

COMMERCIAL HIRE AGREEMENT - SWIMMING POOL

Privacy Notice: We are collecting your personal information in accordance with the Privacy and Personal Information Protection Act 1998 (NSW) to administer this Agreement. The information will only be accessed by us. Your information will not be given to any other person or agency unless we are required or authorised by law to do so.

Item 1. Pool to be used ("Premises")

Muswellbrook Aquatic Centre / Denman Memorial Pool (please delete whichever is not applicable)

Item 2. Address of pool to be used

Muswellbrook Aquatic Centre - Wilkinson Ave, Muswellbrook NSW 2333 / Denman Memorial Pool - Turner St, Denman NSW 2333

Item 3. Our Name

Muswellbrook Shire Council ABN 86 864 180 944

Item 4. Our Address and Postal Address

Campbell's Corner 60-82 Bridge St, Muswellbrook NSW 2333

PO Box 122, Muswellbrook NSW 2333

Item 5. Our Contact for Notices

Person/Position:		Address:	
Telephone Number:	Facsimile:	Email:	

Our second contact for Notices

Person/Position:		Address:	
Telephone Number:	Facsimile:	Email:	

Item 6. Your Name (Business/Organisation Name including ABN/ACN)

--

Item 7. Your Insurance Company details (see clause 10)

--

Item 8. Your Address (Business/Organisation Address)

--

Item 9. Your Contact for Notices

Person/Position:		Address:	
Telephone Number:	Facsimile:	Email:	

Item 10. Commencement Date

--

Item 11. Termination Date

--

Item 12. Hire Fee (inclusive of GST and inclusive of Outgoings)

Amount Payable: \$	Payment Time/s:	Method of Payment: electronic funds transfer to bank account of Council
--------------------	-----------------	---

Item 13. Fee Review

Yes No	Frequency of Review: ie annually
-------------	----------------------------------

Item 14. Do we require a Security Bond?

Yes No	Amount Payable: \$
-------------	--------------------

Item 15. Permitted Use

--

Item 16. Time/s of Use

--

Item 17. Our Equipment you can use – use a separate inventory sheet if necessary

--

Item 18. Cleaning

You are responsible for the cleaning of the Premises at your cost.	Yes/No
You are responsible for the provision of your own consumables such as soap, hand towels, toilet paper.	Yes/No

Item 19. Attachments

You are required to lodge the following supporting documentation with us (or an explanation why it is not required) **before** you sign this Agreement in order that we may consider and approve your application to hire the Premises. All supporting documentation must be current at the date of signing this Agreement and remain current throughout the term of this Agreement.

Tick the box to confirm the attachments to this application.

- Certificate of currency of public liability insurance;
- Certificate of currency of workers' compensation insurance;
- Documentary evidence of your compliance with working with children check;
- Documentary evidence of all approvals, permissions, licences, certificates and consents required by you to use the Premises for the Permitted use (including any local council permits and development applications.);
- an appropriate and current AUSTSWIM Teacher of Swimming and Water Safety qualification or an appropriate, current and nationally recognised equivalent qualification issued by a registered training organisation or governing sporting body);
- an appropriate, current and nationally recognised first aid qualification issued by a registered training organisation;
- a current Pool Lifeguard Certificate issued by the Royal Life Saving Society Australia or an appropriate, current and nationally recognised equivalent qualification issued by a registered training organisation;
- a current Bronze Medallion issued by the Royal Life Saving Society Australia or an appropriate, current and nationally recognised equivalent qualification issued by a registered training organisation; and
- Any other current qualifications or certificates required for you and your Personnel to undertake their duties.

Item 20. Execution

<p>Council signature</p> <hr/> <p>Signature of Authorised Delegate</p> <hr/> <p>Name of Authorised Delegate</p>	<p>Execution Date</p> <p style="text-align: center;">/ /</p>	<p>Witness</p> <hr/> <p>Signature of Witness</p> <hr/> <p>Name of Witness</p>
<p>Your signature</p> <hr/> <p>Signature</p> <hr/> <p>Full Name</p> <p>The person signing warrants that they have authority to sign this Agreement on behalf of You.</p>	<p>Execution Date</p> <p style="text-align: center;">/ /</p>	<p>Witness</p> <hr/> <p>Signature of Witness</p> <hr/> <p>Name of Witness</p>

PART 2 —STANDARD CONDITIONS

1. MEANING OF WORDS

“Approvals”	all approvals, permissions, licences, certificates and consents required by any laws relating to your use of the Premises.
“AUSTSWIM”	The Australian Council for the Teaching of Swimming and Water Safety.
“Business Day”	a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in New South Wales.
“Commencement Date”	the day on which this Agreement commences as set out in Item 10.
“Fee Review Formula”	the formula set out in clause 4.3.
“GST”	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> ;
“Hire Fee”	the hire fee specified in Item 12.
“Outgoings”	means water, electricity, gas, telephone and telecommunications charges.
“Participants”	all persons participating in the activities set out in the Permitted Use.
“Permitted Use”	the use of the Premises as described in Item 15.
“Personnel”	your members, officers, employees, contractors, agents and all other persons authorised by you.
“Premises”	the swimming pool, land, buildings and facilities at the location identified in Item 1, and the equipment identified in Item 17, which is to be licensed to you.
“Security Bond”	the security bond specified in Item 14.
“We”, “us” or “our”	Muswellbrook Shire Council.
“You” or “your”	the person or organisation named in Item 6.

2. INTERPRETING THIS AGREEMENT

- 2.1 This Agreement consists of the following, which make up and govern the entire agreement between you and us –
- the Application, pages 1-3; and
 - Part 2 – Standard Conditions.
- 2.2 If two or more persons are named in Item 6 their responsibilities under this Agreement bind them jointly and each of them separately. For example, we may ask one person to pay money owing to us under this Agreement, without asking the other.
- 2.3 A reference to –
- a person includes a reference to an entity recognised by a law, for example, a corporation; and
 - a clause is a reference to a clause in this Agreement.
- 2.4 The singular shall include the plural and vice versa.
- 2.5 Where the context permits, reference to you shall extend to your Personnel.

3. LICENCE

- 3.1 We grant and you accept a licence to use and occupy the Premises during the times specified in Item 17.
- 3.2 We may have access to the Premises at any time even when you are using it, provided that we do not interfere with your rights under this Agreement.
- 3.3 You must only use the Premises for the Permitted Use.
- 3.4 The rights conferred by this Agreement rest in contract only and shall not infer an intention to create in or confer upon you any tenancy, estate or interest in the Premises.
- 3.5 You agree to conduct your activities at the Premises independently of us. You must not represent, or allow anyone else to represent, that you or your activities are in any way operated, or endorsed, by us.
- 3.6 The parties agree that their relationship is of licensor and licensee of the Premises. This Agreement does not create any joint venture or relationship of principal and agent between the parties.

4. HIRE FEE AND SECURITY BOND

- 4.1 You agree to pay us the Hire Fee in the manner directed by us.
- 4.2 The Hire Fee is inclusive of GST and Outgoings unless otherwise agreed in writing.
- 4.3 If the Hire Fee is to be reviewed as set out in Item 13 the Fee Review Formula is –

$$A = B \times C/D$$

Where –

“A” = yearly hire fee payable during the year of the term under review.

“B” = yearly hire fee payable during the year of the term immediately preceding the year of the term under review.

“C” = index number released for the consumer price index Brisbane for the last quarter immediately preceding the first day of the licence year under review.

“D” = index number released for the consumer price index Brisbane for the last quarter immediately preceding the first day of the licence year last concluded.

- 4.4 In no event will the annual sum payable in the year under review be less than that paid in the year immediately preceding.
- 4.5 If a Security Bond is required in accordance with Item 14, you will pay us the Security Bond in the manner directed by us at the time you sign this Agreement.
- 4.6 We are entitled to use the Security Bond if you do not repair any damage to the Premises to our satisfaction and if we incur any additional costs and expenses due to your use or activities when using the Premises.
- 4.7 Subject to clause 4.6 we will return the Security Bond (or balance, if any) to you upon termination or expiry of this Agreement.

5. THINGS TO BE LEFT CLEAN AND TIDY

- 5.1 If you are responsible for cleaning the Premises in accordance with Item 18, you must at your cost and after each period of use, leave the Premises in a clean and tidy condition and in the same condition they were in prior to use.

PART 2 —STANDARD CONDITIONS

- 5.2 We may arrange for the cleaning of the Premises at your cost if you do not clean them.
- 5.3 You must not move furniture or equipment on or in the Premises, unless, at the Commencement Date, you have received our approval to do so. If we give our approval, you must put the furniture or equipment back in its original position after each period of use and before the termination or expiry of this Agreement.
- 5.4 You must not allow any accumulation of useless property or rubbish on the Premises.
- 5.5 You must not use our rubbish bins on the Premises without our consent.

6. MAINTENANCE & REPAIR

- 6.1 You must not cause or allow any damage to the Premises.
- 6.2 You must advise us promptly of any damage to, or defective operation of, the Premises or any of our property (including, machinery, plant or equipment) upon the Premises.
- 6.3 You are responsible for the cost of repair or replacement of any of our property where such repair or replacement is, in our reasonable opinion, due to your use or activities when using the Premises.
- 6.4 You must not make or cause to be made any alteration, additions or improvements to the Premises.

7. ASSIGNMENT

You must not assign, sub-license or in any manner part with the use and occupation of the Premises or assign the benefit of this Agreement .

8. ADVERTISING

- 8.1 You must not erect or display advertising material on the Premises without our written approval.
- 8.2 You must not use advertising to promote the activity at the Premises without our written approval.
- 8.3 As a guide, we will not approve advertising that –
- (a) is of a nature that might imply that we are involved with or endorse the thing advertised;
 - (b) refers to the Premises other than to show the location of the venue; or
 - (c) is, in our opinion, objectionable.

9. INDEMNITY

- 9.1 You are responsible for –
- (a) damage, loss or injury to any person or property; and
 - (b) the cost of any security or emergency call-out to the Premises,
- arising from your use of the Premises.
- 9.2 You will indemnify us, our employees, contractors and agents against all claims for damages, loss, costs or injury arising from your use and occupation of the Premises.
- 9.3 You must pay, within the time set out by us –
- (a) for any damage to or loss of our property arising from your use of the Premises; and

- (b) the charges that we decide, if you use the Premises outside the times of use in Item 16.

10. INSURANCE

- 10.1 You must, take out and maintain at your cost, the following insurance:
- (d) *Public Liability*
- A public liability policy of insurance for an amount of not less than twenty million dollars (\$20M) per occurrence with a credible insurer.
- (b) *Workers' Compensation*
- A workers' compensation policy of insurance in accordance with the *Workers Compensation Act 1987* (NSW).
- 10.2 You must provide evidence of each policy of insurance to us before you sign this Agreement.
- 10.3 You must maintain each policy of insurance during the term of this Agreement.
- 10.4 You must notify us in writing as soon as possible prior to any material change in terms, cancellation or other termination of any of the policies required in clause 10.1.

11. TERMINATION UPON NOTICE

- 11.1 For hire periods of more than 28 days, either we or you may terminate this Agreement by giving 28 days' notice in writing.
- 11.2 If this Agreement is terminated under clause 11.1, you must leave the Premises in the condition specified in clauses 5.1, 5.4 and 20.4.
- 11.3 Should there be no default by you at the date of termination and you comply with clause 11.2, any fees paid by you for the period beyond the termination date will be refunded to you.
- 11.4 No compensation, including compensation for loss of anticipated earnings will be paid to you in respect of termination of this Agreement in accordance with clause 11.1.

12. TERMINATION FOR DEFAULT

- 12.1 If –
- (a) you breach any clause of this Agreement and do not remedy the breach within 14 days after notice from us to do so; or
 - (b) an application is made or a resolution is passed for your winding up; or
 - (c) a receiver or official manager is appointed; or
 - (d) any step-in insolvency proceedings is taken by or against you; or
 - (e) your incorporation is cancelled; or
 - (f) you cease to carry on business,
- then we may immediately terminate this Agreement.
- 12.2 If this Agreement is terminated pursuant to clause 12, then you must leave the Premises in the condition specified in clauses 5.1, 5.4 and 20.4.
- 12.3 Termination pursuant to clause 12 shall be without prejudice to any rights that we may have against you arising out of or connected with this Agreement prior to the date of termination.

PART 2 —STANDARD CONDITIONS

13. WARRANTIES

- 13.1 We do not warrant that the Premises are fit, suitable, or adequate for your activities and all warranties able to be excluded by law are excluded.
- 13.2 You warrant that:
- (a) you are satisfied that the Premises are fit for the Permitted Use;
 - (b) the Premises are in good condition; and
 - (c) you have been given adequate information about the Premises to ensure its use without risk to any person.

14. POLICIES AND PROCEDURES

- 14.1 We may from time to time implement policies, procedures and rules not inconsistent with or in derogation of your rights relating to –
- (a) the use, safety, care and cleanliness of the Premises;
 - (b) the preservation of good order in the Premises;
 - (c) the comfort of persons lawfully using the Premises;
 - (d) the location of garbage and refuse pending its removal;
 - (e) the location and/or closure of the car park or the common areas or any part thereof;
 - (f) any other matter relevant to the administration of and Premises.
- 14.2 You must abide by all policies, procedures and rules as notified by us from time to time.
- 14.3 Without limiting clauses 14.1 and 14.2 you must –
- (a) not cause a nuisance, or interfere with the reasonable peace, comfort or privacy of other users of the Premises;
 - (b) not use the Premises for any illegal purpose or in our opinion, objectionable purpose;
 - (c) take all reasonable precautions to avoid fire and health hazards;
 - (d) ensure that you, your Personnel, Participants, invitees and visitors do not consume, supply or sell alcohol on the Premises;
 - (e) ensure that you, your Personnel, Participants, invitees and visitors do not smoke at any time on the Premises;
 - (f) not use or store any poisonous, corrosive, inflammable, volatile or explosive substances on the Premises, other than those substances permitted for use on the Premises;
 - (g) ensure all chemicals for use at the Premises are stored safely in locked facilities in accordance with manufacturer's instructions and our instructions when not in use; and
 - (h) ensure a sufficiently stocked first aid kit is available on the Premises and regularly checked by you.

15. ENTRY AND REMOVAL OF PERSONS

- 15.1 In an emergency or where we reasonably believe that you are disturbing the good order and management of the Premises, we may –
- (a) refuse you or your Personnel, Participants, invitees or visitors entry to the Premises; or

- (b) direct you, or your Personnel, Participants, invitees or visitors to leave the Premises.

16. INJURY TO PERSONS

- 16.1 You are responsible for the supervision, control, conduct and health and safety of your Personnel, Participants, invitees and visitors on the Premises.

17. DISPUTE RESOLUTION

- 17.1 The parties shall seek to settle any dispute arising in connection with this Agreement by negotiation, mediation or conciliation between the parties. In any such proceeding, each party may at its election be represented or accompanied by a qualified legal practitioner.

18. COMPLIANCE WITH LAWS

- 18.1 You must at your own cost, punctually comply with all relevant laws, regulations and the requirements of any statutory authority while using the Premises and obtain, maintain and renew all Approvals during the term of this Agreement.
- 18.2 Without limitation to clause 18.1, you must at your own cost, ensure that throughout the term of this Agreement, you comply with the *Child Protection (Working with Children) Act 2012* (NSW) (the Act) and all Personnel required by the Act, hold a current and valid Working With Children Check clearance which indicates that a person is eligible to work with children and young people in NSW, pursuant to the Act.
- 18.3 You must provide documentary evidence of compliance with the requirements referred to in clause 18.1 and 18.2, before you sign this Agreement and thereafter, as requested by us.
- 18.4 You must promptly notify us if you receive any notice, order or direction from a statutory authority regarding the breach of any laws or regulations relating to your use of the Premises.
- 18.5 Nothing expressed or implied in the provisions of this Agreement will derogate from your liability, responsibility, duty or obligation to comply with the provisions of any statute, rule, regulation, local law or any other law in force from time to time in respect of the Premises.
- 18.6 You acknowledge that you will prepare and lodge (at your cost) any development application or other approval that may be required by the local government or statutory authority to allow you to use the Premises for the Permitted Use. You will comply with all conditions imposed by the local government or statutory authority in relation to the development application or approval.

19. COMPLIANCE WITH GUIDELINES

- 19.1 You must at your own cost, punctually comply with all the following guidelines (as amended from time to time) at all times during the term of this Agreement:
- (a) "*Guidelines for Safe Pool Operations*" published by the Royal Life Saving Society Australia;
 - (b) "*Guidelines for Water Safety – Commercial Learn to Swim and School Pools*" published by the Royal Life Saving Society Australia; and
 - (c) "*Guidelines for Safe Pool Operations – Aquatic Supervision*" published by the Royal Life Saving Society Australia.

20. YOUR PROPERTY

- 20.1 You may bring your property onto the Premises with our prior written consent.

PART 2 —STANDARD CONDITIONS

- 20.2 You must ensure that property you bring onto the Premises are fit for use and comply with all relevant Australian Standards.
- 20.3 You are responsible for the care, maintenance and repair of any property you bring onto the Premises.
- 20.4 At the termination or expiry of this Agreement you must remove from the Premises all your property and any other things, including rubbish, you bring on to the Premises. You will fix any damage to our property caused by you when removing your property. After 30 days all your property left on the Premises will be deemed abandoned by you and will become our property. We may, in our discretion sell or otherwise dispose of your abandoned property at your cost.

21. PERSONNEL QUALIFICATIONS

- 21.1 You must ensure throughout the term of this Agreement, that you and all your Personnel are appropriately qualified and trained and hold –
- (a) if engaged in a teaching capacity – an appropriate and current AUSTSWIM Teacher of Swimming and Water Safety qualification or an appropriate, current and nationally recognised equivalent qualification issued by a registered training organisation or governing sporting body;
 - (b) if engaged in a first aid capacity – an appropriate, current and nationally recognised first aid qualification issued by a registered training organisation;
 - (c) if engaged in a lifeguard capacity – a current Pool Lifeguard Certificate issued by the Royal Life Saving Society Australia or an appropriate, current and nationally recognised equivalent qualification issued by a registered training organisation;
 - (d) if engaged in a supervision capacity – a current Bronze Medallion issued by the Royal Life Saving Society Australia or an appropriate, current and nationally recognised equivalent qualification issued by a registered training organisation; and
 - (e) any other current qualifications or certificates required in order to undertake their duties.
- 21.2 You must provide documentary evidence of compliance with the requirements referred to in clause 21.1 before you sign this Agreement and thereafter, as requested by us.

22. UNAVAILABILITY OF PREMISES

- 22.1 We reserve the right at any time, to immediately suspend or terminate this Agreement in the event of:
- (a) an emergency or where we consider such action necessary for the safety of any person or property;
 - (b) a federal, state or local election;
 - (c) a community disaster where the Premises are required to provide disaster relief; or
 - (d) where an essential need arises requiring exclusive use of the Premises.
- 22.2 Should there be no default by you at the date of suspension or termination, any fees paid by you for the period of the suspension or for the period beyond the termination date, will be refunded to you.
- 22.3 No compensation, including compensation for loss of anticipated earnings will be paid to you in respect of suspension or termination of this Agreement in accordance with clause 23.1.

23. WAIVER

No right under this Agreement will be deemed to be waived except by notice in writing signed by each party.

24. VARIATION

No variation to this Agreement will be valid unless it is in writing and signed by both parties.

25. NOTICES

- 25.1 Any notice, demand, consent or other communication required to be given under this Agreement will be deemed to have been given –
- (a) if sent by prepaid mail, on two (2) Business Days following posting;
 - (b) if hand delivered, on the date of delivery;
 - (c) if emailed, upon receipt by the sender of an acknowledgement that the communication has been properly transmitted to the recipient.
- 25.2 The respective addresses for service of the parties are set out in Item 5 and Item 9.

26. INTEREST ON UNPAID MONIES

You are to pay interest to us on any monies due and payable under this Agreement, and on any judgment in our favour in an action arising from the agreement until all outstanding monies, including interest are paid in full. The rate of interest is at a rate equal to the Commonwealth Bank of Australia's monthly overdraft index rate on the amount of any account that is not paid within thirty (30) days of the date of the account.

27. GOVERNING LAW

This Agreement is governed by the laws of New South Wales.

State here any Special Conditions which apply to this Agreement