

POLICY NAME: COMMERCIAL ACTIVITIES ON PUBLIC LAND

POLICY REF: C10

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1 OBJECTIVE

The objectives of this policy are:

- a) to ensure there is an appropriate balance between passive and active recreation on [public land](#) for residents and visitors; and
- b) to clarify what commercial activities may be carried out on public land, and to regulate and manage those activities.

2 POLICY

2.1 Activities Requiring a Commercial Activity Licence

A Commercial Activity Licence is required if it is intended to:

- a) Carry out or be involved in commercial and/or business activities on public land
- b) Those commercial and/or business activities include when acting upon, crossing, transferring on, off or over public land and infrastructure not limited to public land, operational land, road reserves and some water bodies.

2.2 Activities Not Requiring a Commercial Activity Licence

The following activities can be carried out on public land without obtaining a [licence](#) or approval:

- a) Aboriginal cultural tours
- b) Emergency services performed by recognised emergency service organisations
- c) [Passive recreational activities](#)
- d) Informal [social gatherings](#)
- e) Spreading of ashes
- f) Volunteer rescue organisations – training days.

2.3 Activities Not Requiring a Commercial Activity Licence but Requiring Other Approvals

- a) Separate approval is required to carry out some commercial and non-commercial activities on public land, and the approval process is covered by other Council policies. Activities requiring approval under other Council policy areas include for example: Filming, Markets, Special Events, Weddings, Mobile Vendors, Busking, Footpath Use, Signage, Structures and Grazing.
- b) Schools, Universities, recreational sporting clubs, religious organisations and the Lake Ainsworth National Fitness Camp do not require a Commercial Activity Licence but may require Council approval.

2.4 Public Land Management

Council manages parks, reserves and sports fields that are classified as either Community or Operational Land. Council also manages areas of Crown land on behalf of the State Government and may issue licences under a management arrangement. Additionally Council manages some parks and reserves on land designated as road reserves.

The legislative authority for this Policy is to be found in:

- Local Government Act 1993 ss 35, 46, 68, 626, 627 and 632
- Local Government (General) Regulation 2005 cl116 and 117
- Crown Land Management Act 2016 Part 3 and Part 5 Div 5.6
- Crown Land Management Regulation 2018 Pt 4
- Roads Act 1993

2.5 Determination of Fees and Charges

- a) Council will determine the fees and charges applicable for commercial activities, as per this policy, as part of its annual Operational Plan and budget deliberations.
- b) This determination will include, at a minimum, the following fees:
 - i) Commercial Activities Licence –application fee (non-refundable) upon application
 - ii) Commercial Activities Licence – licence fee (annual), payable prior to commencement, based on the level of impact assigned to the activity:

Impact Category
Low impact
Medium impact
High impact
Tender

- c) Fees will be determined taking into account, and not limited to, the following:
 - i) Nature of the activity
 - ii) Scale of its operation
 - iii) Use of and impact on the public land
 - iv) Impact on the community, both beneficial and detrimental.
- d) No pro-rata refunds will be provided where a licence is cancelled, terminated or handed in during the year for which the application and licence fees are applicable.
- e) No pro-rata refunds or fee waivers will be provided for any licence type (including tendered activities and non-tendered activities) for any events, conditions or incidents that cause any interruption to a licensee's business, including, but not limited to, bad weather conditions, natural disasters, floods, poor water quality, fires, pandemics, or anything similar to those things.

- f) For tendered activities (Surf Schools, Elite Surf Coaching and Stand-up Paddle Boarding), which are typically offered longer term licences (i.e. three years), Council will confirm the value of these licences as part of the tender process. Options for determination of the initial Licence fee and any annual increase in the Licence fee may include, but will not be limited to, a fixed percentage increase, indexing at or above CPI, independent valuation, a Licence fee based on turnover, or calling fresh tenders/expressions of interest to assess the value of the Licences.
- g) For tendered activities (Surf Schools, Elite Surf Coaching and Stand-up Paddle Boarding), if a licence holder suffers financial hardship or is no longer capable of carrying on the activities, the licence holder may seek approval of the General Manager to surrender the licence. If the General Manager agrees to the surrender of the licence, the licence holder must sign any surrender document required by Council, and the licence holder shall not be entitled to any refund of fees already paid and shall not be entitled to any compensation in relation to the surrender of the licence.
- h) After a tender process is finalised, any vacant or surrendered licences may be applied for and the General Manger will decide who will be issued with the remaining Licences. Any applications for the remaining Licences must meet the Licence specifications. The new Licensee will be required to pay the same fee as other licence holders for the same commercial activity and time period. Any licence issued under this clause will expire on the same date as the other licences issued arising out of the tender process.

2.6 Commercial Activities

The type, number, capacity and impact category of commercial activity licences available annually for issue under this policy are detailed in the following table.

Activity	Licence Capacity	Client Capacity	Class Capacity
Low Impact Category			
Beekeeping	As per DPI Licence	As per DPI Licence	As per DPI Licence
Ecotourism	Not limited	30 clients	2 classes/day
Personal Fitness (2 Clients)	Not limited	2 clients	Not limited
Surfing for People with Disabilities	Not limited	2 clients	Not limited
Medium Impact Category			
Dog Training	Not limited	10 dog clients	Not limited
Fishing Tour	Not limited	4 clients	Not limited

Activity	Licence Capacity	Client Capacity	Class Capacity
Kayak / Canoe Tour	Not limited	20 kayaks	Not limited
Kite Surfing	2	2 kites/6 clients	Not limited
Personal Fitness (10 Clients)	Not limited	10 clients	Not limited
Hang Gliding and Paragliding	5 flight businesses	2 hang gliding clients per hang gliding flight business at a time 4 paragliding clients per paragliding flight business at a time	As per SAFA operations manuals and other SAFA manuals and subject to site safety operational plans prepared by the SAFA Affiliated Club
High Impact Categories			
Boat Tour	Not limited	2 boats/vessel capacity	Not limited
Fish Harvesting	As per DPI Licence	As per DPI Licence	As per DPI Licence
Group Fitness (20 Clients)	Not limited	20 clients	2 classes/day
Horse Riding Seven Mile Beach	2	10 horses	2 classes/day 1 Licensee allowed 5 days / week 2 Licensees alternate days so shared, only one operating /day Week days only, no public holidays
Tendered Commercial Activities			
Surf School	5	20 clients	2 classes/day
Elite Surf Coaching	6	7 clients	2 classes/day
Stand-up Paddle Boarding	3	14 clients – Richmond River 7 clients – Seven Mile Beach 3 clients – Lake Ainsworth, Shaws Bay, Prospect Lake	2 classes/day

2.7 Applications for Commercial Activity Licences

- a) All applications shall be submitted in writing on the Council-approved [Commercial Activities on Public Land Licence Application](#) form, setting out the proposal in detail and accompanied by the supporting documentation and application fee. For tendered activities, the request for tender document will set out the tender process and requirements.
- b) Applications must comply with the Schedule 1 Standard Specifications and relevant Schedule 2 Activity Specifications outlined in the Commercial Activities on Public

Land Specifications. Non-compliance will result in applications being rejected with reason and returned to the applicant by Council.

- c) All applications for licences shall be assessed and determined by the General Manager of Council or delegate, in consultation, where necessary, with relevant Authorities from, but not limited to: Crown Lands, NSW Maritime and the Cape Byron Marine Park.
- d) All applications for licences will be assessed and determined within a three month period from date of receipt.
- e) Council reserves the right to not issue any licence, to not offer any licence, or to call tenders or expressions of interest for the use of a licence to allow all interested parties an opportunity to obtain that licence. This decision will be made by the elected Council.
- f) A licence will typically be issued for a period of one year, albeit that Council may issue licences for a longer period where Council is of the opinion that the investment in the licence by the operator justifies a longer-term licence. Longer term licences will normally be issued for a maximum period of three years, with these licences requiring Crown approval if on Crown land. Any decision to offer a licence for a period of more than one year will be determined by the elected Council.

2.8 Reapplying for Commercial Activity Licences

Any expiring or expired licences (annual) with an existing Licensee requires a new application form with supporting documentation be submitted to Council and assessment of the following:

- a) The Licensee has demonstrated compliance with the licence specifications.
- b) The Licensee has shown a satisfactory standard of performance in all areas.

If a Licensee re-applies for a new Licence, there is no guarantee a new Licence will be granted and Council makes no representation about whether or not a new Licence will be granted. Each application for a new Licence will be assessed on its merits in accordance with this Policy. No compensation is payable by Council to a Licensee if a Licensee re-applies for a new Licence and the new Licence is not granted.

2.9 Matters to be Considered in Assessing Commercial Activity 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 sustainable operations
- c) Demonstrated appropriate level of knowledge and understanding of local conditions, natural and cultural history, ecological processes and constraints
- d) Demonstrated experience in, or capacity to meet the licence specifications
- e) Demonstrated ability to comply with appropriate safety requirements and duty of

care responsibilities

- f) Demonstrated capability to promote interpretive and educational information that ensures clients are receiving instruction in minimal impact techniques, environmental protection and ethics of appropriate behaviour
- g) Demonstrated compatibility with a Crown Reserve purpose or any plans of management
- h) Economic and tourism development benefits to the Ballina Shire through associated activities such as marketing, use of shire facilities, etc.
- i) Demonstrated compliance with laws relating to the operation of the Licensee's business.

For tendered activities, the request for tender document will set out the requirements and selection criteria.

2.10 Commercial Activity Licence Specifications

- a) Licensees must comply with the Schedule 1 Standard Specifications and applicable Schedule 2 Activity Specifications outlined in the Commercial Activities on Public Land Specifications, which accompany the Commercial Activities on Public Land Licence Application form.
- b) The Schedule 1 Standard Specifications and applicable Schedule 2 Activity Specifications list a number of requirements for the particular Activity current as at the date of this Policy, however, the Specifications list is not exhaustive and will change over time as laws change. It is for the Licensee to determine all qualifications, licences and permits the Licensee requires at any point in time in order to lawfully operate the Licensee's particular business.
- c) The Licensee must hold all qualifications, licences and permits required for the operation of the Licensee's business, and comply with all laws relating to the operation of the Licensee's business.

2.11 Commercial Activity Licence Provisions

The following provisions will apply to all licences:

- a) Licensees shall not sublet, assign or otherwise deal with the licence.
- b) The Licensee must comply with current industry standards relevant to the operation of the Licensee's particular business.
- c) Should a Licensee fail to operate a licence for a continuous period of four months (other than due to events outside the Licensee's control, such as a natural disaster), then Council may terminate the licence and the Licensee shall not be entitled to any compensation in relation to such termination or any refund of any licence fees paid.
- d) Licensees are entitled to hold only one licence within each activity.
- e) The Licensee shall indemnify and keep indemnified Council, and if the activity is conducted on Crown Land, the Crown, against all actions, suits, claims, debts, obligations and other liabilities arising out of the Licensee's activities and the

Licensee's operation of its business on public land.

2.12 Additional Commercial Activity Licences and Activities

- a) The elected Council will determine any amendment to the licence capacity, client capacity and class capacity for each activity through a review of this policy.
- b) While licence applications apply to the activities listed in this policy, it is recognised other activities may be proposed. Such applications will be considered on their merit with reference to the industry, other Authorities, existing Licensees, Plans of Management and if suitable by determination of Council through review of this policy.

2.13 Unlicensed Activities

- a) If someone is carrying out a commercial activity on public land, and the person does not hold the required licence, Council will take steps to end the unlicensed activity, which may include for example, the issuing of written and verbal warnings, issuing a penalty infringement notice, undertaking legal action and, where appropriate, the removal of the activity from the public land by an employee of the Council or NSW Police.

2.14 Revoking of Commercial Activity Licences

- a) Council reserves the right to revoke any licenced activity for management reasons including, but not limited to, environmental protection, public safety and changes in policy or legislation. The Licensee shall not be entitled to any compensation, however, the Licensee will be entitled to receive a pro-rata refund of any prepaid licence fees that relate to a period after the date of revocation of the licence.
- b) If a licensed activity takes place on an area of land and:
 - i) there is an approved determination under the Native Title Act 1993 (Cth) that native title exists in that area; or
 - ii) the area is determined to be claimable Crown lands under the Aboriginal Land Rights Act 1983; or
 - iii) the dedication or reservation over the area is revoked under the Crown Land Management Act, Council ceases to be the Crown Land Manager over the area or ceases to hold a head licence over the area,

(Restricted Land),

then Council may either restrict any licensed activities taking place on the Restricted Land or revoke the licence immediately. The Licensee shall not be entitled to any compensation if:
 - iv) Council restricts any licenced activities on the Restricted Land; or
 - v) Council revokes the licence, however, the Licensee will be entitled to receive a pro-rata refund of any prepaid licence fees that relate to a period after the date of revocation of the licence.

2.15 Breach of Commercial Activity Licences

- a) If a Licensee:
- i) fails to pay any licence fees within 30 days of the due date (whether formally demanded or not);
 - ii) fails to maintain public liability insurance as required under this Policy and the Specifications;
 - iii) breaches any conditions of the licence issued;
 - iv) breaches any conditions of this Policy or the Specifications;
 - v) commits an act of bankruptcy or insolvency; or
 - vi) breaches any law or breaches any conditions of other permits/licences/approvals issued by other authorities,

Council may terminate the licence by:

- vii) notifying the Licensee to that effect; or
 - viii) restricting the Licensee from operating the activity on the public land, by force if necessary; or
 - ix) doing both of the above.
- b) Without limiting the Council's rights under clause 2.15(a), if a breach of a Specification in the License or this Policy is witnessed by a Council officer of reported to Council and investigated, Council may elect to issue a written warning notice.
- c) A Licensee has a right to provide a written response to a warning notice within 28 days. The General Manager has the authority to determine whether or not the warning notice should be waived, based on the response.
- d) Where a Licensee holds a one year licence, the issuing of two written warning notices in that period may result in termination of the licence.
- e) If a Licensee receives three written warning notices within a three year period, Council may terminate the licence.

3 DEFINITIONS

Aboriginal cultural tours

Walking tours conducted by Aboriginal people, providing Aboriginal cultural heritage interpretation on Country. The operator must employ or engage representatives of the relevant Aboriginal community to undertake the interpretation, unless the appropriate representatives of the relevant Aboriginal community have given specific authorisation to the person delivering the interpretation and have approved the content of the interpretation. Any proposed tours not meeting this requirement must apply for an Ecotourism licence.

Commercial Activity Licence	The Council approval for the operation of a commercial activity on public land in Ballina Shire.
Council	Ballina Shire Council
Licence	A Commercial Activity Licence.
Passive recreational activities	Low-key and low impact recreational/leisure activities undertaken by people on an informal basis.
Religious organisations	Organised gatherings of people for the purpose of expressing religious beliefs.
Public Land	Land under the ownership or care and control of Council.
Social gatherings	Small gatherings of people, meeting on an informal and social basis.
Specifications	The conditions required to be met to both hold and operate a Commercial Activity Licence. This is a separate document maintained by Council.
Sporting clubs	Organised on a not-for-profit and community basis, where people form for the purpose of playing sports.

4 SCOPE OF POLICY

This policy applies to:

- a) Council employees
- b) Councillors
- c) Community members
- d) Council-owned businesses
- e) Applicants

5 RELATED DOCUMENTATION

Related documents, policies and legislation:

- a) *Aboriginal Land Rights Act 1983*
- b) *Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulation 2017*
- c) *Council – Policies (Various)*
- d) *Council – Plans of Management (Various), Ballina Local Environmental Plan*
- e) *Crown Land Management Act 2016*
- f) *Crown Land Management Regulation 2018*
- g) *Fisheries Management Act 1994*
- h) *Local Government Act 1993*

- i) *Local Government (General) Regulation 2005*
- j) *Native Title Act 1993 (Cth)*
- k) *Roads Act 1996*
- l) *Work Health and Safety Act 2011 and Work Health and Safety Regulation 2017*

6 REVIEW

The Commercial Activities on Public Land policy will be reviewed at least every four years.