



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting

Thursday, 23 February 2017

held at Council Chambers, Station Street, Mullumbimby
commencing at 7.00pm

Public Access relating to items on this Agenda can be made at 2pm on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

Ken Gainger
General Manager

CONFLICT OF INTERESTS

What is a "Conflict of Interests" - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary - a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

Remoteness - a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

Who has a Pecuniary Interest? - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

Relatives, Partners - a person is taken to have a pecuniary interest in a matter if:

- The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. "Relative", in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

No Interest in the Matter - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
 - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
 - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

Non-pecuniary Interests - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

RECORDING OF VOTING ON PLANNING MATTERS

Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

BYRON SHIRE COUNCIL
BYRON SHIRE RESERVE TRUST COMMITTEE

BUSINESS OF MEETING

- 1. PUBLIC ACCESS**
- 2. APOLOGIES**
- 3. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**
- 4. STAFF REPORTS**

Corporate and Community Services

- 4.1 Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves and
Request for Tender - Commercial Activities Sub-Licenses4

Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Director or Executive Manager prior to the meeting. Any suggested amendments to the recommendations should be provided to the Administration section prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 4.1 Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves and Request for Tender - Commercial Activities Sub-Licenses

Directorate: Corporate and Community Services
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2017/144
Theme: Corporate Management
 Governance Services

Summary:

Council's current Sub-Licences for Commercial Activities expires on 31 August 2017. Policy 5.52 – Commercial Activities on Coastal and Riparian Crown Reserves ('the Policy') requires Council to call an open tender before granting any Class 2 commercial activity sub-licence.

Prior to calling Tenders for Commercial Activities, Council's must amend the Policy. Amendments as detailed in this report include changes to the crowns lands the Policy applies; changes to the activities that can occur on Council managed and controlled Crown reserves without the need for approvals or licences. The Policy amends the types of Class 1 non-commercial activities that are permitted by a temporary licence and other Class 1 activities permitted only by a resolution of the Reserve Trust.

Class 2 activities permitted by a sub-licence are amended. Amendments include the setting of the criteria that Council must consider before granting any Class 2 sub-licence. Changes to the general provisions for the operation of a Class 2 sub-licences include a new term of six (6) years, clarifying when a sub-licence holder may transfer or assign rights of a sub-licence and make clear that a sub- licensee may only hold one type of Class 2 sub-licence at any one time. Further the Policy is amended to account for new sub-licence types and lists the terms and conditions of the licence.

In summary this report recommends that Council as the Reserve Trust Committee adopt the amendments to the Policy and places the Draft Policy on public exhibition for 28 days. Following adoption of the Policy, authorise the General Manager to use the open tender method to establish licences for Commercial Activities.

RECOMMENDATION:

That Council, Reserve Trust Manager, recommend to Council:

- a) **That Council adopt amendments to Policy 5.52 – Commercial Activities on Coastal and Riparian Crown Reserves as detailed in the attached Draft Policy and places the Draft Policy on public exhibition for a period of 28 days; and**
 - i. **should no submissions are received, that the Policy be adopted.**
 - ii. **should any submissions be received that the submissions be reported to Council.**
- b) **That Council authorise the General Manager to use the open tender method to establish sub-licences for Commercial Activities for Surf Schools, Personalised Surf Schools, Elite Surf Coaching, Stand Up Paddle Board Schools, Sea Kayak Tours, Mobile Kiosk, Mobile Bike Hire and Mobile Beach Locker Hire.**

Attachments:

- 1 DRAFT Amended Policy: Commercial Activities on Coastal & Riparian Crown Reserve Policy),
E2016/103848 , page 12 [↓](#)

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Report

Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves ('the Policy') guides Council's decision-making by determining the types of activities that can occur on Council managed and controlled Crown reserves.

This report details amendments to the Policy to clarify the types of:

- a) non-commercial activities permitted without the need for approvals or licence; and
- b) other non-commercial activities, called Class 1 activities, permitted only by issue of a temporary licence; and
- c) commercial activities, called Class 2 activities, permitted by grant of a sub-licence authorised by a Crown licence issued under section 34A of the *Crown Lands Act 1989* (NSW), ('the Act').

The report also details amendments to the Policy to add to and delete the crown lands to which the Policy applies.

Lands which the Policy applies

The Policy at Item 1 lists Crown reserves to which the Policy applies.

Council is proposing to amend the Policy at Item 1 to remove Torakina Beach from the Policy. Torakina Beach is currently under the management of the NSW Crown Holiday Parks Trust and is physically located less than 300 metres from the Brunswick River mouth. The proximity of the Beach to the river mouth makes the location unsuitable for any Class 2 commercial activity. In addition any authority to hold a non-commercial activity at this Beach must come from the NSW Crown Holiday Parks Trust not Council.

Item 1.2 is added to the Policy to allow for additional lands authorised under a Crown licence agreement to be lands which the Policy applies which may not be listed in Item 1.1 of the Policy.

Non-commercial activities permitted without approvals or licence

The Policy at Item 4.1 lists the non-commercial activities permitted without the need to obtain any approvals or licence and includes:

- Emergency Services performed by recognised Emergency Service Organisations;
- Passive Recreational Activities;
- Social Gatherings;
- Spreading of Ashes; and
- Volunteer Rescue Organisations – Training Days.

Item 4.1 is amended to remove 'Spreading of Ashes' because this activity now requires Council approval.

Class 1 non-commercial activities

The Policy currently restricts Class 1 activities to:

- Sporting Events- Organised;
- Educationally based community activities;
- Fundraising activities by Registered Charities;
- Political Functions;
- Religious Functions; and
- Weddings.

Council, as the Reserve Trust Manager, has authority under s108 of the *Act* to grant temporary licences for prescribed purposes detailed in clause 31 of the *Crown Lands Regulations 2006* (NSW), ('the *Regulation*'). Item 5.1 of the Policy is amended to extend the types Class 1 non-commercial activities permitted by the *Regulation* to include:

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- (a) access though a reserve;
- (b) advertising limited to Class 1 or Class 2 activity sponsorship;
- (d) catering;
- (e) emergency occupation;
- 10 (f) entertainment (non-commercial and consistent with use of the Reserve);
- (h) exhibitions (non-commercial for example sand sculptures);
- (i) filming;
- (j) functions limited to:
 - educationally based community activities,
 - 15 • fundraising activities by registered Charities,
 - political functions,
 - religious functions, and
 - weddings.
- (m) markets; and
- 20 (s) sporting & organised recreational activities.

All remaining activities permitted by the *Regulation* may be possible only by resolution of the Reserve Trust. Class 1 activities will be approved only for a short period of time for example one day under Item 5.1 of the Policy.

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The Policy amendments to Class 1 non-commercial activities are to provide clear guidance to Council staff to determine the types of activities that can occur on Crown reserves under a temporary licence other activities which can occur only by resolution of the Reserve Trust.

30 Class 2 commercial activities

Item 5.3 of the Policy requires a sub-licence to carry out all Class 2 commercial activities.

35 Item 7 of the Policy lists matters which Council must consider prior to the granting a Class 2 sub-licence. Council is proposing to amend Item 7 to include:

a) Mandatory criteria:

1. Instrument of Tender:
 - A valid Australian Business Number (ABN);
 - Details of Organisational profile;
 - Referee details;
 - A statement if acting as an Agent or Trustee (if applicable); and
 - A statement if intending to sub-contract requirements (if applicable).
2. Details of Financial Viability.
3. Details of Insurance or statement of ability to obtain required insurance.
4. Statement of ability to meet minimum work health and safety requirements.
5. Proof of holding relevant qualifications necessary to operate a business under the sub-licence.
6. Statement of a commitment to ethical business practice principles.
7. Conflict of interest declaration.

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b) Qualitative criteria:

- Experience: 1. Demonstrated experience, local knowledge and practical skills to succeed in the activity

- 2. Demonstrated ability to comply with primary and secondary legislations relevant to the activity.
- Resourcing: 3. Demonstrated resourcing of personnel, plant & equipment essential to the activity
- Operations: 4. Demonstrated capacity to conduct the activity to professional standards required by relevant accreditation to meet sub-licence conditions.
- 5. Demonstrated understanding of the purpose of a Crown Reserve and in promoting use and enjoyment of Crown Reserves.
- 6. Demonstrate ability to assist persons gain employment via access to skills and support.

Item 8 of the Policy details general provisions for the operations of a Class 2 sub-licences. The Policy is amended to correct the numbering of sub-items within Item 8. Other amendments to Item 8 include:

- 5 a) Item 8.3 of the Policy is amended to increase the maximum term of a Class 2 sub-licence to six (6) years in accordance with Schedule 1 of the Crown Licence RI 564194. The minimum term of a Class 2 activity sub-licence will remain at one (1) year.
- 10 b) Item 8.6 of the Policy is added to limit a holder to only one type of Class 2 sub-licence. For example a sub- licensee may not hold two sub-licences for surf schools but may hold a sub-licence for a surf-school and personalised surf-school.
- 15 c) Item 8.9 is amended to clarify the two only circumstances that a holder of a sub-licence may transfer or assign sub-licensed rights and includes:
 - i. Upon the death of a sole or surviving sub- licensee; or
 - ii. Upon proof a sub- licensee is suffering hardship.

Council to retain absolute discretion to permit the transfer or assignment of sub- licensee rights under a Class 2 sub-licence.

Item 9 of the Policy is amended to list the performance standards of all Class 2 sub-licensed activities and includes:

Activity	Number of Annual sub-Licences	Student / Instructor Ratio	Maximum Students	Frequency (Number of Classes per day)
Surf Schools	Four (4) only.	8 students to 1 instructor. 9 students to 2 instructors.	10	Two (2) classes per day with one (1) class from each school is permitted at the same time.
Personalised Surf Schools	Two (2) only.	2 students to 1 instructor.	2	
Elite Surf Coaching	One (1) only.	2 students to 1 instructor.	2	
Sea Kayaks	Two (2) only.	8 kayaks to 1 instructor.	18 kayaks	
Stand Up Paddle Schools	Three (3) only.	8 students to 1 instructor.	8	
Mobile Kiosk	One (1) only.	Limited to one (1) vehicle operating in designated areas.		
Mobile Bike Hire	One (1) only.	Limited to one (1) only designated area.		
Mobile Beach Locker Hire	One (1) only.	Limited to one (1) only designated area.		

Item 13.4 of the Policy is amended to reflect Class 2 sub-licence fees are payable either annually or monthly in advance.

Terms of Class 2 commercial activity sub-licences

Schedules A to H of the Policy details the terms of Class 2 sub-licences. Schedules are provided in full in the attached Draft Policy. The main amendment to the Schedules includes a requirement that all holders of a Class 2 sub-licences provide:

- a) Proof that all sub-licensee employees, agents and contractors undertake mandatory working with children checks; and
- b) Proof of current \$20 million public liability insurance and current \$5 million professional indemnity insurance and where applicable proof of current \$20 million product liability insurance.

This report recommends that the Reserve Trust Committee recommends to Council to adopt the amendments to the Policy and authorise the General Manager to use the open tender method to call for new Class 2 sub-licences for Commercial Activities.

Financial Implications

Sub-Licence Fees

In 2012 Council called a tender to let Class 2 commercial activities sub-licences. This process called for a proponent to tender a sub-licence fee for the Class 2 activity as a method of establishing the market value rent. Tenders were subsequently awarded using the methodology that scored a submission higher based on the value of the tendered sub-licence fee.

As a consequence two unsuccessful tenderers lodged an objection to the process. Council sought an independent probity review of the process by Grant Thornton. The Thornton report recommended that Council, in the future, when tendering for Class 2 sub-licences determine a standard fee payable by all Tenderers in its annual fees and charges and that fee should be determined by taking into account:

- a) The nature and scale of the activity;
- b) Use and impact on the reserve;
- c) Impact on the community by way of benefit or detriment;
- d) Number of sub-licences issued; and
- e) Revenue generated by operators based for example on the number of visitors to limit licence conditions.

Fees for all Class 2 sub-licences will be determined by Council as part of its 2017/2018 Revenue Policy and Fees and Charges. Council will consider recommendations of the Thornton report in setting Class 2 sub-licences fees. Current Class 2 sub-licence fees are:

Activity	2016/17 Fee (\$)	Total Revenue (\$)
Surf School (5 sub-licences)	8857	44285
Personalised SS (2 sub-licences)	2866	5,732
Elite Surf Coaching	1,145	1,145
Sea Kayak (2 sub-licences)	40552	81,104
		132,266

Statutory and Policy Compliance Implications

34A Special provisions relating to Minister's powers over Crown reserves

(1) Despite any other provision of this Act, the Minister may grant a lease, licence or permit in respect of, or an easement or right-of-way over, a Crown reserve for the purposes of any facility or infrastructure or for any other purpose the Minister thinks fit. Any such lease, licence, permit, easement or right-of-way is referred to in this section as a **relevant interest**.

(2) The following provisions apply in relation to the granting of a relevant interest:

(a) the Minister is to consult the following persons or bodies before granting the relevant interest:

(i) the person or body managing the affairs of the reserve trust (if any) appointed under Part 5 as trustee of the Crown reserve that is the subject of the relevant interest,

(ii) if the Crown reserve is being used or occupied by, or is being administered by, a government agency—the Minister to whom that agency is responsible,

(b) if the Crown reserve is to be used or occupied under the relevant interest for any purpose other than the declared purpose (as defined in section 112A) of the reserve—the Minister is to specify, by notice published in the Gazette, the purposes for which the Crown reserve is to be used or occupied under the relevant interest,

(c) the Minister is not to grant the relevant interest unless the Minister:

(i) is satisfied that it is in the public interest to grant the instrument, and

(ii) has had due regard to the principles of Crown land management.

(3) Failure to comply with subsection (2) (a) does not affect the validity of the relevant interest concerned.

(4) The proceeds from a relevant interest are to be applied as directed by the Minister.

(5) Without limiting subsection (4), any such direction by the Minister may include any of the following:

(a) a direction that the proceeds (or part of the proceeds) be paid to the Consolidated Fund or to the Public Reserves Management Fund constituted under the [Public Reserves Management Fund Act 1987](#),

(b) in the case of a relevant interest granted in respect of a Crown reserve for which a reserve trust has been appointed as trustee under Part 5—a direction that the proceeds (or part of the proceeds) be paid to the reserve trust or to another reserve trust,

(c) in the case of a relevant interest granted in respect of a travelling stock reserve under the care, control and management of Local Land Services—a direction that the proceeds (or part of the proceeds) be paid to Local Land Services,

(d) in the case of a Crown reserve referred to in subsection (2) (a) (ii)—a direction that the proceeds (or part of the proceeds) be paid to the relevant government agency.

(6) The provisions of:

(a) Divisions 3 and 3A apply in relation to a lease granted under this section, and

(b) Division 4 apply in relation to a licence granted under this section, and

(c) Division 5 apply in relation to an easement granted under this section as though the easement was granted or created under that Division, and

(d) Division 6 apply in relation to a permit granted under this section as though the permit was granted under that Division.

Accordingly, in relation to the granting of a relevant instrument, a reference in Divisions 3–6 to Crown land includes a reference to a Crown reserve.

(6A) Nothing in this section affects the operation of section 35.

(7) (Repealed)

(8) For the avoidance of any doubt, the power of the Minister to grant a relevant interest in respect of a Crown reserve under this section includes the power to enter into an agreement for such a relevant interest.

(9) A Crown reserve the subject of a special purpose lease within the meaning of Division 3A may be leased under this section, but only if the granting of a lease under this section is authorised by, and complies with, the terms of the special purpose lease.

108 Temporary licences

(1) A reserve trust may, in respect of the whole or any part of a reserve, grant temporary licences for grazing or any other prescribed purpose.

(2) A temporary licence may be granted subject to conditions and is also subject to such conditions as may be prescribed.

(3) A temporary licence may not be granted for any purpose for which an authority, permit, lease or licence may be granted under the [Fisheries Management Act 1994](#).

(4) A temporary licence ceases to have effect on the expiration of the prescribed period after it is granted unless it is revoked sooner or is granted for a shorter period.

31 Temporary licences

- (1) For the purposes of section 108 (1) of the Act, in addition to grazing, the purposes for which a temporary licence may be granted are as follows:
- (a) access through a reserve,
 - (b) advertising,
 - (c) camping using a tent, caravan or otherwise,
 - (d) catering,
 - (e) emergency occupation,
 - (f) entertainments,
 - (g) equestrian events,
 - (h) exhibitions,
 - (i) filming (within the meaning of the [Local Government Act 1993](#)),
 - (j) functions,
 - (k) hiring of equipment,
 - (l) holiday accommodation,
 - (m) markets,
 - (n) meetings,
 - (o) military exercises,
 - (p) mooring of boats to wharves or other structures,
 - (q) sales,
 - (r) shows,
 - (s) sporting and organised recreational activities,
 - (t) stabling of horses,
 - (u) storage.
- (2) For the purposes of section 108 (2) of the Act, in addition to any other condition subject to which a temporary licence is granted, the licence is subject to the condition that the relationship of landlord and tenant is not created between the parties.
- (3) For the purposes of section 108 (4) of the Act, the prescribed period for the expiration of a temporary licence is one year following the date on which it is granted.

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BYRON SHIRE COUNCIL

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Draft POLICY NO. 5.52

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COMMERCIAL ACTIVITIES ON COASTAL AND RIPARIAN CROWN RESERVES

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

INFORMATION ABOUT THIS DOCUMENT

Date Adopted	16 August 2001	Resolution No.	
Policy Responsibility	Property Management		
Review Timeframe			
Last Review Date:	October 2011	Next Scheduled Review Date	

5 **Document History**

Doc No.	Date Amended	Details Comments eg Resolution No.
	30 November 2004	
#421342	15 December 2005	Res 05-930
#456736	15 August 2006	Res 06-499
#939163	3 March 2010	Res 09-1128
#1177191	8 December 2011	Res 11-1000

Further Document Information and Relationships

Related Legislation	Crowns Lands Act Crowns Lands Regulation 2000 Local Government Act 1993 Local Government (General) Regulation 2005 National Parks and Wildlife Act 1974 National Parks and Wildlife Regulation 2009 Marine Parks Act 1997 Marine Safety Act 1998 Marine Parks Regulation 2009 Marine Parks (Zoning Plans) Regulation 1999 Food Act 2003
Related Policies	
Related Procedures/ Protocols, Statements, documents	Food Safety Plan (Code) #82795 Crown Licence Agreement RI 406617 for Commercial Activities – Appendix “C”

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Policy No. 5.52**POLICY TITLE COMMERCIAL ACTIVITIES ON COASTAL AND RIPARIAN
CROWN RESERVES****FILE REFERENCE** COR050504

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1. PREAMBLE

Byron Shire is endowed with a huge range of unique geographical and topographical features and richly biodiverse plant and wildlife both on land and in the sea. It is now recognised throughout the world as one of the most desirable places to visit with Byron Bay listed as “most preferred” destination by the world backpacker group of travellers.

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Byron Shire’s “*Jewel in the Crown*” is our ribbon of beautiful, white sand beaches, crystal clear ocean and year round quality surf. Adventurous activities abound for people of all ages from the extremely challenging to those safe for young children. Our beaches and excellent surfing breaks are easily accessible to everyone.

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With public demand for our beaches and reserves increasing rapidly, we must take every care to protect them and the safety and comfort of people who use them.

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2. MISSION STATEMENT

Commercial activities on beaches and adjoining reserves must not diminish the recreational amenity of residents or visitors who are attracted to this Shire for its natural beauty and environment.

It is our special responsibility to ensure ecologically sustainable use and protection of the coastal zone for the benefit and enjoyment of future generations.

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3. OBJECTIVES OF THIS POLICY

To retain coastal Crown reserves, that are under the care, control and management of Council, where authorised, or as the Reserve Trust Manager, as places for passive and active recreation where appropriate for residents and visitors.

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To set out what activities can be carried out on coastal Crown reserves with, and without, permission of Council, where authorised, or as the Reserve Trust Manager.

To regulate the level of temporary business or commercial activity on coastal Crown reserves under the care, control and management of Council, where authorised, or as the Reserve Trust Manager.

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To provide criteria for determining applications to carry out commercial activities on coastal Crown reserves.

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4. DEFINITIONS

For the purposes of interpreting this policy a list of definitions is provided as an appendix to this document.

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5. REVIEW

This policy is subject to ongoing review at a minimum every twelve (12) months after adoption and as part of the preparation of the Coastal Zone Management Plan for Byron Bay Embayment.

6.

POLICY STATEMENT**1 Land to which this Policy Applies**

- 5 1.1 This policy applies to all beaches and adjoining parks that are coastal Crown reserves under the care control and management of Byron Shire Council, where authorised or as the Reserve Trust Manager. The coastal Crown reserves are:

Reserve No.	Reserve Name	Beach Name	Purpose
R140034	Byron Coast Reserve	Seven Mile Beach	Public Recreation
R140052	Byron Coast Reserve	South Golden Beach	Public Recreation/Protection from Sand Drift
R82000	Byron Coast Reserve	Byron Bay Beach	Public Recreation
R97066	Byron Coast Reserve	Tallow Beach	Public Recreation/Protection from Sand Drift
R97139	Byron Coast Reserve	Brunswick Heads Beach	Public Recreation

Council as authorised by Crown Licence Agreement RI 564194 for Commercial Activities

R49122	Lighthouse Hill Reserve	Clarkes Beach	Public Recreation/Preservation of Native Flora
R82780	Crown Land	South Brunswick Heads Beach	Future Public Requirements
R755695	Crown Land	Suffolk Park Beach	Future Public Requirements
R755687	Crown Land	New Brighton Beach	Future Public Requirements
R755695	Crown Land	Belongil Beach	Future Public Requirements

- 10 1.2 Crown licence RI 564194 may provide for further licenced areas not listed above that apply to this Policy.

Site maps for all the above reserves are attached to this policy.

15 **2 Activities that can be regulated**

2.1 Activities Regulated by the *Crown Lands Act 1989* (NSW) include:

- 20 The only activities for which Council, as the Reserve Trust Manager, pursuant to Section 92 (5) of the *Crown Lands Act*, can issue a **temporary licence** under s108 of the *Crown Lands Act* for are the activities listed in clause 31 of the *Crown Lands Regulation 2006* (NSW) (as amended from time to time). This clause, as at the date of the policy, states as follows;

- 25 *"For the purpose of section 108 of the Act:*
- *Advertising*
 - *Camping using a tent, caravan or otherwise*
 - *Catering*
 - *Entertainments*
 - *Equestrian events*
 - *Exhibitions*
 - *Filming (within the meaning of the Local Government Act 1993)*
 - *Functions*
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- *Hiring of equipment*
- *Holiday accommodation*
- *Markets*
- *Meetings*
- *Mooring of boats to wharves or other structures*
- *Sales*
- *Shows*
- *Sporting and organised recreational activities*
- *Stabling of horses*

- (b) *in addition to any other condition subject to which a temporary licence is granted, the licence is subject to the condition that the relationship of landlord and tenant is not created between the parties, and*
- (c) *unless it is revoked sooner or is granted for a shorter period, a temporary licence ceases to have effect one year after it is granted."*

2.2. Activities Regulated by the *Local Government Act 1993* (NSW) includes:

Council, as the Reserve Trust Manager, may grant an approval under Item 7 Part F to the table to Section 68 of the *Local Government Act* on a Crown reserve for "use a standing vehicle or an article for the purposes of selling an article in a public place".

2.3. Council may grant a sub-licence authorised by a head Trust licence issued under Section 34A of the *Crown Lands Act 1989* (NSW) for permitted reserve uses of:

- Surf schools, personalised surf schools, elite surf coaching, sea kayak and stand up paddle schools; and mobile kiosk, mobile bike hire and mobile beach locker services.

3 Temporary Licences or Approvals to be obtained under this Policy

3.1. Any activity, including commercial and / or business activities (including any activity which involves a standing vehicle or any article to be used for the purposes of selling any article) cannot be carried out on a coastal Crown reserve where a notice is erected under section 632 of the *Local Government Act* about that activity, unless a temporary licence or approval has been obtained from the Council, as the Reserve Trust Manager, in accordance with that notice.

3.2. Activities on a coastal crown reserves are not limited to activities taking place wholly on the reserve but also include activities that involve crossing the reserve, or transferring people or items on, off or over the reserve. This includes the embarking or disembarking of people / items from or to water based activities adjoining the reserve. Council, as the Reserve Trust Manager, is entitled to require licensing of any activity or part of an activity involving a reserve.

4 Activities not requiring a Temporary Licence or Approval

4.1 In accordance with clause 31 of the *Crown Lands Regulation*, Council, as The Reserve Trust Manager, has determined that the following activities can be carried out on coastal Crown reserves without the need to obtain a temporary licence or approval for non-commercial activities being:

- Emergency Services performed by recognised Emergency Service Organisations;
- Passive recreation activities;
- Social Gatherings; and
- Volunteer Rescue Organisation Training Days.

5 Activities requiring a Temporary Licence or Approval

5.1 In accordance with clause 31 of the *Crown Lands Regulation*, Council as the Reserve Trust Manager, has determined that the following activities require a **Class 1** temporary Licence:

- (a) access though a reserve;
- (b) advertising limited to sponsorship of Class 1 or Class 2 activities;
- (d) catering;
- (e) emergency occupation;
- (f) entertainments (non-commercial and consistent with the Reserve purpose);
- (h) exhibitions (non-commercial and consistent with the Reserve purpose);
- (i) filming;
- (j) functions (limited to educational based community activities, fundraising by registered charities, political or religious functions and weddings);
- (m) markets; and
- (s) sporting & organised recreational activities.

All other activities listed in clause 31 of the *Crown Lands Regulation* may be possible only by a Reserve Trust resolution.

Generally Class 1 activities will only be approved for a short term or temporary basis for example one day or less. An application fee must be paid for a **Class 1** application and a licence fee may apply.

Council, as the Reserve Trust Manager, will consider applications for filming (within the meaning of the *Local Government Act 1993*). Filming applications will be subject to the terms, conditions and fees outlined in Council Policy No. 3.41 "Filming on Council owned and controlled land".5.2

5.3 All other activities that are of a commercial nature and conducted on a commercial basis require a **Class 2** sub-licence.

5.4 If any of the commercial activities requiring a **Class 2** sub-licence involve the use of a standing vehicle, or any article for the purpose of selling any article on a Crown reserve, then in addition to the temporary licence, an approval must be obtained from the Council, as the Reserve Trust Manager, under Item 7 of Part F of the table to Section 68 of the *Local Government Act*.

6 Applications for Temporary Licences

6.1. All applications shall be in writing on the approved form, setting out the proposal in detail, the desired location (including the size of the area it is intending to occupy) and be accompanied by the appropriate application fee.

6.2. Any application for a temporary licence under this Policy that fails to meet the requirements of clause 6.1 shall be rejected with reasons given and returned to the applicant by Council.

6.3. All applications for temporary licences under this Policy shall be assessed and determined by the General Manager of Byron Shire Council as the delegated officer of the Reserve Trust, or by his or her delegate, in consultation with representatives from, but not limited to, Crown Lands Division, Cape Byron Headland Trust and National Parks and Wildlife Service, where appropriate.

6.4. All applications for temporary licences are to be assessed and determined within a three month period from date of receipt.

7 Matters to be considered in Issuing Class 2 Sub-Licences

Council, as the Reserve Trust Manager, will assess the information provided in applications for Class 2 sub-licences based on the following selection criteria:

(a) Mandatory criteria:

1. Instrument of Tender:
 - A valid Australian Business Number (ABN);
 - Details of Organisational profile;
 - Referee details;
 - A statement if acting as an Agent or Trustee (if applicable); and
 - A statement if intending to sub-contract requirements (if applicable).
2. Details of Financial Viability.
3. Details of Insurance or statement of ability to obtain required insurance.
4. Statement of ability to meet minimum work health and safety requirements.
5. Proof of holding relevant qualifications to operate the business purpose of the sub-licence.
6. Statement of a commitment to ethical business practice principles.
7. Conflict of interest declaration.

(b) Qualitative criteria:

- | | |
|-------------|--|
| Experience: | <ol style="list-style-type: none"> 1. Demonstrated experience, local knowledge and practical skills to succeed in the activity 2. Demonstrated ability to comply with relevant primary and secondary legislative instruments. |
| Resourcing: | <ol style="list-style-type: none"> 3. Demonstrated resourcing of personnel, plant & equipment essential to the activity |
| Operations: | <ol style="list-style-type: none"> 4. Demonstrated capacity to conduct the activity to professional standards required by relevant accreditation to meet sub-licence conditions. 5. Demonstrated understanding of the purpose of a Crown Reserve and in promoting the use and enjoyment of Reserves. 6. Demonstrate ability to assist persons gain employment via access to skills and support. |

8 General Provisions for the Operation of Class 2 Sub-Licences

- 8.1. The general provisions listed in this clause will apply to all Class 2 sub-licences.
- 8.2. Class 2 sub-licences, where Council is the Reserve Trust Manager, will be issued for a maximum term of one (1) year.
- 8.3. Class 2 sub-licences, where Council is authorised by Trust Licence RI 564194, will be issued subject to terms of the Trust Licence for a minimum term of one (1) year and a maximum term of six (6) years.
- 8.4. An open tender process will be used for all Class 2 sub-licences.
- 8.5. Class 5 sub-licence can be issued to a Holder being:
 - (a) Individuals only; or
 - (b) Individuals and companies (with personal guarantees by all directors); or
 - (c) Companies only (with personal guarantees by all directors).
- 8.6. A Holder will not be granted more than one (1) sub-licence in a Class 2 activity type for example a Holder may not hold two surf school sub-licences.

8.7 Where the licence is issued to a company then the company can only retain the licence so long as there is no change in the shareholding of the company.

8.8 A company licensee must advise Council (as the Reserve Trust Manager) by giving at least twenty eight (28) days written notice:

- (a) of any proposed changes in the shareholdings of the company, and
- (b) when those changes will take effect.

8.9 Class 2 sub-licences are not transferable in all circumstances. A Class 2 sub-licence may only be transferred or assigned only upon:

- (a) the death of a sole or surviving sub-licensee; or
- (b) proof a sub-licensee is suffering hardship.

Council retains absolute discretion to permit the transfer or assignment of sub-licensee rights under a Class 2 sub-licence.

8.10 Class 2 sub-licence conditions will use industry standards, where applicable.

8.11 Mandatory working with children checks for all class 2 sub-licensees and their employees, agents or contractors likely to be working with children.

8.11 Class 2 sub-licences will, generally only be issued for beach or water based and non-mechanised activities.

8.12 Should a Class 2 sub-licence holder fail to operate a licence for a continuous period exceeding four (4) months, then the licence will lapse, unless Council, as the Reserve Trust Manager, has provided prior approval.

8.13 No motorised craft will be approved for Hire.

9 Licences and Performance Standards – Class 2

9.1. The maximum number of Class 2 sub-licences to be issued annually is detailed in the following table.

Activity	Number of Annual sub-Licences	Student / Instructor Ratio	Maximum Students	Frequency (Number of Classes per day)
Surf Schools	Four (4) only.	8 students to 1 instructor. 9 students to 2 instructors.	10	Two (2) classes per day with one (1) class from each school is permitted at the same time.
Personalised Surf Schools	Two (2) only.	2 students to 1 instructor.	2	
Elite Surf Coaching	One (1) only.	2 students to 1 instructor.	2	
Sea Kayaks	Two (2) only.	8 kayaks to 1 instructor.	18 kayaks	
Stand Up Paddle Schools	Three (3) only.	8 students to 1 instructor.	8	

The above activities may be increased only on application by the NSW Department of Education, or any other higher learning institution and Licensee's must comply with Education Department guidelines. For example, surf schools, one instructor in charge of ten (10) students and one instructor or group leader in charge of remaining students, to a maximum of 20 students on the beach at any one time.

Activity	Number of Annual sub-Licences	Conditions
Mobile Kiosk	One (1) only.	Limited to one(1) only vehicle in a designated operating area.
Mobile Beach Locker Hire	One (1) only.	A designated operational location.
Mobile Bike Hire.	One (1) only.	A designated operational location.

9.2. Council, or as the Reserve Trust Manager, reserves the right to issue none or less than the proposed number sub-licences for each Class 2 activity type.

9.3. Operating requirements have been developed for Class 2 activities is set out in the Schedules "A" to "H" in this Policy.

9.4 Council, or as the Reserve Trust Manager, must determine any amendment to the number and/or type of Class 2 sub-licences issued. This determination is to be made after consultation with the Council Committee, if any, established to review the management of commercial activities on coastal crown reserves.

10 Temporary Licences and Performance Standards – Class 1

10.1. Class 1 temporary licences will be issued on an as required basis, as determined by Council, as the Reserve Trust Manager.

10.2. Operating requirements for Class 1 temporary licences will be listed in the licence as provided by Council, as the Reserve Trust Manager.

11 Granting of New Temporary Licences

11.1 The granting of a new temporary licence to replace a temporary licence that has expired, vacated or relinquished will be dependent on satisfactory compliance with both the letter and spirit of the licence conditions and this Policy, and the standards of performance. Accordingly, the following will apply:

11.1. Strict compliance with the policy and licence conditions is required.

11.2. The granting of a new temporary licence will be dependent on the licensee showing a satisfactory standard of performance in all areas.

11.3. Breaches of temporary licence conditions, or lapses in standards, may result in licence cancellation.

11.4. Council, or as the Reserve Trust Manager, reserves the right not to grant new temporary licences to replace any expired temporary licences.

11.5. If a Class 2 sub-licence becomes vacant, Council, or as the Reserve Trust Manager, reserves the right to determine how it wishes to allocate that vacant sub-licence, if and when a decision is made to issue a new sub-licence. Options that Council, or as the Reserve Trust Manager will consider include, but are not limited to the calling of tenders or expressions of interest for the sub-licence.

12 Appeals against refusals to issue a Class 2 Sub-Licence

12.1. Any applicant for a new Class 2 sub-licence under this Policy may appeal to the Council, as the Reserve Trust Manager, if the application is refused. Such an appeal must be made in writing, attaching all relevant documentation, and within 28 days of the date of the refusal.

12.2. The hearing, management and determination of any appeals as per clause 12.1 will be a matter for the General Manager of Byron Shire Council, as the delegated officer of the Reserve Trust, to determine.

13 Nature and Determination of Fees and Charges

13.1. Council, or as the Reserve Trust Manager, must determine the fees and charges in accordance with this Policy as part of Council's Integrated Planning and Reporting Framework.

13.2. Council, or as the Reserve Trust Manager, must determine at a minimum, the following fees;

- (a) Class 1 Temporary Licence – Application Fees;
- (b) Class 2 Sub-Licence – Application Fees; and
- (c) Class 2 Sub-Licence – Annual Licence Fee.

13.3. Application fees are payable for all Class 1 and Class 2 licences, with the exception when an existing Class 2 sub-licence holder has a new Class 2 sub-licence issued based on the conditions of the existing Class 2 sub-licence.

13.4. Class 2 sub-licence fees may be paid annually or monthly in advance.

13.5. Fees will be determined taking into account, and not limited to, the following:

- nature of the activity;
- scale of its operation;
- use and impact on the coastal Crown reserve; and
- impact on the community both beneficial and detrimental.

13.6. A performance bond will be required for licensees who have not held a licence previously with Council. Bonds may also be required for existing licensees at the discretion of Council, or as the Reserve Trust Manager.

13.7. All fees are payable unless subsidised by Council, or as the Reserve Trust Manager, or its delegated officer, in accordance with Council policy and approved delegations. This clause 13.7 does not apply to Class 2 sub-licences.

14 Breaches and Unlicensed Activities

14.1. Where there is any breach of any licence conditions, including unlicensed activities, Council, or as Reserve Trust Manager, is to take all necessary action to remedy the breach. This includes, but is not limited to, the issuing of penalty notices, the taking of injunction proceedings and other legal action, and where appropriate, the removal of the activities from the coastal Crown reserve by an employee of the Council, or a Police Officer.

15 Revoking of Temporary Licences

15.1. Council, as Reserve Trust Manager, reserves the right to revoke any licensed activities for management reasons including, but not limited to, environmental protection, public safety, and changes in policy or legislation.

15.2. The licence may also be terminated in the following circumstances:

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- 5
- a) if any fees payable, or any part thereof are in arrears for 30 days, whether formally demanded or not;
 - b) if the Licensee breaches any conditions of this Policy or the temporary licence;
 - c) if the Licensee has committed an act of bankruptcy; and
 - d) if the Licensee commits an unlawful act or breaches the requirements of any other relevant Authority.
- 10
- 15.3. If a license is to be terminated due to the circumstances set out in this clause, the Council, as the Reserve Trust Manager, may terminate the temporary licence by:
- a) notifying the Licensee to that effect; or
 - b) restricting the Licensee from operating the activity on the coastal Crown reserves, by force if necessary; or doing both.
- 15
- 15.4. If a breach of a condition in the licence is witnessed and recorded by a Council Officer, written notice may be forwarded to the operator. Council, as the Reserve Trust Manager, reserves the right to issue verbal warnings for minor deviations from the licence.
- 20
- 15.5. A Licensee has a right to appeal a written notice within 28 days of receipt. The General Manager has the authority to determine whether or not the notice should be waived based on the appeal.
- 25
- 15.6. If a Licensee receives two written notices, within a three year period, the Council, as Reserve Trust Manager, will advise in writing that any further breach within three years of the first notice will result in the termination of the licence. If three notices are issued within a three year period, the licence is terminated from the time of the third notice, subject to clause 15.7 below.
- 30
- 15.7. Licensee granted a one (1) year, Class 2 sub-licence, the issuing of two written notices in that period will result in termination of the licence.

SCHEDULE 'A' SURF SCHOOL

1 Introduction:

A Surf School provides beginner and intermediate surf lessons to individual or groups in licensed reserves.

2 Fees:

A Surf School sub-Licence fee is published annually in Council's Fees and Charges.

3 Qualifications:

- 3.1.1 Current Surf Rescue Certificate (SLSA Community Award) OR
Current Bronze Medallion (SLSA proficient annually) OR
Ocean Rescue Award (RLSS proficient annually) AND
- 3.1.2 Current Advanced Resuscitation Certificate; AND
- 3.1.3 Minimum - Level 1 Surf Coaching Accreditation from an Australian Nationally Recognised Training Institution; AND
(Note: Level 1 Accreditation insures basic coach education and annual coach education updating and requires mandatory updating of resuscitation, first aid and rescue certificates); AND
- 3.1.4 First Aid Senior Certificate (St Johns, TAFE, NSW Ambulance, Red Cross); AND
- 3.1.5 Working with Children Check in accord with relevant Child Protection Legislation.

Risk Management Protocol

The following equipment is to be provided on the beach at every Surf School session:-

- 3.1.6 A Mobile Telephone;
- 3.1.7 A First Aid Kit (to be audited each quarter to the satisfaction of the Byron Bay Surf Lifesaving Club and reviewed by Council, as the Reserve Trust Manager, during each licence period);
- 3.1.8 "Soft Safes" surfboards with soft fins used at entry level;
- 3.1.9 Instructor's rescue board on beach;
- 3.1.10 Flags denoting area colour coding exclusively on flags; and
- 3.1.11 Drinking water.

Insurance Cover

- 3.1.12 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act); AND
- 3.1.13 Minimum \$5 million Professional Personal Indemnity.

4 A maximum of four (4) Surf Schools will be Sub-Licensed to operate in licensed reserves ;

5 Sub-Licence conditions provide for a maximum of:

- 5.1 ten (10) students per Surf School session;
- 5.2 two (2) Surf School sessions per day; and
- 5.3 one (1) Surf School session from each Surf School is permitted in the reserve, in the lesson area at the same time.

6 Class sizes may be increased when a Surf School is requested by the State Education Department or higher learning institutions but must comply with State Education Department guidelines, (i.e. one instructor in charge of seven (7) students and one instructor or group leader in charge of remaining students, to a maximum of 40 students from each Surf School, on the beach, at any one time.) Byron Shire Council, as Reserve Trust Manager, must be advised in writing in advance of such a request.

7 A Surf School must operate at a minimum distance of 100 metres from any other Sub-Licensed Surf School.

8 No Surf School must operate from the western side of the Byron Bay Surf Club to a line extending from Middleton Street.

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- 9** No Surf School will have priority over any other Surf School in the licensed areas. A Surf School must liaise with other sub-licensed Surf Schools to ensure only one class from each school is in the reserve, in the lesson area at one time.
- 5 10** A Surf School must not interfere with other beach users, or enjoy exclusive use rights over any licensed area.
- 11** A Surf School must have distinctive garments for each student and instructor; and
- 10** **11.1** Students from each Surf School must be identifiable and distinguishable from any other type of Sun-Licensed Surf School;
- 11.2** Instructors from each Surf School must be easy to identify from a distance and be distinguishable from other Surf Schools;
- 15** **11.3** Each Surf School must have clear and visible colour coding exclusively on all garments, beach flags and surf boards;
- 11.4** Surf Schools must use bright colours on all garments and other apparel when on the beach to assist in easy and quick identification.
- 11.5** All students must wear leg-rope that is attached to the Surf Board.
- 20 12** Surf Schools must keep and retain records of all students and daily signed logs, such records to be made available for inspection to Council as required.
- 13** A Surf School must maintain a close liaison with the Surf Life Saving Officers, if on duty, at a particular beach to be used by a Surf School.
- 25 14** All participants in a Surf School must be educated in the prohibition of surf craft in flagged areas on the beach under control of Surf Life Saving Officers.
- 30 15** A Surf School session must be cancelled if conditions are unsafe or if a surf carnival or other major event is being held. All reasonable directions from Surf Life Saving Officers, NSW Police Force Officers or Council Officers must be complied with.
- 35 16** No vehicles are to be driven on any licensed area including the beach or in any grassed reserve under the control of Byron Shire Council.
- 17** No advertising is permitted on the beach or on any uniforms or equipment used by a Surf School with exception of a Surf School business logo. Advertising of any kind is not permitted on shore based equipment such as flags.
- 40 18** Any class area or parking area must be kept in a clean and tidy condition free from litter and refuse at all times.
- 19** Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time.

SCHEDULE 'B'

PERSONALISED SURF SCHOOL

1 Introduction:

A Personalised Surf School provides individualised one on one surf lessons to members of the public.

2 Fees:

A Personalised Surf School sub-Licence fee is published annually in Council's Fees and Charges.

3 Qualifications:

- 3.1.1 Current Surf Rescue Certificate (SLSA Community Award) OR
Current Bronze Medallion (SLSA proficient annually) OR
Ocean Rescue Award (RLSS proficient annually) AND
- 3.1.2 Current Advanced Resuscitation Certificate; AND
- 3.1.3 Minimum - Level 1 Surf Coaching Accreditation from an Australian Nationally Recognised
Training Institution; AND
(Note: Level 1 Accreditation insures basic coach education and annual coach education
updating and requires mandatory updating of resuscitation, first aid and rescue certificates);
AND
- 3.1.4 First Aid Senior Certificate (St Johns, TAFE, NSW Ambulance, Red Cross); AND
- 3.1.5 Working with Children Check in accord with relevant Child Protection Legislation.

Risk Management Protocol

The following equipment is to be provided on the beach at every Personalised Surf School session:-

- 3.1.6 A Mobile Telephone;
- 3.1.7 A First Aid Kit (to be audited each quarter to the satisfaction of the Byron Bay Surf
Lifesaving Club and reviewed by Council, as the Reserve Trust Manager, during each
licence period);
- 3.1.8 "Soft Safes" surfboards with soft fins used at entry level;
- 3.1.9 Instructor's rescue board on beach;
- 3.1.10 Flags denoting area colour coding exclusively on flags; and
- 3.1.11 Drinking water.

Insurance Cover

- 3.1.12 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the
principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act);
AND
- 3.1.13 Minimum \$5 million Professional Personal Indemnity.

4 A maximum of two (2) Personalised Surf Schools will be Sub-Licensed to operate in licensed reserves;

5 Sub-Licence conditions provide for a maximum of:

- 5.1 Two (2) students per Personalised Surf School session;
- 5.2 Two (2) Personalised Surf School sessions per day; and
- 5.3 One (1) Personalised Surf School session from each Personalised Surf School is permitted in the
reserve, in the lesson area at the same time.

6 A Personalised Surf School must operate at a minimum distance of 100 metres from any other Sub-
Licensed Surf School.

7 No Personalised Surf School must operate from the western side of the Byron Bay Surf Club to a line
extending from Middleton Street.

8 No Personalised Surf School will have priority over any other Sub-Licensed Surf School in the licensed
areas. A Personalised Surf School must liaise with other Sub-Licensed Personalised Surf Schools to
ensure only one class from each school is in the reserve, in the lesson area at one time.

9 A Personalised Surf School must not interfere with other beach users, or enjoy exclusive use rights over
any licensed area.

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- 10** A Personalised Surf School must have distinctive garments for each student and instructor; and
- 5 10.1 Students from each Personalised Surf School must be identifiable and distinguishable from any other Personalised Surf School;
- 10 10.2 Instructors from each Personalised Surf School must be easy to identify from a distance and be distinguishable from any other type of Sub-Licensed Surf School;
- 10.3 Each Personalised Surf School must have clear and visible colour coding exclusively on all garments, beach flags and surf boards;
- 10.4 Personalised Surf Schools must use bright colours on all garments and other apparel when on the beach to assist in easy and quick identification.
- 10.5 All students must wear leg-rope that is attached to the Surf Board.
- 11** A Personalised Surf School must keep and retain records of all students and daily signed logs, such records to be made available for inspection to Council as required.
- 15 **12** A Personalised Surf School must maintain a close liaison with the Surf Life Saving Officers, if on duty, at a particular beach to be used by a Surf School.
- 20 **13** All participants in a Personalised Surf School must be educated in the prohibition of surf craft in flagged areas on the beach under control of Surf Life Saving Officers.
- 25 **14** A Personalised Surf School session must be cancelled if conditions are unsafe or if a surf carnival or other major event is being held. All reasonable directions from Surf Life Saving Officers, NSW Police Force Officers or Council Officers must be complied with.
- 30 **15** No vehicles are to be driven on any licensed area including the beach or in any grassed reserve under the control of Byron Shire Council.
- 35 **16** No advertising is permitted on the beach or on any uniforms or equipment used by a Personalised Surf School with exception of a Personalised Surf School business logo. Advertising of any kind is not permitted on shore based equipment such as flags.
- 17** Any class area or parking area must be kept in a clean and tidy condition free from litter and refuse at all times.
- 18** Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time.

**SCHEDULE 'C'
ELITE SURF COACHING**

1 Introduction:

An Elite Surf Coaching School provides individualised coaching service to elite juniors and professionals or coaching of intermediate to advanced surfers.

2 Fees:

An Elite Surf Coaching School sub-Licence fee is published annually in Council's Fees and Charges.

3 Qualifications:

- 3.1.1 Current Surf Rescue Certificate (SLSA Community Award) OR
Current Bronze Medallion (SLSA proficient annually) OR
Ocean Rescue Award (RLSS proficient annually) AND
- 3.1.2 Current Advanced Resuscitation Certificate; AND
- 3.1.3 Minimum - Level 2 Surf Coaching Accreditation from an Australian Nationally Recognised Training Institution; AND
- 3.1.4 First Aid Senior Certificate (St Johns, TAFE, NSW Ambulance, Red Cross); AND
- 3.1.5 Working with Children Check in accord with relevant Child Protection Legislation.

Risk Management Protocol

The following equipment is to be provided on the beach at every Personalised Surf School session:-

- 3.1.6 A Mobile Telephone;
- 3.1.7 A First Aid Kit (to be audited each quarter to the satisfaction of the Byron Bay Surf Lifesaving Club and reviewed by Council, as the Reserve Trust Manager, during each licence period);
- 3.1.8 Instructor's rescue board on beach;
- 3.1.9 Flags denoting area colour coding exclusively on flags; and
- 3.1.10 Drinking water.

Insurance Cover

- 3.1.11 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act); AND
- 3.1.12 Minimum \$5 million Professional Personal Indemnity.

4 A maximum of two (2) Elite Surf Coaching Schools will be Sub-Licensed to operate in licensed reserves;

5 Sub-Licence conditions provide for a maximum of:

- 5.1 Two (2) students per Elite Surf Coaching School session;
- 5.2 Two (2) Elite Surf Coaching School sessions per day; and
- 5.3 One (1) Elite Surf Coaching School session from each Elite Surf Coaching School is permitted in the reserve, in the lesson area at the same time.

6 An Elite Surf Coaching School must operate at a minimum distance of 100 metres from any other Sub-Licensed Surf School.

7 No Elite Surf Coaching School must operate from the western side of the Byron Bay Surf Club to a line extending from Middleton Street.

8 No Elite Surf Coaching School will have priority over any other Sub-Licensed Surf School in the licensed areas. An Elite Surf Coaching School must liaise with the other Sub-Licensed Elite Surf Coaching School to ensure only one class from each school is in the reserve, in the lesson area at one time.

9 An Elite Surf Coaching School must not interfere with other beach users, or enjoy exclusive use rights over any licensed area.

10 An Elite Surf Coaching School must have distinctive garments for each student and instructor; and

- 10.1 Students from each Elite Surf Coaching School must be identifiable and distinguishable from any other type of Sub-Licensed Surf School;

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- 10.2 Instructors from each Elite Surf Coaching School must be easy to identify from a distance and be distinguishable from the other Elite Surf Coaching School;
- 10.3 Each Elite Surf Coaching School must have clear and visible colour coding exclusively on all garments, beach flags and surf boards;
- 5 10.4 An Elite Surf Coaching School must use bright colours on all garments and other apparel when on the beach to assist in easy and quick identification.
- 10.5 All students must wear leg-rope that is attached to the Surf Board.
- 10 11 An Elite Surf Coaching School must keep and retain records of all students and daily signed logs, such records to be made available for inspection to Council as required.
- 12 An Elite Surf Coaching School must maintain a close liaison with the Surf Life Saving Officers, if on duty, at a particular beach to be used by a Surf School.
- 15 13 All participants in an Elite Surf Coaching School must be educated in the prohibition of surf craft in flagged areas on the beach under control of Surf Life Saving Officers.
- 20 14 An Elite Surf Coaching School session must be cancelled if conditions are unsafe or if a surf carnival or other major event is being held. All reasonable directions from Surf Life Saving Officers, NSW Police Force Officers or Council Officers must be complied with.
- 15 No vehicles are to be driven on any licensed area including the beach or in any grassed reserve under the control of Byron Shire Council.
- 25 16 No advertising is permitted on the beach or on any uniforms or equipment used by an Elite Surf Coaching School with exception of an Elite Surf Coaching School business logo. Advertising of any kind is not permitted on shore based equipment such as flags.
- 30 17 Any class area or parking area must be kept in a clean and tidy condition free from litter and refuse at all times.
- 18 Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time.

**SCHEDULE 'D'
STAND UP PADDLE SCHOOL**

1 Introduction:

A Stand Up Paddle Board School provides an opportunity for any member of the public to experience the sport of stand up paddle boarding in enclosed flat waters of the Brunswick River.

2 Fees:

A Stand Up Paddle Board School sub-Licence fee is published annually in Council's Fees and Charges.

3 Qualifications:

- 3.1.1 Current Surf Rescue Certificate (SLSA Community Award) OR
Current Bronze Medallion (SLSA proficient annually) OR
Ocean Rescue Award (RLSS proficient annually); AND
- 3.1.2 Current Advanced Resuscitation Certificate; AND
- 3.1.3 Minimum - Level 1 Stand Up Paddle Instructor (Enclosed Flat Water) Accreditation form an
Australian Nationally Recognised Training Institution; AND
- 3.1.4 First Aid Senior Certificate (St Johns, TAFE, NSW Ambulance, Red Cross); AND
- 3.1.5 Working with Children Check in accord with relevant Child Protection Legislation.

Risk Management Protocol

The following equipment is to be provided on the beach with every class:-

- 3.1.6 A Mobile Telephone;
- 3.1.7 A First Aid Kit (to be audited each quarter to the satisfaction of the Byron Bay Surf
Lifesaving Club and reviewed by Council, as the Reserve Trust Manager, each licence
period);
- 3.1.8 A Stand Up Paddle Board School Instructor must be clearly identifiable by apparel or craft;
- 3.1.9 All life jacket and other safety regulations must be adhered to.
- 3.1.10 All personalised safety apparel, hard hats, safety vests or shirts that clearly distinguish one
Stand Up Paddle Board School from any other licensed activity.

Insurance Cover

- 3.1.11 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the
principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act);
AND
- 3.1.12 Minimum \$5 million Professional Personal Indemnity.

4 That a maximum of three (3) Stand Up Paddle Schools will be Sub-Licensed to operate in flat waters of the Brunswick River.

5 Sub-Licence conditions provide for a maximum of:

- 5.1 Eight (8) students to every one (1) instructor to a maximum of eighteen students in any one
session; and
- 5.2 Two (2) Stand Up Paddle Board sessions per day; and
- 5.3 One (1) Stand Up Paddle Board session from each Stand Up Paddle Board School is permitted in
the reserve, in the lesson area at the same time.

6 A Stand Up Paddle Board School must operate less than 300m from the Brunswick River mouth.

7 A Stand Up Paddle Board School must operate at a minimum distance of 100 metres from any other Stand Up Paddle Board School.

8 No Stand Up Paddle Board School will have priority over any other Stand Up Paddle Board School in the licensed area. A Stand Up Paddle Board School must liaise with the other Sub-Licensed Stand Up Paddle Board Schools to ensure only one class from each school is in the reserve, in the lesson area at one time.

9 A Stand Up Paddle Board School must not interfere with other reserve users, or enjoy exclusive use rights over any licensed area.

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- 10 A Stand Up Paddle Board School must have distinctive garments for each student and instructor; and
- 5 10.1 Students from each Stand Up Paddle Board School must be identifiable and distinguishable from any other Stand Up Paddle Board School;
- 10.2 Instructors from each Stand Up Paddle Board School must be easy to identify from a distance and be distinguishable from the other Stand Up Paddle Board School;
- 10.3 Each Stand Up Paddle Board School must have clear and visible colour coding exclusively on all garments and boards;
- 10.4 An Stand Up Paddle Board School must use bright colours on all garments and other apparel when on the beach to assist in easy and quick identification.
- 10.5 All students must wear leg-rope that is attached to the Stand Up Paddle Board.
- 11 A Stand Up Paddle Board School must keep and retain records of all students and daily signed logs, such records to be made available for inspection to Council as required.
- 15 12 A Stand Up Paddle Board School session must be cancelled if conditions are unsafe. All reasonable directions from Surf Life Saving Officers, NSW Police Force Officers or Council Officers must be complied with.
- 20 13 No vehicles are to be driven on any licensed area including the beach or in any grassed reserve under the control of Byron Shire Council.
- 25 14 No advertising is permitted on any uniforms or equipment used by an A Stand Up Paddle Board School with exception of an A Stand Up Paddle Board School business logo. Advertising of any kind is not permitted on shore based equipment.
- 15 Any class area or parking area must be kept in a clean and tidy condition free from litter and refuse at all times.
- 30 16 Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time.

SCHEDULE 'E' SEA KAYAK SCHOOL

1 **Introduction:**

Sea Kayak provides adventure tours to individuals and groups on licensed coastal waters and the flat waters of the Brunswick River.

2 **Fees:**

A Sea Kayak sub-Licence fee is published annually in Council's Fees and Charges.

3 **Qualifications:**

- 3.1.1 Current Surf Rescue Certificate (SLSA Community Award) OR
Current Bronze Medallion (SLSA proficient annually) OR
Ocean Rescue Award (RLSS proficient annually); AND
- 3.1.2 Current Advanced Resuscitation Certificate; AND
- 3.1.3 First Aid Senior Certificate (St Johns, TAFE, NSW Ambulance, Red Cross); AND
- 3.1.4 Working with Children Check in accord with relevant Child Protection Legislation.

Risk Management Protocol

The following equipment is to be provided on the beach with every class:-

- 3.1.5 A Mobile telephone;
- 3.1.6 A First Aid Kit (to be audited each quarter to the satisfaction of the Byron Bay Surf Lifesaving Club and reviewed by Council, as the Reserve Trust Manager, each licence period);
- 3.1.7 All Sea Kayak (maximum of eighteen (18)) craft must be licensed by the NSW Roads & Maritime Services with licence numbers clearly displayed on each craft;
- 3.1.8 For safety purposes the Instructor's or Tour Guide's Sea Kayak craft must be distinctly marked for quick identification as the instructors kayak craft;
- 3.1.9 All life jacket and other safety regulations must be adhered to; and
- 3.1.10 All personalised safety apparel, hard hats, safety vests or shirts that clearly distinguish one Sea Kayak tour from any other licensed activity.

Insurance Cover

- 3.1.11 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act); AND
- 3.1.12 Minimum \$5 million Professional Personal Indemnity.

4 A Maximum of two (2) Sea Kayak Sub-Licences is available to operate in open waters of licensed reserves.

5 Sub-Licence conditions provide for a maximum of:

- 5.1 Eight (8) students to every one (1) instructor to a maximum of eighteen (18) students in any one tour; and
- 5.2 Two (2) Sea Kayak tours in open waters of reserve areas; and
- 5.3 One (1) Sea Kayak tour in the flat waters of the Brunswick River; and
- 5.4 One (1) Sea Kayak tour from each Sea Kayak operator is permitted in the reserve, in the lesson area at the same time

6 No Sea Kayak will have priority over any other Sub-Licensed Sea Kayak when using the parks or beaches. Sea Kayak operators are encouraged to liaise with each other to ensure that only one class from each operator is in the reserve, in the lesson area at one time.

7 Sea Kayak tour must not interfere with other reserve users, or enjoy exclusive use rights over any licensed area.

8 **Approaching Marine Mammals**

- 8.1 Sea Kayak operators will comply with the *National Parks and Wildlife Act 1974* (NSW) as amended and the *National Parks and Wildlife Regulation 2009* (NSW) as amended for the interaction with marine mammal.
- 8.2 Sea Kayak operators will liaise with the National Parks and Wildlife Service (NPWS) on a regular basis and comply with any requests or directions from the NPWS by necessity.

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- 8.3 Sea Kayak operators will inform all participants of each tour of conditions 8.1 and 8.2 (approaching marine mammal) before departing the beach.

- 5 **9** All licensed Sea Kayak operator must have distinctive garments for each student and instructor; Students from each Sea Kayak business should be identifiable and distinguishable from any other Sea Kayak business;

- 10 9.1 Instructors from each Sea Kayak operator should be easy to identify from a distance and be distinguishable from other Sea Kayak operators;
- 9.2 Each Sea Kayak operator should have clear and visible colour coding exclusively on all garments, beach flags and kayaks;
- 9.3 Sea Kayak operators should use bright colours on all garments and other apparel when on the beach to assist in easy and quick identification.

- 15 **10** Sea Kayak operators are to keep and retain a record of clients and daily signed logs, such records to be made available for inspection by Council, as required.

- 20 **11** A Sea Kayak tour must be cancelled if conditions are unsafe. All reasonable directions from Surf Life Saving Officers, NSW Police Force Officers or Council Officers must be complied with.

- 12** No vehicles are to be driven on any licensed area including the beach or in any grassed reserve under the control of Byron Shire Council.

- 25 **13** No advertising is permitted on any uniforms or equipment used by an Sea Kayak business with exception of an the business logo. Advertising of any kind is not permitted on shore based equipment.

- 14** Any class area or parking area is to be kept in a clean and tidy condition free from litter and refuse at all times.

- 30 **15** No vehicles to be driven on the beach.

- 16** Any other conditions that Council, as the Reserve Trust Manager may impose from time to time.

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SCHEDULE 'F' MOBILE KIOSK

1. Introduction:

A Mobile Kiosk serves food that is not potentially hazardous such as pre-packaged foods like soft drinks, ice creams and packaged confectionery.

2. Fees:

A Mobile Kiosk sub-Licence fee is published annually in Council's Fees and Charges.

3. Insurance:

3.1.1 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act); AND

3.1.2 Minimum \$5 million Professional Personal Indemnity.

3.1.3 Minimum \$20 million Product Liability.

1. A Mobile Kiosk may operate daily with the hours as specified by the Sub-Licence.

2. A Mobile Kiosk vehicle may only operate with licence locations as specified by the sub-licence.

3. A Mobile Kiosk must not operate from a fixed location but maintain a regular route within the licenced location as specified in the Sub-licence.

4. A Mobile Kiosk Van operator must supply a suitable vehicle for use for the carrying, storage and sale of foodstuffs and be approved by Council's Environmental Health Officers before use. Suitability of the vehicle is at the discretion of Council. The vehicle must be comprehensively insured and registered with the Roads and Maritime Services, and the operator shall be licensed to operate the type of vehicle used at all times.

5. A Mobile Kiosk Van operator must comply with the *Food Act 2003* (NSW) and *Regulations* and adopt Council's Food Code.

6. A Mobile Kiosk Van operator must provide for sale only pre-packed foodstuffs for example soft drink cans, ice blocks and packaged confectionery.

7. A Mobile Kiosk Van operator may sell sunscreen products approved by the Cancer Council of NSW. This excludes all fixtures and structures such as umbrellas, sun shades or similar that restricts movement by people on the coastal Crown reserve.

8. A Mobile Kiosk Van operator or any of his / her employees shall have attained a current 'Bronze Medallion in Surf Life Saving' and a senior level 'First Aid Certificate' which is current before commencing trade on any coastal Crown reserve.

9. A Mobile Kiosk Van operator must provide suitable containers for the collection of garbage and must actively encourage all customers to dispose of litter in a responsible manner.

**SCHEDULE 'G'
MOBILE BIKE HIRE**

1. Introduction:

A Mobile Bike Hire service is aimed at providing seven (7) day public access to affordable means of temporary cycling transportation around the town of Byron Bay.

2. Fees:

A Mobile Bike Hire sub-Licence fee is published annually in Council's Fees and Charges.

3. Insurance:

3.1.1 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act); AND

3.1.2 Minimum \$5 million Professional Personal Indemnity.

3.1.3 Minimum \$20 million Product Liability

3 A Mobile Bike Hire operator must at its own cost provide all equipment necessary to carry out a Bike Hire business including but not limited to bikes, helmets and security chains, and to officially carry on the business and must remove all such equipment on the termination of the Licence.

4 A Mobile Bike Hire may operate daily with the hours as specified by the Sub-Licence.

5 A Mobile Bike Hire may only operate from fixed location as specified by the Sub-Licence.

6 A Mobile Bike Hire Sub-Licence is the right to operate a cycling bike hire business only no other services or goods are to be offered for sale or hire.

7 The Mobile Bike Hire must be legally operated in a businesslike and efficient manner.

8 The Mobile Bike Hire operator must ensure that no advertising matter other than reasonably necessary to identify the business and the service provided.

9 The Mobile Bike Hire operator must ensure that all equipment and structures associated with the hire business is well maintained and all approvals are obtained under relevant laws.

10 The Mobile Bike Hire operator must ensure all structures used in association of the business are designed and approved by Byron Shire Council.

11 While the Mobile Bike Hire operator has discretion to make changes to their business, the operator must at all time reasonably have regard to the nature of the service being provided.

12 No tickets, pamphlets or other material with potential to become litter can be used in connection with the operation of the business unless authorised by Byron Shire Council.

13 All material used for the operation of the business or ancillary to the business must not be stored on the beachfront when not in operation. The lawful parking of associated trailers and vehicles must be the responsibility of the Licensee.

14 A Mobile Bike Hire operator must not use any public address or other sound amplification system in association with the provision of the service.

15 The Licensee must not drive a vehicle onto the designated beach area in a way that poses a risk to any person of the public walking on a footpath, the Licensee must take all necessary risk management steps to prevent any injury to persons or property.

16 Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time.

**SCHEDULE 'H'
MOBILE BEACH LOCKER HIRE**

1. Introduction:

A Mobile Beach Locker Hire is aimed at providing 7 days public access to safely store their personal chattels while at the beach.

2. Fees:

A Mobile Beach Locker Hire sub-Licence fee is published annually in Council's Fees and Charges.

3. Insurance:

3.1.4 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act); AND

3.1.5 Minimum \$5 million Professional Personal Indemnity.

3.1.6 Minimum \$20 million Product Liability.

4. A Mobile Beach Locker Hire is the right to operate a locker business only no other services or goods are to be offered for sale or hire.

5. A Mobile Beach Locker Hire operator must at their own cost provide all equipment necessary to officially carry on the mobile beach locker business and must remove all such equipment on the termination of the Licence.

6. The Mobile Beach Locker Hire may operate daily with the hours as specified by the Sub-Licence.

7. The Mobile Beach Locker Hire may only operate from fixed location as specified by the Sub-Licence.

8. A Mobile Beach Locker Hire must be legally operated in a businesslike and efficient manner.

9. A Mobile Beach Locker Hire must ensure not display advertising matter other than reasonably necessary to identify the business and the service provided.

10. A Mobile Beach Locker Hire must ensure that all equipment and structures associated with the locker business is well maintained and all approvals are obtained under relevant laws.

11. While a Mobile Beach Locker Hire sub-licensee has discretion to make changes to their business, the sub-licensee must at all time reasonably have regard to the nature of the service being provided.

12. No tickets, pamphlets or other material with potential to become litter can be used in connection with the operation of the business unless authorised by the Sub-Licenser.

13. All material used for the operation of the Mobile Beach Locker Hire or ancillary to the business must not be stored on the beachfront when not in operation. The lawful parking of associated trailers and vehicles must be the responsibility of the Licensee.

14. A Mobile Beach Locker Hire sub-licensee must not use any public address or other sound amplification system in association with the provision of the service.

15. A Mobile Beach Locker Hire sub-licensee must not drive a vehicle onto the designated beach area in a way that poses a risk to any person of the public walking on a footpath, the Licensee must take all necessary risk management steps to prevent any injury to persons or property.

16. Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time.

APPENDIX "A"

DEFINITIONS

5 In this Policy:

Approved form means a form determined by the Byron Shire Council for the purposes of this policy in relation to which this expression is used.

Coastal Crown reserves means the reserves identified within this Policy.

10 *Council* means the Byron Shire Council.

Educationally based community activities mean organised activities for the purpose of providing and distributing educational information.

Holder means the person named as the sub-licensee in a Sub-Licence.

15 *Passive Recreational Activities* means passive recreational / leisure activities undertaken by people on an informal basis.

Political Functions means organised gatherings of people, for the purpose of expressing political beliefs.

Religious functions mean organised gatherings of people, for the purpose of expressing religious beliefs.

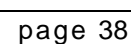
20 *Social Gatherings* means small gatherings of people, meeting on an informal and social basis.

Sporting events – organised means events organised on a not-for-profit and community oriented basis, where prizes are distributed on an amateur basis.

Weddings – means weddings that constitute gatherings of ten or more people that then impact on the management and use of the reserve.

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MAPS





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4.1 - ATTACHMENT 1



