

Addendum Report

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

a14 [CNR-CM] Draft Policy - Commercial Recreation Activities on Public Open Space

SUBMITTED BY: Recreation Services

mhm



People, places and moving around
Who we are and how we live

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.2 Places
- 3.2.7 Parks and Gardens - To provide and manage quality and accessible public parks and gardens for the enjoyment and wellbeing of the community and visitors to the Tweed.

ROLE: **Provider**

SUMMARY OF REPORT:

Council has considered reports regarding the Draft Policy - Commercial Recreation Activities on Public Open Space Strategy (the draft policy) at its meetings held 16 March 2017, 20 April 2017 and 15 June 2017.

Progression of the draft policy was deferred to allow further consultation with representatives from the Save the Jack Evans Boat Harbour Committee (SJEBHC) who had concerns with the process in developing the draft policy from a version posted on Councils website in 2014 to the version presented to Council in 2017, and the potential impact of some of the amendments.

Since the draft policy was first presented to Council in March 2017, two meetings have been held with representatives of the SJEBHC. While Council officers have agreed to many of the amendments requested, there are two areas that the requested amendments have not been supported in the revised draft policy.

This report details amendments to the version of the draft policy presented to the April Council meeting and presents a revised draft policy for Council's consideration.

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RECOMMENDATION:

That Council gives public notification of the Draft Policy - Commercial Recreation Activities on Public Open Space and advertises the draft policy for 28 days allowing submissions for 42 days.

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REPORT:

Background:

Council has considered reports regarding the Draft Policy Commercial Recreation Activities on Public Open Space Strategy (the draft policy) at its meetings held 16 March 2017, 20 April 2017 and 15 June 2017.

Consideration of the draft policy was deferred to allow further consultation with representatives from the Save the Jack Evans Boat Harbour Committee (SJEBHC) who had concerns with the process in developing the draft policy from a version posted on Councils website in 2014 to the version presented to Council in 2017, and the potential impact of some of the amendments.

Since the draft policy was first presented to Council in March 2017, two meetings have been held with representatives of the SJEBHC. The initial meeting also attended by the Mayor, Deputy Mayor, General Manager, Director Community and Natural Resources and Manager Recreation Services was held 2 May 2017. The rationale behind the changes in the 2014 and 2017 versions was explained and the community representatives were offered the opportunity to review the draft policy and a follow up meeting was rescheduled to discuss any feedback.

The community representatives presented a tracked changes version for consideration and the follow up meeting was held 11 July 2017. While Council officers have agreed to many of the amendments requested, there are two areas that the requested amendments have not been supported in the revised draft policy.

Amendments to the policy:

Attachment 1 is the draft version recommended for exhibition and attachment 2 is the tracked changes version provided by the SJEBHC representatives.

The majority of the amendments requested by the SJEBHC are the reinstatement of elements of the 2014 version that had been removed for the sake of brevity and plain language. As the reintroduction of these sections to the draft policy are not considered to have significant impacts on the policy's implementation they have been reintroduced back into the policy.

The areas where there was not agreement were in relation to buffers to residences and activities that require a tender.

Buffers:

The 2014 draft policy had proposed that commercial recreation activities should not be undertaken within 100 metres of any residential property, tourist accommodation or similar unless special circumstances warrant departure from this distance

When reviewing the 2014 draft policy the practicality of implementing a 100m buffer was questioned. Further analysis of a 100m buffer highlighted that this would potentially impact the usability of a large proportion of popularly used parks, particularly along the coast. Attachment 3 illustrates 50m and 100m buffers when applied to a selection of popularly used parks. As a result, the 2017 draft reduced the buffer area to 50m.

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The concerns for Council officers in implementing a policy of 100m buffers is that when this buffer is applied from the geographical centre of parks, 90% of parks would fall within the 100m zone. When the buffer is applied to the boundary of parks, this figure increases to 96%. The result being that the majority of applications would be required to be considered under the 'special circumstances' allowance which does not reflect a practical policy. In other words there would be vastly more 'exceptions' than complying applications making the policy somewhat inefficient. Keeping in mind that activities with a potential major impact will be reported to Council in any case under the draft policy, the main target of the draft policy is lower impact activities such as exercise classes, yoga classes etc. It is anticipated that the implementation of a 100m buffer would result in significant increases in administration and regulation requirements to implement the draft policy for which resources are not currently available.

One of the main objectives for the development of the policy is to facilitate efficient processing of applications for low impact activities and to provide clear guidelines for applicants, the community and staff. The implementation of the 50m buffer will facilitate this objective, while a 100m buffer will increase the potential for conflict and interpretation by increasing the occurrences where only sections of a park are available and where 'special circumstances' determinations are required. This is highlighted by the fact that expanding the buffer from 50m to 100m would result in an additional 66 parks being impacted which includes 18 sports fields and numerous popular parks as illustrated in Attachment 3.

Another important consideration is the role of public parks in improving the health and wellbeing of the community. Survey data from the Australian Sports Commission highlight the concerning trends that many Australians are not meeting the national physical activity guidelines, with many people not undertaking any form of physical activity. Public parks are critical in helping to address these concerns and the activities offered by commercial providers' present important opportunities for many community members to get activity who might not wish to participate in formal sport or join a gym. While a balance between the requirements of casual users of the parks, neighbours and these commercial activities is important, Council should also be cautious about implementing barriers to the community's opportunities to be more active.

Tendering:

There appeared to be some misunderstanding with the SJEBEC representatives on the relationship between the development assessment and approval process and the tender process for a license to conduct activities in parks which led to concerns that the draft policy would allow Council to circumvent the approval process in some circumstances. When the separation of these processes was explained there was agreement on the wording from the 2017 version of the draft policy, with the exception of the following clause:

Notwithstanding the above, where Council receives a proposal developed by the proponent that would ordinarily require a tender, Council will consider an initial approval for a limited period without going to tender. This will include considering existing licenses, the anticipated impacts of the activity and advertising & seeking public comment. At the end of this period Council will review the activity and call for tenders if appropriate. This is dependent on the requirement of Council's procurement policy.

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This clause was added by Council officers to the benefit of Council. The rationale being that where Council receives a proposal for a new activity that would generally require a tender process, it affords Council the option to trial the activity prior to progressing to a full tender process. This allows Council and the community the opportunity to review the activity and determine whether there is support to proceed to a longer term approval and apply particular conditions, if required, based on the trial period. If a proposal requires development approval, this will need to happen first.

Other proposed amendments:

A requested amendment to Section 2.4.5 - *Activities which will not be considered for a Licence* was the inclusion of the following:

- *Commercial activities that restrict the public use of an open space for a period of more than two weeks.*

The intent of this addition and the restrictions and potential interpretations were discussed and it was agreed that the addition in this form was impractical and Council officers were to review alternatives to address the intent. Upon review of the draft policy, it is felt that the concerns that this addition were intended to address are already covered in the policy in the following sections:

2.4.3 Assessment of proposed activities.

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

2.7.2 Determination of an application for a Licence

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

- 1. Suitability of the site to accommodate the type of commercial recreation activity proposed, and the potential impact on:
 - i. other users and neighbouring residents during the times requested,*
 - ii. infrastructure and site management, and*
 - iii. the natural environment.**
- 2. The type of commercial recreation activity proposed to be undertaken, its frequency and proposed operating arrangements (in particular safety measures).*
- 3. In respect of a major commercial recreation activity (measured by such factors as numbers attending, area required, **duration** of the activity or level of infrastructure involved) consideration will be given to;
 - i. the accessibility of the activity to the general public, and*
 - ii. the physical, cultural or intellectual benefits of the activity.**

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OPTIONS:

1. That Council gives public notification of the Draft Commercial Recreation Activities on Public Open Space Policy and advertises the draft policy for 28 days allowing 42 days for submissions.
2. That Council does not give public notice of the draft Commercial Recreation Activities on Public Open Space Policy.
3. That Council determines another option.

CONCLUSION:

The Draft Commercial Recreation Activities on Public Open Space Policy was developed to address emerging conflicts with the increasing use of Council open space areas for commercial activities. While many of these activities may be considered beneficial to the community, the increasing numbers of activities and corresponding increased conflict with casual park users and residents require a response.

Currently Council officers are making determinations in the absence of a considered and adopted Policy framework and have limited capacity to adequately and consistently respond to complaints. The resource impacts of implementing the Policy in comparison to resources currently applied to managing these issues are uncertain, but it is anticipated additional resources may be required to manage the increased administration requirements and expectation for compliance. This may be partially offset by the implementation of the 2017/2018 fees and charges for commercial recreation activities adopted by Council.

It is considered that the draft policy presented to Council provides an effective framework for managing use of Councils public open space which is practical for Council officers to administer.

COUNCIL IMPLICATIONS:

a. Policy:

Draft Commercial Recreation Activities on Public Open Space Policy.

b. Budget/Long Term Financial Plan:

The following fees were adopted by Council for 2017/2018

Commercial Park Hire and Beach Recreation Activities	2016-17	2017-18
Application fee	\$0.00	\$88.00
Temporary Crown or Community Land licence agreements for commercial activities in parks and on beaches. eg. Circus, Expos, Major Surf Contests		
(a) (i) Per Day	\$196.00	\$250.00
(a) (ii) Bump in/out days at 50% rate	\$109.00	\$125.00
(a) (iii) Deposit bond (refundable) must be paid one month prior	\$1,290.00	\$1,290.00
High Impact, high infrastructure activities ie. water park, water slide, aqua golf		Price on application

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The adopted fees represent a balance between full cost recovery and affordability for the providers, however the actual costs to implement in terms of expectations for compliance is difficult to determine. As the fees and charges are reviewed annually, the impact and effectiveness can be measured and reviewed after a year and amended as required.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

An extensive engagement process was undertaken to develop the draft policy including specific stakeholder meetings. The exhibition period will allow further opportunity for submissions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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| Attachment 1. | Draft Commercial Recreational Activities on Public Open Space (ECM 4676821) |
| Attachment 2. | Draft Commercial Recreational Activities on Public Open Space with tracked changes requested by the Save the Jack Evans Boat Harbour Committee (ECM 4676859) |
| Attachment 3. | Illustration of popular Council parks with 100 metre and 50 metre buffers (ECM 4676917) |
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