

Pontoon Licence Agreement



BETWEEN: **TWEED SHIRE COUNCIL** of Civic and Cultural Centre, Tumbulgum Road, Murwillumbah in the State of New South Wales ("Licensor")

AND **[INSERT NAME]** of **[insert address]** in the State of New South Wales ("Licensee")

The parties agree as follows:

1. Interpretation

1.1 These rules apply unless they are inconsistent with the context.

- a) For ease of reference clause headings have been included, but the licence is not to be construed or interpreted by reference to them.
- b) References to the Licensed Premises include references to part of them.
- c) References to corporations include natural persons and vice versa.
- d) A reference to a party in this Deed will include in the case of a natural person a reference to legal personal representatives, successors in title and assigns, and, in the case of a corporation, a reference to its successors and assigns.
- e) References in singular number include the plural number and vice versa.
- f) References to any gender include any other gender.
- g) If the Licensee comprises more than one person their liabilities under the licence are joint and several.
- h) References to statutes or any particular statute include:
 - i. amendments, consolidations or replacements of them or it; and
 - ii. proclamations, rules, ordinances, regulations, orders and notices issued under them or it.
- i) References to "Term" mean the term granted by this licence or any renewal thereof.

2. Definitions

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like

Berthing Area a designated location where a vessel may be moored or docked.

Canal Management Policy means the document titled '*Policy Canal Management*' adopted by Tweed Shire Council on 18 March 2021, as amended from time to time and any document that replaces that document.

Commencement Date means the date referred to in Item 4 of the Reference Schedule.

Defect means anything that adversely affects, or is likely to adversely affect the structural integrity or functionality of a Licensee's Structure or any part of a Licensee's Structure.

Floating Dock means a floating structure which may not be structurally connected to the shore, but is otherwise secured immediately adjoining a property, for the primary purpose of securing, storing and accessing boats and other water vessels from the property.

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Goods and Services Tax, has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Licensee's Structures means, if applicable, any Jetty, Pontoon, Revetment Wall, Floating Dock or related structure attached to the Licensed Premises. Noted in Item 6 of the Reference Schedule.

Jetty means a structure extending into the waterway immediately adjoining a property generally perpendicular to the shoreline constructed to enable access to boats and other water vessels from the property.

Licence means this agreement including all Schedules and Annexures hereto.

Licence Fee means the annual licence fee as described in Item 2 of the Reference Schedule applicable to the Licensee's Structures, or if Council determines another amount in accordance with Part 10 of Chapter 15 of the *Local Government Act 1993* that other amount.

Licensed Premises means the part of the canal (comprising land and waters) described in Item 1 of the Reference Schedule and on the plan marked as Appendix 1.

Licensee means the Licensee referred to on page 1.

Licensor means Tweed Shire Council.

Permitted Use means the use shown in Item 3 of the Reference Schedule.

Pests has the same meaning as in s15 of the *Biosecurity Act 2015*.

Pontoon means a floating platform structure connected to the shore of immediately adjoining property by a gangway or ramp constructed for the primary purpose of accessing boats and other water vessels from the property.

Pontoon Guidelines means the Tweed Shire Council document titled, *Installation of Pontoons and Boat Ramps Guidelines*, as amended from time to time and any document that replaces that document.

Term means the term set out in Item 5 of the Reference Schedule.

Termination Date means the date on which the Licence is revoked or ceases to have effect in accordance with the provision of this Licence.

3. Notification and Service

3.1 Where the licence provides that one party is to notify the other, any notice shall be in writing and may be served by any of the following methods:

- a) by personal delivery to the person to be served;
- b) by prepaid post to the person to be served:
 - i. addressed to the private property adjacent to the Licensed Premises in the case of the Licensee;
 - ii. addressed to the person's last known place of business (or residence, in the case of a natural person), in any case;
- c) any other method authorised by email;
- d) by any other method authorised by law.

- 3.2 Anything sent by post will be deemed to have been received within seven days of mailing, whether or not the person to be served in fact receives it.

4. Exclusion of Statutory Provisions

- 4.1 No statutory provisions apply to this Licence, unless the relevant statute provides that certain provisions apply and cannot be excluded by agreement.
- 4.2 In the event of determination of these provisions, the laws of the State of New South Wales apply to the Licence and any legal proceedings under it.

5. Term of Licence

- 5.1 Subject to the provisions of this Licence, the Licensor grants to the Licensee a licence to use the Licensed Premises only for the Permitted Use for the Term.

6. Licence Fee

- 6.1 The Licensee is required to pay the Licence Fee and any application fee, administration fee and fee for transfer of licence as applicable to the Licensee's Structures as determined by Council in accordance with Part 10 of Chapter 15 of the *Local Government Act 1993*.

7. Licensee to Maintain, Repair and Keep Safe Licensed Premises and Licensee's Structures

- 7.1 Without prejudice to the specific obligations contained in this Licence the Licensee will to the satisfaction of the Licensor at all times during the Term keep all Licensee's Structures now erected or hereafter to be erected on the Licensed Premises in good repair and properly maintained in all respects.
- 7.2 The Licensee will not at any time during the Term permit any person to be upon or use any Licensee's Structures upon the Licensed Premises which has become defective or unsafe in any way, other than for the purposes of repair. The Licensor shall not be required to notify the Licensee of any defect or safety issue and shall not be liable for any claim, damage or loss arising from any defect or safety issue.
- 7.3 In the event the Licensee's Structures, or any part of the Licensed Premises become unsafe, hazardous or dangerous, the Licensee will repair, replace or otherwise make safe such Licensee's Structures or the Licensed Premises as the case may be as soon as practicable and will erect at its expense, such warning signs and barricades as may be necessary until the Licensee's Structures or Licensed Premises are replaced, repaired or otherwise made safe.
- 7.4 The Licensee will give to the Licensor prompt notice in writing of any serious defect to any Licensee's Structures or the Licensed Premises which may or are likely to be a serious danger, risk or hazard to the Licensee's Structures or Licensed Premises or any person, unless such defect is promptly remedied by the Licensee. Unless the circumstances otherwise dictate, such notice must be given no more than seven (7) days from such a defect occurring.
- 7.5 The Licensee is, at its own expense, to keep the Licensee's Structures free of Pests.
- 7.6 The Licensee will during the Term take all steps reasonably necessary to ensure that the Licensed Premises and Licensee's Structures are kept clean and will do all things necessary to remove any debris that is on, or caught on, the Licensee's Structures.

7.7 The Licensee will ensure that satisfactory measures are taken to prevent pollution of the waterway adjoining or forming part of the Licensed Premises or its foreshores arising out of the use of the Licensed Premises or from vessels moored and/or docked at the Licensee's Structures.

7.8 An obligation on the Licensee to carry out work under this Licence may be carried out by the Licensee themselves or by another person who has entered into an agreement with the Licensee under which the other person carries out the work on behalf of the Licensee.

8. Provision of Services and Facilities

8.1 The Licensee will pay all costs associated with connection of any electricity, water, or sewer services to the Licensee's Structures.

9. Licensee to Pay for Services and Expenses

9.1 The Licensee is to pay for all maintenance and expenses associated with the Licensee's Structures including, but not necessarily limited to insurance, permits, levies, rates, charges, land tax and any other charges and expenses associated with the Licensee's Structures.

10. Acknowledgement, Sub-licensing and Assignment

10.1 The Licensee acknowledges that:

- a) this Licence is granted to the Licensee to use the Licensed Premises for the Permitted Use,
- b) only the Licensee or their invitee may use the Licensee's Structure under this Licence,
- c) the Licensor (including its employees, agents and contractors) may enter the Licensed Premises and onto the Licensee's Structures at any time, other than if access is required through private property, in which case prior notification will be given.

10.2 Nothing in this Licence gives the Licensee any estate or proprietary interest in the Licensed Premises whether at law or in equity.

10.3 The Licensee may not sub-licence any part of the Licensed Premises or Licensee's Structures, or transfer or assign the licence, without the prior written consent of the Licensor.

11. Indemnities and Insurances by Licensee

11.1 The Licensee shall indemnify and keep indemnified the Licensor against all actions, suits, claims, debts, obligations and other liabilities suffered by the Licensor during the Term of this Licence or after arising from any act, neglect or default of the Licensee or its agents, or employees.

11.2 The Licensee must maintain a public liability policy of insurance in respect of any one occurrence of not less than \$20,000,000.00 in relation to liability for loss or damage to property and death of or injury to any person in any way connected to Council owned land the subject of the licence agreement. The insurance Certificate of Currency is to:

- a) be provided to Council with the signed Licence Agreement,
- b) be maintained yearly and provided to Council upon request,
- c) include Tweed Shire Council named as an interested party, where the insurer agrees to do so.

- 11.3 The Licensee must not cause, suffer or permit anything to be done that may result in any insurance on or relating to the Licensed Premises and Licensee's Structures becoming void or voidable.

12. Licensor May View Licensed Premises and Carry Out Works

- 12.1 At all reasonable times the Licensor and/or its agents may inspect the Licensed Premises to view the repair and cleanliness of the Licensed Premises and the Licensee's Structures, other than if access is required through private property in which case prior notification will be provided to the Licensee. The Licensor may notify the Licensee of any Defects and require the Licensee to remedy them in accordance with the provisions of the Licence within a reasonable time and the Licensee is to comply with the notice according to its terms.
- 12.2 The Licensor may enter the Licensed Premises and the Licensee's Structures to remedy any Defects about which the Licensor has notified the Licensee and which the Licensee has not remedied within the required time.
- 12.3 If the Licensor carries out any works at the Licensed Premises on the Licensed Structure that should have been carried out by the Licensee, the Licensor may recover the costs from the Licensee as a liquidated debt payable on demand and recoverable in a court of competent jurisdiction.

13. Licensee to Comply with Maritime Authority of NSW Directions

- 13.1 The Licensee will at all times comply with any directions given by Transport for NSW / Maritime Authority in the interests of safe navigation equitable use of and conservation of waterways and the prevention of pollution.

14. Licensee to Comply with Requirements of Relevant Authorities

- 14.1 The Licensee is to do all things necessary to comply with any notice that may be served upon the Licensor or the Licensee in relation to the Licensed Premises or the Licensee's Structures by any responsible Authority at any time during the Term of this Licence, within the time specified in such notice or otherwise provided by law, if such notice has been necessitated by the actions of the Licensee or the Licensee's use of the Licensed Premises and Licensee's Structures or either of them.

15. Use of the Licensed Premises

- 15.1 The Licensee may use the Licensed Premises only for the Permitted Use and is to conduct its activities on the Licensed Premises in a reputable and proper manner.
- 15.2 The Licensed Premises and Licensee's Structures or either of them must not be used as a residence, or to enable residential accommodation of any kind.
- 15.3 The Licensed Premises and Licensee's Structures must not be hired or otherwise used for commercial purposes, including for the purpose of storage of vessels actively engaged in a commercial activity, without prior written approval of the Licensor.
- 15.4 The Licensee will ensure that any vessel or floating dock secured at the Licensee's Structures or Licensed Premises shall be moored and/or docked in accordance with the Canal Management Policy and Pontoon Guidelines and be consistent with the size and load specifications of the Licensee's Structures and Licensed Premises and must not exceed the width of the lot's canal or waterway frontage.
- 15.5 The Licensee will not at any time during the Term carry on or permit to be carried on any noxious, noisome or offensive trade business calling or activity at the Licensed Premises or Licensee's Structures or on any vessel moored or berthed at or on the Licensed Premises.

15.6 The Licensee acknowledges that the Licensor cannot be required to provide access to the Licensed Premises over other land held by the Licensor or any other land.

16. Licensee Not to Make Additions or Alterations to Licensed Premises

16.1 The Licensee shall not make any additions or alterations to the Licensed Premises or erect any permanent structures without first obtaining the written consent of the Licensor. If the Licensee wishes to make an application to the Licensor to make additions or alterations or erect permanent structures, the Licensee will at the Licensee's cost provide any supporting documentation reasonably requested by the Licensor.

17. No Noise or Damage

17.1 The Licensee is to ensure to the fullest extent reasonably practicable in relation to the use of the Licensed Premises and Licensee's Structures under this Deed that nuisances and unreasonable noise and disturbances to owners, occupiers or users of properties surrounding the Licensed Premises are prevented.

18. Non-interference

18.1 If the Licensee pays the Licence Fee and does not breach the Licence it may use and occupy the Licensed Premises during the Term of the Licence without any interference from the Licensor and/or its agents, subject to the provisions of the Licence and the Licensor's rights under it.

19. Termination of the Licence on Default

19.1 In this clause 19, Essential Term means the following provisions of this Licence:

- a) clause 6 Licence Fee;
- b) clause 9 Licensee to pay for services and expenses;
- c) clauses 10.1 and 10.3 Acknowledgement, sub-licensing and assignment;
- d) clause 11 Indemnities and Insurances by Licensee;
- e) clause 15 Use of Licensed Premises,

19.2 The Licensor may, by written notice to the Licensee terminate the Licence with immediate effect in the following circumstances:

- a) if the Licensee breaches an Essential Term;
- b) if the Licensor is refused entry to the Licensed Premises or the Licensee's Structures, following receipt by the Licensee of a written notice from the Licensor requesting access to the Licensee's Structures;
- c) if the Licensee is a corporation and an order is made or a resolution is passed for its winding up, except for the purpose of reconstruction or amalgamation;
- d) if the Licensee is a corporation and is placed under official management under the Corporations Act or enters into a composition or scheme of arrangement.

- 19.3 If the Licensor considers that the Licensee is in breach of any obligation under this Deed (other than an Essential Term), it may give a written notice to the Licensee:
- a) specifying the nature and extent of the breach,
 - b) requiring the Licensee to rectify the breach, and
 - c) specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.
- 19.4 If the Licensee fails to fully comply with a notice referred to in clause 19.3, the Licensor may, by written notice to the Licensee terminate the Licence with immediate effect.
- 19.5 Nothing in this clause 19 prevents the Licensor from exercising any rights it may have at law or in equity in relation to a breach of this Licence by the Licensee, including but not limited to seeking relief in an appropriate court.
- 19.6 If the Licensor terminates the licence, the Licensee is still liable for any prior breach of the Licence and other remedies available to the Licensor for recovery of arrears of licence fees or for breach of the Licence will not be lost.

20. No Right of Action by Licensee

- 20.1 The Licensee shall not have any right of action against the Licensor in respect of any damage or loss that may be sustained by the Licensee through any action properly made or taken by the Licensor under the Licence.

21. Licensee to Remove Property

- 21.1 At the expiration of this Licence where renewal is not sought, or upon sooner determination of this licence, the Licensee shall remove the Licensee's Structures referred to in Item 6 of the Reference Schedule within twenty one days. Should the said Licensee's Structures not be removed the Licensor is authorised to remove the Licensee's Structures and the Licensor may recover all costs associated with the removal as a liquidated debt payable on demand and recoverable in a court of competent jurisdiction.

22. Damages

- 22.1 If the Licensor terminates the Licence in accordance with clause 19 the Licensor may, in addition to any other rights and remedies that it might have, withhold from the Licensee any refund of Licence Fees paid.

23. Interest on Unpaid Monies

- 23.1 The Licensee is to pay interest to the Licensor on any monies due and payable under the Licence or on any judgement in favour of the Licensor in an action arising from the Licence until all outstanding monies including interest are paid in full.
- 23.2 The interest rate used for overdue rates & charges is set by the office of local government.
- 23.3 Interest will accrue and be calculated daily.

24 No Fetter

- 24.1 Nothing in this Licence shall be construed as requiring the Licensor to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

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Reference Schedule

1. Description of the Licensed Premises	Part of Tweed Shire Council Canal - Lot [insert] DP[insert] Adjoining Lot [insert] DP[insert], [insert address] as shown on Appendix 1
2. Licence Fee	[\$insert] for 20XX/XX financial year. Councils fees are updated each year and advertised in Tweed Shire Council's Fees and Charges.
3. Permitted Use	Pontoon
4. Commencement Date	The date on which a construction certificate in accordance with a development consent for the Licensee's Structures is issued.
5. Term	From the Commencement Date until the Licensee ceases to be the registered land owner of the adjoining lot.
6. Licensee's Structures	Pontoon

SAMPLE



Pontoon Licence Agreement



Executed as an agreement

By the Licensor:

EXECUTED on behalf of **TWEED SHIRE**)
COUNCIL by its authorised delegate)
pursuant to section 377 *Local Government*)
Act 1993 (NSW):

.....
Name of authorised delegate
**Director Sustainable Communities &
Environment**

Date:.....
.....
Signature

I certify that the above person signed this document in my presence.

Date:.....)
.....)
Signature of witness
.....
Name of witness
.....
Address of witness

By the Licensee:

EXECUTED by [Insert]:

Date:.....)
.....)
.....)
Signature

I certify that the above person signed this document in my presence.

.....)
.....)
.....)
Signature of witness
.....
Name of witness
.....
Address of witness



