

SURF SCHOOL LICENSING

Procedure 1.2.15

Policy No. and title	1.2	Lands Under Kempsey Shire Council Jurisdiction Policy
Procedure	1.2.15	Surf School Licensing
Version	2	
Date Adopted	25 March 2015	

1 OBJECTIVE

To encourage sustainable growth of commercial water-based activities on local beaches by regulating and monitoring their use so as not to diminish the availability of the Shire's beaches to visitors and residents.

2 STATEMENT

The Kempsey Shire local government area has many coastal areas that provide opportunities for active and passive recreation. Slow but steady growth in both population and tourism numbers is resulting in increased beach visitation. Accompanying this is a rising demand for the commercial use of beaches to offer users a range of recreational, water-based experiences.

Council has a responsibility to ensure ecologically sustainable use and protection of open spaces for future generations. With public demand for beaches increasing Council must take every care to protect these assets and ensure the safety and comfort of the broader community.

3 LAND TO WHICH THIS PROCEDURE APPLIES

This Procedure applies to all beaches and adjoining parks that are coastal Reserves under the care, control and management of Kempsey Shire Council as the Reserve Manager and other Crown lands defined as public places under the Local Government Act 1993. This includes Crown Reserve lands under the control of Council above Mean High Water Mark (MHW) as well as unreserved Crown lands below MHW (sandy beaches, intertidal lands).

These include:

Reserve No	Reserve Name
R63725	Crescent Head
R52808	Hat Head
R82364	South West Rocks
R63879	Grassy Head

Consistent with Council's Management of Leases and Licences Procedure 1.2.6, clause 15(a) - a licence is a contractual agreement that grants the licensee a personal right to occupy and use land for a particular purpose. It does not grant exclusive possession of the land, as is the case with a lease, and may permit the land to be used by other persons.

For this reason, no approved Surf School Licence Holder shall have priority over any other approved Surf School when using the Crown Reserves or beaches. Each approved Surf School is encouraged to liaise with other approved Surf Schools to

ensure that only one class from each school is in the lesson area at one time. Where two (2) or more licensed operators share a location, a minimum distance of 50 metres must be maintained at any time. Each Licence holder is encouraged to liaise with other licence holders to ensure that only one class from each school is in the Reserve in the lesson area at one time.

3.1 Process for application

Operators seeking to obtain a licence must complete the application form and submit to Council with full supporting documentation and licence fee.

3.2 Matters to be considered in assessing Surf School Licence Applications

Council will assess the information provided in applications for licences based on the following selection criteria:

- a) Demonstrated successful experience in the activity to a high professional standard.
- b) Demonstrated history and experience of environmentally acceptable operations.
- c) Demonstrated appropriate level of knowledge and understanding of local conditions, natural and cultural history, ecological processes and possible constraints.
- d) Demonstrated experience in or capacity to meet licence conditions, including provision of business activity log and payment of fee.
- e) Demonstrated ability to provide appropriate safety requirements and duty of care responsibilities.
- f) Demonstrated capability to promote interpretive and educational information that ensures clients are receiving instruction in minimum impact techniques, environmental protection and ethics of appropriate behaviour.
- g) Demonstrated compatibility with the Reserve purpose or any Plans of Management.

4 LICENSING

The proprietors of any Surf School wanting to operate in Kempsey Shire will need to obtain from Kempsey Shire Council a Commercial Licence for their operation.

5 LICENCE TERM

A Commercial Licence, when issued, will be for a term of 12 months and will be renewed annually upon Council's assessment of the application form.

6 LICENCE FEE

The Licence will carry an annual fee as listed in Council's Fees and Charges.

7 COUNCIL'S ROLE

- a) Council will issue Licences for a 12-month period. Upon issuing the Licence Council will monitor the activities of the schools to ensure their compliance with the regulations of the Licence. The monitoring will be carried out by Council's rangers, assisted by rangers from State Parks and National Parks.

- b) Any report of Licence breaches received from other sources will be investigated and acted upon on its merit.
- c) Council does not assume the role of an industry regulator in its role as licensor.

8 ATTACHMENTS

Attachment A – Application Form
Attachment B – Licence Template

9 DEFINITIONS

Commercial use - means any activity with a principle purpose to derive profit to an individual(s) or company and/or where a fee is obtained for a service or product provided. Not-for-profit groups may seek to gain exemption from this Procedure upon application in writing to Council.

Council – means Kempsey Shire Council.

Fees and Charges – means fees and charges as published by Kempsey Shire Council each financial year in line with its Management Plan and Annual Budget.

Licensee – means a business responsible for the instructing of an individual or group of people in a Surf School activity.

Reserve – means Crown Land for which Kempsey Shire Council is the Trust Manager for the Reserve.

VARIATION

Council reserves the right to review, vary or revoke this procedure and to review it periodically to ensure it is relevant and appropriate.



Contact Details:

Postal Address: PO Box 3078
 West Kempsey: NSW 2440
 Telephone: (02) 6566 3200
 Facsimile: (02) 6566 3205

Office Location:

22 Tozer Street,
 West Kempsey NSW 2440

Website:

www.kempsey.nsw.gov.au

Email:

ksc@kempsey.nsw.gov.au

Updated: Feb 6, 2014

**SURF SCHOOL LICENSING
 LICENCE APPLICATION FORM**

Section 1

THE APPLICANT: (All correspondence will be forwarded to this contact)

Applicant Name:

Address:

Phone: (W).....(H).....(M).....

Section 2

BUSINESS/COMMERCIAL ACTIVITY DETAILS:

Business/Trading Name:

Email:

Type of Commercial Activity:

Description of Activity:

.....

.....

Equipment/materials (incl. maximum number):

.....

Time of Day/Night for Activity:

Days of Week for Activity:

.....

.....

Location/s of activity (attach map):

.....

<u>OFFICE USE ONLY</u>		Register No:.....	Job No:.....
Fee Paid:	\$	Date Received:	

Section 3

VEHICLE DETAILS: (for all vehicles used for commercial activities)

Vehicle Registration No/s:.....

Make/Model/Colour of Vehicle/s:.....

Section 4 Other Requirements

Please attach the required documentation to the application form when submitting.

The following information with copies of documentation is required:

- Map of location where activity is to be conducted**
- Qualifications (copies of these documents are to accompany application)**
 - Industry accreditation/qualifications
 - Licences/Permits for equipment, vehicle, boat, plane etc
 - Required certificates for industry
 - Senior First Aid Certificate
- Risk & Safety (Operations) Management Plan (to accompany application)**
 - Risk assessment for activity (see addendum for template)
 - Risk and safety management protocols
 - First aid
 - Emergency response
 - Evacuation plan
 - Operational procedures for activity (if required)
- Insurance Requirements (to accompany application)**
 - Current "Certificate of Currency" for Public Liability—\$20,000,000 (such policy to include Kempsey Shire Council noted as an interested party). Please note a current Certificate of Currency must be lodged with Council at all times.

Section 5 Schedule of Fees & Charges

The annual Licence Fee is payable at the time the Surf School Licence Application Form is lodged and will be refunded should the application be unsuccessful. Applications are to be lodged at the Kempsey Shire Council Customer Services Centre, Tozer Street, West Kempsey.

The Licence Fee provides for administration, assessment and regulation of commercial beach activities in the Kempsey Shire Local Government Area, as well as the maintenance of Public Reserves in which commercial activities are undertaken.

The current fee is:

Surf School Licence Fee - Refer to Annual Fees and Charges document.

Section 6 Checklist of Documentation Required

Each section of this Application Form must be completed and supporting documentation/evidence attached.

APPLICANT TO COMPLETE

Yes	No	Information Required
<input type="checkbox"/>	<input type="checkbox"/>	Section 1 —Application Details
<input type="checkbox"/>	<input type="checkbox"/>	Section 2 —Business/Commercial Activity Details
<input type="checkbox"/>	<input type="checkbox"/>	Section 3 —Vehicle Details
<input type="checkbox"/>	<input type="checkbox"/>	Section 4 —Other Requirements
<input type="checkbox"/>	<input type="checkbox"/>	Map of location where activity is to be conducted
<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Qualifications</u></p> <ul style="list-style-type: none"> • Minimum Level 1 Surfing Australia Surf Coaching Accreditation, or Academy of Surfing Instructor Surf Coaching Accreditation • All surfing coaches must be accredited by Surfing Australia and be members of SNSW or Academy of Surfing Australia • Current Senior First Aid • Hold any one of the following <ul style="list-style-type: none"> ○ SLSA Bronze Proficiency ○ Surf Rescue Certificate: SLSA Community Award ○ Royal Lifesaving Society (RLSS): Ocean Rescue Award ○ OSSCA Award professional Ocean Lifeguard Association (APOLA) • NSW Working with Children Check
<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Risk & Safety (and Operations) Management Plan</u></p> <p>All surfing instructors must be 16 years of age or over.</p> <p>The following should be provided:</p> <ol style="list-style-type: none"> 1. Equipment and clothing: <ul style="list-style-type: none"> • Soft surfboards for beginners, preferably with rubber fins • All surfboards should have leg ropes • Coloured rash vests should be worn by all students/participants in groups of six or more 2. Ratio of surfing instructors to students/participants: <ul style="list-style-type: none"> • Beginners instructor-to-student ratio of 1:8 or lower must be adhered to 3. Risk Management Protocol <p>The following equipment is to be provided with every class:-</p> <ul style="list-style-type: none"> • Portable First Aid kits • Mobile phone/two-way radio • Instructor's rescue board on beach • Banners denoting area, colour coding exclusively to Licensee logo on banners • Drinking water • Sunscreen
<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Insurance Requirements</u></p> <ol style="list-style-type: none"> 1. \$20m public liability insurance, 2. \$20m products liability insurance, and 3. \$5m professional indemnity insurance.

<input type="checkbox"/>	<input type="checkbox"/>	Section 5 —Schedule of Fees & Charges
<input type="checkbox"/>	<input type="checkbox"/>	Section 6 —Checklist
<input type="checkbox"/>	<input type="checkbox"/>	Section 7 —Declaration
Section 7 Declaration		
<input type="checkbox"/>	I/We have read and understand all of the requirements set out in Kempsey Shire Council's Licensing of Surf Schools policy.	
<input type="checkbox"/>	I/We have read and understood all of the requirements outlined throughout this form.	
<input type="checkbox"/>	I/We have completed all sections of this form, including the checklist.	
<input type="checkbox"/>	I/We will ensure that any and all alterations to the proposal are submitted to Council in writing and documentation as soon as they become available, and acknowledge that alterations will only be considered if sufficient time is provided in which to assess the proposed changes.	
<input type="checkbox"/>	I/We acknowledge that it will be my/our responsibility to ensure that all requirements and conditions of the Surf School Licence will be met.	
<input type="checkbox"/>	Any information or evidence required to assess this application has been provided.	
<input type="checkbox"/>	I/We certify that all of the information contained in this application is correct and accurate.	
Name/s _____ Signature/s _____ Date _____		
ATTENTION: Applicant—Privacy Notification Form		
<p>The personal information that Council is collecting from you is personal information for the purpose of the Privacy and Personal Information Act 1988 ("the Act"). The information may only be made available through this or other relevant Acts and Regulations that may apply.</p> <p>The intended recipients of the personal information are Officers within the Council' agents or data service providers engaged by Council.</p> <p>Council is collecting this personal information from you for assessment and processing purposes.</p> <p>You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the Act. Enquiries concerning this matter can be addressed to the General Manager of Council.</p> <p>Council is to be regarded as the agency that holds the information.</p>		
Signed Applicant _____ Date _____		

SECTION 8 (COUNCIL USE)

Commercial Licence approval to operate Surf School

Application Approved

YES

NO

Comments (if applicable):

Note: Approved applicants will be issued with a Licence Agreement, to be signed by the Applicant and a designated Council Officer.



DATE: March 1, 2014

BETWEEN: *KEMPSEY SHIRE COUNCIL
(RESERVE TRUST MANAGER)*

AND: *(<BUSINESS NAME>)*

TYPE OF LICENCE AGREEMENT

*COMMERCIAL LICENCE AGREEMENT TO
OPERATE SURF SCHOOL/TOUR GROUP*

THIS AGREEMENT is made on <DATE>

BETWEEN: **KEMPSEY SHIRE COUNCIL AS RESERVE TRUST MANAGER,** of Elbow Street, Kempsey in the State of New South Wales (hereinafter referred to as 'the Licensor') of the one part

AND: **<INSERT BUSINESS NAME HERE>**, of (**<INSERT BUSINESS ADDRESS HERE>**) in the State of New South Wales (herein after referred to as 'the Licensee') of the second part.

WHEREAS:

- A. Pursuant to Clause 31 of the Crown Lands Regulation, Section 92(5) and Section 95(2) of the Crown Lands Act, the Licensor may grant approval to a person who conducts a commercial activity on a Crown Reserve.
- B. The Licensee conducts a commercial activity as a small surf school operator / surf tour school
- C. The Licensor and the Licensee have agreed to enter into a Licence Agreement to allow the Licensee to operate on Crown Reserves that are under the care, control and management of the Licensor as the Reserve Trust Manager upon the terms and conditions hereinafter contained.

The crown reserves included in this Licence Agreement are as listed;

Reserve No	Reserve Name
R63725	Crescent Head
R52808	Hat Head
R82364	South West Rocks
R63879	Grassy Head

THE PARTIES MUTUALLY COVENANT AND AGREE AS FOLLOWS:**1. Licensor's Obligations**

- a. The Licensor does hereby license the Licensee to operate for the term contained in Item 1 of the Reference Schedule commencing on the commencement date contained in Item 2 of the Reference Schedule and expiring on the expiry date contained in Item 3 of the Reference Schedule subject to the Terms and Conditions contained herein.
- b. The Licensor provides this Licence on the basis that it shall not be an exclusive Licence and this licence does not restrict any member of the public from entering the Licensed Area.

2. Licensee's Obligations

- a. The Licensee shall pay to the Licensor an annual licence fee as determined by the Licensor (hereinafter referred to as the "Licence Fee") and as referred to in Item 4 of the Reference Schedule.
- b. The Licence Fee is applicable from the commencement date of this licence.

3. Operators / Instructors

All Surf School operators / instructors must meet as required by Surfing Australia / Academy of Surfing Instructors (ASI) as the controlling body of Surfing in Australia the following minimum qualifications:-

- a. Current Surf Rescue Certificate (SLSA Community Award) OR Current Bronze Medallion (SLSA proficient annually) OR Ocean Rescue Award (RLSS proficient annually) AND
- b. Current Advanced Resuscitation Certificate
- c. First Aid Senior Certificate (St Johns, TAFE, NSW Ambulance, Red Cross)

4. Risk Management Protocol

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

- a. Mobile phone
- b. First Aid kits
- c. "Soft Safes" surfboards with soft fins used at entry level

- d. Instructor's rescue board on beach
- e. Banners denoting area, colour coding exclusively to Licensee logo on banners
- f. Drinking water
- g. Megaphone
- h. Sunscreen

5. Insurances

a. Insurances

The Licensee shall effect and keep current during the term of this Agreement all insurance required by the Licensor and such as required by law in respect of the Licensee's business including, but not limited to:

- i) The Licensee will effect and keep in force at the Licensee's own expense in respect of the Licensed Area a public risk policy in an amount not less than twenty million dollars (\$20,000,000) (or otherwise for such amount as the Licensor shall from time to time direct). Such a policy to include indemnity of the principal — i.e. the Licensor and the Minister for Land and Water Conservation NSW.

b. Policies of Insurance

- i) In respect of any policy of insurance affected by the Licensee pursuant to Clause 6a of this Agreement, the Licensee will, if required by the Licensor, within three (3) days of written request by the Licensor, produce to the Licensor a Certificate of Currency for the said policy and a copy of the policy conditions.

6. Operating Conditions

- a. At times when conditions are such that schools need to operate from Hat Head Reserve, each approved Surf School must operate at a minimum of 50 metres apart from any other approved surf school.
- b. During times of NSW school holidays, public holidays and weekends, Licensees instructing groups of more than 3 students cannot operate within 100 metres of headlands. This restriction depends upon prevailing weather conditions and consideration to the safety of the students.
- c. No approved Surf School shall have priority over any other approved Surf School when using the Crown Reserves or beaches. Each approved Surf School is encouraged to liaise with other approved Surf Schools to ensure that only one class from each school is in the lesson area at one time. In the event of dispute, the Licensor's Authorised Officer shall determine

which school shall be entitled to occupy the relevant lesson area at a particular time.

- d. Each approved Surf School should have distinctive garments for each student and teacher. The Licensee is to advise the Licensor in writing with the details of the distinctive garments and colours to be worn by its students and teachers.
 - i) Students from each Surf School should be identifiable and distinguishable from any other Surf School;
 - ii) Teachers from each Surf School should be easy to identify from a distance and be distinguishable from other Surf Schools;
 - iii) Each Surf School should have clear and visible colour coding exclusively on all garments, beach banners not flags and should be of colours not similar to Surf Life Saving safety warning flags.
 - iv) Surf Schools should use bright colours on all garments and other apparel when on the beach to assist in easy and quick identification.
- e. The Licensee is required to purchase a Beach Permit for its vehicle(s). Vehicles are not to be driven unnecessarily on any grassed reserve under the control of this policy. Vehicles are not to be driven on beaches contrary to Council's vehicles on beaches policy C23:17 (note, lifesaving emergencies excepted).
- f. No advertising is permitted or allowed on the Crown Reserve at any time. The name and/or logo of the business are permitted to be attached to uniforms or equipment used by the commercial operator in the operation of the commercial activity.
- g. All participants in the approved Surf School are to be educated relating to the prohibition of surf craft in flagged areas on the beach under the care of Surf Life Saving Officers.
- h. Close liaison is to be maintained with the Lifeguard if on duty at a particular beach to be used by a Surf School.
- i. Any grass, beach or parking area is to be kept in a clean and tidy condition free from litter and refuse at all times.
- j. Any approved Surf School shall not interfere with any other beach user, or enjoy exclusive use rights over any coastal Crown Reserve under the care, control and management of the Licensor.
- k. Class sizes may be increased when any Surf School is contracted by the State Education Department or higher learning institutions but must comply with Education Department guidelines (ie, one instructor in charge of seven (7) students and one teacher 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). The Licensor must be advised of any such request in advance.

- i. Any proven failure to act in accordance with the Terms and Conditions of the Licence herein will be viewed by the Licensor as unprofessional and will be assessed on the merit of the breach of Licence terms:
 - i) Minor Breach – written warning
 - ii) Moderate Breach – written warning – final warning
 - iii) Serious Breach – immediate cancellation of licence.

NB. Any breach of safety will be viewed as serious. Consequently, there will be no right of appeal and Council's decision will be final.
- m. The Licensee is solely responsible for the conduct of its business, its employees and its clients.
- n. At the conclusion of the first 12-month Licence, renewal applications must be supported by a Business Activity Log detailing dates of operation, types of instruction provided and number of students.

7. Class Frequency and Size

- a. The Licence allows for the Licensee to operate one-on-one classes of up to three students, and occasionally special events of classes up to 36 learners. (Council must be notified of such events)
- b. On occasions when larger classes are conducted that class in accordance with recommended industry standards will have a minimum of one (1) instructor per eight (8) clients.
- c. The Licensee will operate a maximum of three (3) classes per day, with only one class being conducted at any one time. (this restriction does not apply to classes of up to and including three students).
- d. The class must be cancelled if conditions are unsafe or if a surf carnival or major event is being held. All reasonable directions from Lifeguards or the Licensor must be complied with.

8. Use of Licensed Area

- a. The Licensee shall assist in maintaining the Licensed Area in a clean and tidy manner and shall actively encourage all customers to dispose of litter in a responsible manner.
- b. The Licensee shall comply with all laws regulating how the Licensed Area is to be used, obtain any consents or licences needed, comply with any conditions of consent and keep current any licences or registrations needed for the use of the Licensed Area or for the conduct of the Licensee's commercial activity.

9. Indemnities:

- a. The Licensee uses the Licensed Area at its sole risk and the Licensor shall be in no way responsible for any loss of property from the Licensed Area.
- b. If any property which may be on the Licensed Area during the term of this Licence shall be injured, destroyed or damaged from any cause whatsoever by the acts, omissions or negligence of the Licensee or any person authorised by the Licensee to be on the Licensed Area, no part of the loss or damage occasioned thereby shall be borne by the Licensor.
- c. The Licensee shall and does hereby indemnify the Licensor from and against all loss and damage to all property on the Licensed Area caused by the acts, omissions or negligence of the Licensee or of any servant, workmen, licensee, invitee, employee, agent, client, customer or visitor of the Licensee.
- d. The Licensee shall and does hereby indemnify the Licensor from and against all damages sum or sums of money costs charges expenses actions claims or demands which may be sustained or suffered or recovered or made against the Licensor by any person for any injury such person may sustain when using or entering or near any portion of the Licensed Area whether in the occupation of the Licensor or the Licensee or of any other person where such injury arises or has arisen as a result of the act or omission of the Licensee or as a result of the creation of some dangerous thing or state or affairs by the Licensee or by any servant workmen employee or agent of the Licensee and whether the existence of such dangerous thing or dangerous state of affairs was or ought to have been known to the Licensor or not.
- e. The Licensee agrees to indemnify the Licensor from and against all actions, causes of action, losses, claims, demands, costs and expenses of third parties for which the Licensor shall or may be or become liable in respect of this Agreement.

Licensee's Acknowledgments**10. No Exclusive Use**

The Licensee hereby agrees and acknowledges that the Licensed Area is not for the sole or exclusive use of the Licensee.

11. Licensor's Policy – Lands under Kempsey Shire Council Jurisdiction Policy 1.2 & Licensing of Surf Schools & Other Commercial Activities on Beaches Procedure 1.2.15

The Licensee hereby agrees and acknowledges that;

- a. He/she has read and is aware of and acknowledges the Terms and Conditions contained in the Kempsey Shire Council Policy — Lands under Kempsey Shire Council Jurisdiction Policy 1.2 & Surf School Licensing Procedure 1.2.15
- b. He/she shall comply with the Terms and Conditions of the Kempsey Shire Council Policy — Lands under Kempsey Shire Council Jurisdiction Policy 1.2 & Surf Schools Licensing Procedure 1.2.15 as amended, from time to time.
- c. In the event of any inconsistency between the Licensor's policy referred to in Clause 12 of this Agreement, the provisions of the Licensor's Policy shall prevail.

Assignment or Transfer of Licence

12. The Licensee cannot assign or transfer this license.

Expiry or sooner determination of Licence Agreement.

13. Expiry of Licence

- a. This Agreement shall expire at midnight (12.00 am) on the date referred to in Item 3 of the Reference Schedule.

14. Sooner Determination

Notwithstanding anything herein contained to the contrary, the Licensor may determine this Agreement at any time and without prior notice if any of the following events occurs:

- a. If any payments due under this Agreement remain unpaid for thirty (30) days after they become due;
- b. If the Licensee defaults in the observation or performance of any covenant or term contained in this Agreement.
- c. As listed in Council Policy C21:28 Clause 8 (d)

15. Waiver or breach by the Licensor

No waiver by the Licensor of any breach of any covenant obligation or provision in this Agreement contained or implied shall operate as a waiver of any other breach of the same or of any other covenant obligation or provision in this Agreement.

Miscellaneous

16. Service of Notices

- a. Any notice required to be given under the terms of this Agreement shall be in writing.

- b. Any notice delivered or given under this Agreement will be sufficiently served if addressed to that party and served in accordance with s 170 Conveyancing Act 1919 (NSW).
- c. A notice sent by post is deemed to have been served within forty-eight (48) hours after posting.

17. Severance

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction, is, as to that jurisdiction, ineffective only to the extent of that prohibition or unenforceability and does not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provision in any other jurisdiction.

18. Applicable Law

- a. Regardless of the domicile or residence of any of the parties, this Agreement shall be construed in accordance with, and governed by the laws of, New South Wales.
- b. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales with respect to any legal proceedings in connection with, or relating to, this Agreement.

19. Non-Merger

None of the Terms and Conditions or any act, matter or thing done under or by virtue of or in connection with this Agreement, shall operate as a merger of any rights and remedies of the parties in or under this Agreement but such rights and remedies shall at all times continue in full force and affect.

20. Relationship between the Parties

The Licensor and the Licensee hereby agree and acknowledge that nothing contained in this Agreement shall create the relationship of partnership or of principal and agent or of joint venture or of Landlord and Tenant between the parties.

No provision in this Agreement contained nor any acts of the parties shall create any relationship between the parties other than the relationship of Licensor and Licensee upon the terms and conditions provided in this Agreement.

21. No Interest in the Licensed Area

This Agreement does not confer on the Licensee any estate or interest in the Licensed Area and it is agreed and declared that the control and management thereof shall at all times remain vested in the Licensor and in particular this Agreement shall not operate as a demise of the Licensed Area and in the construction and interpretation of this Agreement this Clause shall be paramount and the other Clauses hereof shall be construed so as not to be inconsistent with this Clause and in the event of

and to the extent that any other Clause or Clauses hereof cannot be construed so as to avoid any such inconsistency such other Clause or Clauses shall to such extent be void and of no effect but otherwise this Agreement shall remain in full force and effect. Nothing in this clause shall affect any duties created or indemnities granted in clause 10 of this Agreement.

22. Definitions

In this Agreement unless there is something in the subject or context inconsistent therewith, the expressions following will have the meanings mentioned, that is to say:

- a. "Agreement" means this Agreement and includes all schedules and annexures.
- b. "Approved Surf School" refers to the holder of an Annual Commercial Licence for Surf Schools issued by the Licensor.
- c. "Authorised Officer" in respect of the Licensor shall include the person identified in Item 5 of the Reference Schedule by the Licensor.
- d. "Business Day" means a day on which trading banks are generally open for business in New South Wales and that day is not a Saturday, Sunday or public holiday in that State.
- e. "Client" means any person participating in a class.
- f. "Date of this Agreement" means the date herein before written.

23. Interpretation

- a. Headings and underlining are for convenience only and do not affect the interpretation of this Agreement.
- b. Words importing the singular include the plural and visa versa.
- c. Words importing a gender include any gender.
- d. Reference to a person includes a reference to a natural person, a corporation and any entity capable of being the subject of legal proceedings.
- e. A reference to a part, clause, paragraph, condition, provision, party, annexure, exhibit or schedule is a reference to a part, clause, paragraph, condition, provision, party, annexure, exhibit or schedule to this Agreement.
- f. Reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, proclamations, ordinances or by-

laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

- g. Reference to a document includes any amendment, supplement, replacement or novation of that document.
- h. A reference to a party in the case of a corporation includes its successors and in the case of a natural person, that party's personal representative.
- i. Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.
- j. Reference to the whole, whether express or implied, is also a reference to any part of the whole.
- k. No rules of construction apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Agreement or any part of it.
- l. An obligation on the part of two or more persons binds them jointly and severally.
- m. If an association, body or authority, statutory or not (hereinafter referred to as the "body") ceases to exist or is reconstituted, renamed, replaced or its powers or functions are transferred to any other body, a reference to that body means the body established or constituted in its place or that substantially undertakes the powers or functions of that body.
- n. Any written communication or notice required to be given under this Agreement, must be legible and written in English.

24. Reference Schedule

Item 1 – INSERT TERM HERE

Item 2 – INSERT COMMENCEMENT DATE HERE

Item 3 – INSERT EXPIRY DATE HERE

Item 4 – INSERT LICENSE FEE AMOUNT HERE

Item 5 – INSERT AUTHORISED OFFICER DETAILS HERE

IN WITNESS WHEREOF the parties hereto have hereunto signed their names the day and year first hereinbefore written

SIGNED FOR AND ON BEHALF OF KEMPSEY SHIRE COUNCIL, AS RESERVE TRUST MANAGER by its Authorised officer in the Presence of:

Name:

Signature Authorised Officer:

Witness:

SIGNED and **DELIVERED** by the said

Name:

Signature:

Witness
