

Commercial recreational activities on public land

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Objective	1.2 We will have a safe, active and healthy region
Strategy	1.2.1 Provide, maintain and develop sport and recreational facilities and encourage greater utilisation and participation

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1. Purpose

The purpose of this policy is:

- (a) to provide a framework for Council's consideration of proposals for commercial recreational activities on beaches, parks and other public places;
- (b) to determine and regulate those commercial recreational activities suitable for conduct on beaches, parks and other public places.

2. Definitions

For the purposes of this policy:

- (a) 'Commercial recreational activity' means recreational 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.
- (b) 'Commercial Recreational Activity Licence' or 'Licence' means a licence providing consent for the operation of a commercial recreational activity on or across a public place within the Council area.
- (c) 'Council' means Clarence Valley Council.
- (d) 'Public place' has the same meaning as in the *Local Government Act 1993*.

Note:

For the purpose of this policy, the term '*commercial recreational activity*' does not include one-off or occasional events. One-off and occasional events are either addressed through Council's temporary licence or Development Application process.

3. Background/legislative requirements

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

- (a) s68 and s632 of the *Local Government Act 1993*
- (b) Divisions 3 and 4 of Part 9 of the *Roads Act 1993*
- (c) Parts 2, 3 and 8 of the *Crown Land Management Act 2016*

4. Policy statement

Council is committed to the principle that public places are for the benefit of the public and should not be alienated for private use.

Council also recognises that there are some commercial recreational activities that can only be, or are best suited to being, conducted on a particular public place. Where such uses have a substantial public benefit component and are a permitted use under the legislation noted in clause 3 at that public place then Council will consider approving the activity.

5. Policy

5.1 Scope of Policy

This policy applies to all public places under the care, control and/or management of Council, including:

- Crown Reserves under the control of Council
- Crown Reserves under licence to Council
- Council owned community and operational land
- Council roads

5.2 Activities requiring a Commercial Recreational Activity Licence

A *Commercial Recreational Activity Licence* must be obtained if it is intended to conduct a commercial and/or business activity on a public place or any such activity that traverses a public place. This includes the embarking or disembarking of people/items from or to water-based activities adjoining the public place. Council requires licensing of any activity or part of an activity involving a public place.

Other licences and/or permits may also be required depending on the commercial activity and the location where the activity is to be conducted. For example:

- Motorised and non-motorised boat hire and/or instruction/guiding activities will also be required to obtain a Certificate of Operation from the Australian Maritime Safety Authority.
- Surf schools and other beach-based activities may be required to purchase a Beach Permit for its vehicles.
- Charter boat operators providing fishing trips for anglers in NSW need a licence issued by the NSW Department of Primary Industries to operate the business. (Note: All recreational fishers (unless exempt) are required to carry a receipt to show payment of the NSW Recreational Fishing Fee).

5.3 Commercial recreational activities for which application may be made

Council will consider applications, including but not limited to, the following commercial recreational activities:

- Bicycle hire
- Boat hire (incl. canoes, kayaks, jet skis, sailboats, sit-on-tops, windsurfers, jet ski hire, etc)
- Canoe, kayak and stand-up paddle schools/tuition and tours
- Dog training/obedience schools
- Equestrian schools/tuition
- Fitness training/Bootcamp groups
- Fishing tours/tuition (incl. 4WD fishing tours)
- Hang gliding and para gliding
- Horse / camel riding
- Hot air ballooning

- Personal trainers
- Kite and wind surfing schools / tuition
- Seaplane or helicopter rides
- Shade shelter, beach chair hire
- Skateboarding, in-line skating, scooters and bicycle tuition
- Skydiving
- Surf or paddle boarding schools / tuition.

Note:

Council will consider applications for activities **not included in the above list** on their merits taking into account such matters as proposed location, numbers involved, previous approvals for similar activities.

5.4 Activities not requiring a *Commercial Recreational Activity Licence* but requiring other approvals

- (a) Filming – refer to Council's *Filming Application Form*
- (b) Markets – refer to Council's *Market Policy*
- (c) Mobile food vendors – refer to Council's *Mobile Food Vehicles, Temporary Food Stalls & Hawking Policy*
- (d) Mobile signs, merchandise and entertainment on public land - refer to Council's *Mobile Signs, Articles, Merchandise and Entertainment on Public Land Policy*
- (e) Recreational/sporting events (such as Grafton – Inverell Cycle Race, Bridge to Bridge Power Boat Race, Wakeboarding) – refer to Council's temporary licence or Development Application process
- (f) Fetes, shows, circuses and the like - refer to Council's temporary licence or Development Application process

5.5 Commercial recreational activities that will not be approved

Council will not approve applications, relating to the following activities:

- (a) Activities involving tobacco, gambling or alcohol promotion or advertising.
- (b) Activities or promotion of activities which are culturally insensitive, illegal, or are reasonably likely to cause offense to the community or a group therein or incite public unrest or violence.
- (c) Activities that are contradictory to the goals or objectives of Council.

5.6 Other restrictions

- (a) All signage and other advertising must comply with Council's *Mobile Signs, articles, merchandise and entertainment on public land Policy* and be subject to a development consent if required.
- (b) All parking and vehicle usage is subject to Council parking restrictions, local laws and state road rules.
- (c) All activities must comply with relevant WH&S legislation.
- (d) Compliance with Council's *Gas Filled Balloons on Council Managed Land Policy* which prohibits the use, release, sale or distribution of gas filled balloons on Council managed land.

5.7 Licence Applications

- (a) All applications shall be in writing on the approved form, setting out the proposal in detail and accompanied by the appropriate application fee.
- (b) Applications for commercial recreational activities on crown reserves managed by or licensed to Council may also require traditional-owner consent from the respective native title holder. Applicants will be advised if traditional owner approval also required.
- (c) Any application that fails to meet the requirements set out in the Application Guidelines shall be rejected. A letter outlining the reasons why an application was rejected will be provided to the Applicant on request.
- (d) Rejected applications may be resubmitted for consideration if the reasons for its rejection are addressed.

5.8 Licence and Application Assessment Criteria

Council will apply the following criteria when assessing Licence applications:

- (a) Suitability of the site to accommodate the activity (e.g. access, infrastructure, facilities, ecological amenity, public safety, etc), including the suitability of the site to accommodate more than one licensed commercial recreational activity of a similar or different type.
- (b) Demonstrated ability to conduct the activity (e.g. skills, knowledge, understanding of local conditions, etc).
- (c) Ability to conduct activities in an environmentally and culturally sensitive manner.
- (d) Capacity to meet and comply with industry safety standards and requirements as well as WH&S legislation, where relevant.
- (e) For an activity on or utilising Crown land:
 - (i) the review by one of Council's native title managers that the activity complies with the applicable provisions of the native title legislation. This will include an assessment against the future act provisions of the Native Title Act 1993 (Cth) and any Indigenous Land Use Agreement (ILUA) covering the licencing of the activity or the land on which the activity will be conducted; and
 - (ii) an assessment of the area's

cultural heritage involving a check of the Aboriginal Heritage Information Management System (AIHMS) and any other cultural heritage information known to be recorded by Council concerning the land to ensure the cultural heritage of the area will not be impacted or harmed.

5.9 Standard conditions for Licences

The following standard conditions will apply to all Licences:

- (a) Licences are issued for a maximum period of twelve (12) months.
- (b) All Licence holders are required to have public liability insurance (minimum \$10 million but higher limits will be required for higher risk activities) – applicants will be required to provide a certificate of currency for such insurance to Council prior to the issue of the Licence and will be required to provide proof of continuance of that insurance if requested during the currency of the Licence.
- (c) Council will not permit Licences to be assigned or transferred to another operator – if the business operating under the Licence is sold then the Licence will automatically terminate and the new owner will need to apply for a new Licence.
- (d) Licence holders are required to comply with operating requirements for the listed activity, available as part of the Application Guidelines that accompany the *Commercial Recreational Activity Licence* Application Form and all industry standards, where they exist.
- (e) The Licence may be terminated in the following circumstances:
 - (i) if any fees are in arrears for 10 days,
 - (ii) if any insurance the holder is required to have is cancelled or if the holder fails to provide proof of that insurance to Council within 14 days of any request by Council,
 - (iii) if the Licensee breaches any condition of the Licence, or
 - (iv) if the Licensee is declared bankrupt or, being a corporation, has receivers appointed.
- (f) Council reserves the right to terminate any Licence at any time for management reasons including, but not limited to, environmental protection, public safety, changes in policy and/or legislation. If a Licence is terminated by Council for reasons other than those set out in (e) above, then Council shall reimburse the Licence fee on a pro-rata basis – however, Council will not be responsible for any losses incurred by the Licence holder as a result of that termination.

5.10 Breaches and unlicensed activities

Where there is a breach of a licence condition or conduct of an unlicensed activity, Council will take all necessary action to remedy the breach. This includes, but is not limited to, the issuing of written and/or verbal warnings, undertaking injunction proceedings or legal action and the removal of the activities from the public place by an employee of the Council or NSW Police, where appropriate.

5.11 Renewal of Licenses

A reminder letter will be issued 28 days prior to the expiration of the licence. Council will extend a grace period of 10 working days to the licence holder of an expired licence in which to renew or a new application will need to be submitted.

The renewal of an expired Licence will depend on the following:

- (a) The submission of a renewal application.
- (b) Demonstrated strict compliance with the operating Guidelines and licence conditions.
- (c) Demonstrated ability to satisfactorily conduct the activity.

Licence renewals will be for a maximum period of twelve (12) months.

A licence renewal may incorporate additional conditions.

5.12 Licence fees

Council will determine the applicable fees and charges annually, as part of its Operational Plan budget deliberations. The following items will incur a fee:

- *Commercial Recreational Activities Licence – Application*

Commercial Recreational Activities Licence – Annual Licence

- (a) The Licence Application fee must be paid when an application is submitted to Council. The application fee is non-refundable should the application be refused.
- (b) If approved, the Licence Fee must be paid prior to the issuing of the Licence.
- (c) The Annual Licence fee will be based on the level of impact that the activity is assigned in the table below, taking into account the:
 - (i) nature of the activity,
 - (ii) scale of its operation,
 - (iii) use and impact on the reserve, and
 - (iv) impact on the community both beneficial and detrimental.

Impact Category	Activity
Very Low Impact	Bicycle tours
	Canoeing/kayaking tours
	Activities in purpose built facilities (ie. skate parks; tennis courts; basketball courts; etc)
	Fitness training and bootcamp groups
	Personal trainers

Impact Category	Activity
Low Impact	Bicycle and boat hire
	Canoe, kayak, paddle board, stand-up paddle and/or surf schools or tuition
	Dog training classes
	Kite and wind surfing schools
	Activities in purpose built facilities (eg. sporting fields, equestrian centre, etc)
Medium impact	4WD fishing tours
	Hang gliding and paragliding
	Horse / camel riding (other than in a purpose built facility)
	Skydiving
	Jet ski hire
High Impact	Seaplane and helicopter rides
	Hot air ballooning

6. Review of Policy

This *Commercial Recreational Activities on Public Land Policy* is to be reviewed at least every four years or when new activity licenses require approval by Council.