserves the right to not renew a Licence.

### 2.7.4 Transfer of sale of license

Licenses may not be sold or transferred.

## **2.8 What Conditions will be applied to a Licence?**

### 2.8.1 Standard Licence Conditions

A Licence for use of a Council reserve is subject to standard conditions addressing matters such as public liability insurance and the licensee's relationship with Council.

### 2.8.2 Other Conditions

In addition to the standard licence conditions, Council may impose additional conditions depending on the nature of a proposed activity. This may include requiring a bond if Council believes the proposed recreation activity has the potential to damage to the reserve.

## 2.9 Other Related Legislation

Activities for which a Commercial Recreation Activity Licence is required may also require approval under other legislation. It is the responsibility of an applicant to make the necessary enquiries prior to lodging an application for a Licence. Such approvals may include:

- Development Consent pursuant to the Environmental Planning and Assessment Act (1979). Many activities undertaken on beaches, parks and public open space zoned for Recreation (RE1) can be considered ancillary to the ordinary use of the park or reserve and development consent may not be required. However, the need to obtain development consent depends on the nature, size and impact of the activity.
- Recreation activities within waterways pose different issues for Council.
  - Council is the consent authority where development consent is required for activities on waterways in the Shire. Thresholds have been developed to identify when development consent is required, and these are described in the 'Policy for Non- Motorised Water Recreation Businesses and the Interpretation of the Tweed Local Environment Plan 2014 and the Tweed City Local Environment Plan 2012'.
  - Other than determining Development Applications, Council does not have the authority to issue licenses and set conditions for recreation activities on waterways, excepting Clarrie Hall Dam and similar key water supply areas. Council does however manage riverbank parks and public land used to access the river, and it is on this basis that any license to undertake water based commercial recreation activities is issued.
  - The State Government has lead management responsibility for the Shire's waterways. Two key agencies are:
    - Department of Roads and Maritime Services
    - Department of Primary Industries

## 2.10 Compliance

Compliance with this Policy will be achieved through the processing of Commercial Recreation Activity Licence applications, investigation of complaints regarding commercial recreation activities, and surveillance by authorised officers of Council.

## 2.11 Review Period

This Policy will be reviewed by Council over the first 12 months of operation.

### Appendix 1 Standard Commercial Recreation Activity Licence Conditions (Section 2.8)

A Commercial Recreation Activity Licence for use of public open space is subject to the standard conditions set out below.

An Operator may apply to Council to vary some conditions. In particular Council may consider applications to:

- Use land within 50m of residential properties if it can be demonstrated that other factors will ameliorate the impact of the activity (eg. a busy road or land form intervening between affected residential properties and the site of the activity). Equally if the activity is extremely noisy or located in an area which would magnify the noise (on water or between structures) the distance could be increased.

- Erect a small marquee to provide shade during the period of the activity (eg surf school).

Note: A Licence is approved by Council subject to the provisions of the LGA or the CLA, depending on the status of the land as described by Section 2.3. As a consequence any of the Standard conditions set out in this section may be amended to indicate the condition is subject to Ministerial, Trust or Council requirements as appropriate.

### **Period of Licence**

- a) A Licence is issued for
  - i. a specific event,
  - ii. a short term period to cover a series of events,
  - iii. a period up to a maximum of 12 months, or
  - iv. a period of three years in respect of existing aquatic licences which have historically been granted for this period.
- b) The licence shall expire on 30 June each year.

### **Operator**

- c) A Licence is not a tangible asset and cannot be sold or transferred to a new operator.
- d) A Licence is granted on a non-exclusive basis.
- e) No relationship of landlord and tenant is or is intended to be created between the parties hereto by virtue of this Licence or in any way whatsoever.
- f) The approved Activity shall not be conducted unless supervised by a Manager, being the Licensee, or a suitably qualified authorised employee of the Licensee.
- g) The Manager, or other suitably qualified authorised employee of the Licensee, responsible for supervising activities, must be a person approved by the appropriate controlling body for the activity.
- h) The Manager must be able to produce on demand from a Council officer a copy of the relevant Commercial Recreation Activity Licence when requested

### **Activity**

- i) The Activity must be conducted only in the location(s) approved in the Licence.
- j) The licence holder must not:
  - i. use any public equipment (eg shelter sheds, park furniture) for the activity.
  - ii. undertake any activity within an area identified as being of cultural or natural significance (eg dune stabilisation areas, memorial areas).
  - iii. undertake any higher impact activity within 100m of a neighbouring residential property or undertake any low impact activity within 50m of a neighbouring residential property.
  - iv. undertake any activity within a 10m radius of:
    - any memorials
    - any playground or play equipment
    - any public change room, toilet, kiosk, picnic area, shelter shed or BBQ facility
  - v. undertake any activity within any other area that Council deems unfit or unsafe for the activity.

### **Business Interruption**

- k) Council will accept no responsibility or liability for any interruption to business/activity caused by the need for Council or any other authority to carry out maintenance works, conduct special events or the like on the land the subject of the Licence.

### **Insurance**

- l) The Licensee shall indemnify and keep indemnified Council, the Trust and the Minister administering the Crown Lands Act against all actions, suits, claims, debts, obligations and other liabilities during the continuation of the Licence and further. The Licensee shall take out a public risk insurance policy with reputable insurance office, approved by the Trust, in the names of the Licensee, Council, the Trust and the Minister administering the Crown Lands Acts insuring them against such of the said matters as can be insured against to the sum of not less than \$10,000,000 and shall produce at any time when required by the Trust or the Minister a Certificate of Currency or similar appropriate document to the satisfaction of Council.
- m) The Licensee shall maintain all other insurance as may be required by the Workers' Compensation Act 1987 (NSW) or any other Act or Acts of Parliament in regard to the conduct of activities licensed. A copy of such insurance (or Certificate of Currency) shall be provided to Council prior to the commencement of the Activity.

### **Sale of goods**

- n) A licensee shall not sell clothing, equipment, food, refreshments, goods, services or products.

### **Structures**

- o) A licensee shall not without the specific approval of Council erect tents, marquees, awnings or similar structures.
- p) A licensee may erect an identification sign (measuring no more than 1m x 1m) for the activity which is to be displayed only at the time the activity takes place.

### **Risk management**

- q) The operator must undertake a risk assessment prior to commencing an approved activity and take actions to address any identified risk. Such an assessment must include an inspection of the area to ensure no hazards are present, and action must be taken to remove those hazards or re-locate to a more suitable location.
- r) When conducting approved activities beyond daylight hours, an operator shall monitor and manage risks to participants and ensure public safety is not impacted by the activity.
- s) At the completion of an approved activity the licence holder must remove as soon as is practical all equipment, signage and the like that has been used during the activity. Should the activity involve two or more sessions during the day, equipment must be removed between sessions.
- t) The licence holder shall be responsible for any injuries, losses or the like arising from any equipment used during the approved activity.

### **Hours of operation**

- u) Activities must not commence prior to 07.00 and must conclude by 20.00. Earlier start and finish times may be negotiated for locations at a distance from residences where noise will not carry and where the impact is lessened by operating outside these times. Should the activity occur before sunrise or after sunset the operator is responsible for

ensuring the safe conduct of the activity. However, later starting and earlier finishing times may be required depending on the location and the type of activity.

### **Environment**

- v) The licence holder must ensure that any activity causes minimum disruption to surrounding residents and to the general public's right of access and enjoyment of the public open space.
- w) There shall be no use of amplified music or devices.
- x) The licence holder must:
  - i. Comply with any reasonable directions of a Council officer.
  - ii. When conducting their activities be considerate of other reserve users and adjacent residents.
  - iii. Not interfere with any other person authorised by Council or the Trust to use the reserve or any part thereof.
- y) The licensee shall immediately repair and make good, damage occasioned by their use within the area specified by the Licence.

### **Car parking**

- z) Licence holders and participants are required to park in accordance with NSW road rules. No vehicle is to be driven onto Council parks or other public open space

### **Waste**

- aa) Licence holders are required to ensure the area used for an activity is clean and tidy after use and all waste is collected and removed.

### **Amusement Devices**

- bb) In the event that a recreation activity involves the use of amusement devices appropriate conditions will be imposed by Council.

### **Other licences**

- cc) The licensee is responsible for obtaining any other approvals or licences that may be required to undertake the activity.

### **Useful Links**

[Tweed Shire Council website](#)

