

POLICY NAME: (REVIEW)
Markets on Public Land

POLICY REF: M01

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OBJECTIVE

The objectives of this policy are:

- a) to provide a documented process describing how market managers may obtain approval to hold a market on public land in Ballina Shire that is owned or managed by Council, including parks, open spaces or streets;
- b) to outline key matters to be addressed in the operation of markets on public land;
- c) to ensure that market managers are aware of Council's requirements in order to assist and encourage the efficient organisation of markets;
- d) to ensure that market managers receive requisite approvals in a timely and orderly manner; and
- e) to encourage markets in circumstances that support local and regional food production and other small business initiatives.

POLICY

1. Land to Which This Policy Applies

This policy applies to all Council owned land and all Crown land managed by Council as a Reserve Trust Manager.

This policy applies to all market proposals and agreements (including licence renewals) after the date of adoption of this policy.

2. Policy Requirements

a. Application

- Parties proposing to hold a market on public land in Ballina Shire must lodge a completed Application for Markets on Public Land.
- Applicants must address the Ballina Shire Market Guidelines (Public Land) when completing an application.
- A completed application is required for all new market proposals and all market renewals after the date of adoption of this policy.
- Council may accept direct proposals for a market on public land or call for expressions of interest to conduct a market on public land whether or not there is an existing market or market proposal relating to an area.

b. Fees and Charges – refer to Council's Schedule of Fees and Charges

Market applications may be subject to fees and charges, licence fees and/or ground bonds in accordance with Council's adopted Fees and Charges. Examples of fees include application fees, ongoing licence fees (for use of public land), and inspection fees.

c. Operating Requirements

Markets must address and comply with the requirements established in the Ballina Shire Market Guidelines (Public Land). The guidelines may be updated to reflect legislative changes or amendments to accepted best practice standards.

d. Assessment of Applications

- When assessing applications Council staff will consider a range of assessment criteria based on the Ballina Shire Market Guidelines (Public Land), including, but not limited to:
 - *Environmental impacts* – impact on environmental attributes including flora and fauna;
 - *Social impacts* – impact on residential amenity, conflicts with other user groups and organisations, availability of land;
 - *Economic impacts* – likely economic benefits and detriments to the locality and the shire;
 - *Infrastructure impacts* – demand for use of public infrastructure, capacity of infrastructure and potential impacts;
 - *Risk assessment* – approach to the management of risks and stallholders ensuring the health and safety of patrons and stallholders and the general public.

- Council may instigate an expression of interest process in relation to the operation of a market on public land. Council will determine the EOI criteria as part of the EOI process. As a guide, the following criteria may be applied:
 - Ability to develop, implement and monitor a Market Management Plan in accordance with Ballina Shire Market Guidelines (Public Land);
 - Experience in market management and meeting market licence conditions;
 - Knowledge of the region's markets;
 - Experience with and commitment to environmentally sustainable operations and initiatives;
 - Social and environmental benefits to the local community;
 - Benefits to the local economy.

e. Licensing

All market approvals will require the market manager to enter into a licence with Council for the occupation of land where the market operates. Licence fees are set out in Council's fees and charges.

f. Dispute Resolution

In the event of a dispute between Council and the market manager or where a breach of the licence agreement has been identified, Council may request the parties attend a formal dispute resolution process where the issues cannot be otherwise resolved.

Council will not engage in any dispute resolution between stall holders or between stall holders and market manager.

g. Insurances and Risk Management

- The market manager will be required to provide evidence of insurance cover for public liability, workers compensation and products liability in sums as directed by Council's insurer;
- The market manager must provide Council with a risk management plan demonstrating identification of risks and proposed management responses.

h. Reporting

The market manager is required to provide reporting on the operation of the market to Council on an annual basis. This information is to include details of economic and social benefits provided, stall holder numbers, incident reporting and other content as determined by Council in the licence agreement.

i. Determination

- Market approvals which are endorsed by Council will be for an initial term of twelve months. Should the market operator wish to continue with the market after the first 12 month term, Council may grant a further term of up to three years.
- At the expiry of a licence agreement, Council may call for expressions of interest for the operation of a market on the land;
- All new applications to conduct a market on public land will be reported to Council for determination. A current licence for a market on public land may be reported to Council where a substantial change is proposed to operations, where there is recent community feedback relating to market operation or where the elected Council determines a review is required. In other circumstances renewals will be managed through the process for the use of the Council seal.

BACKGROUND

Markets are conducted regularly in various centres in the North Coast Region, reflecting the lifestyle and cultural diversity of our area and, at the same time, providing for an expansion in the region's tourism base.

Council supports the market concept and enhancing the social, cultural and economic wellbeing of residents and visitors. Markets also provide an outlet for services and merchandise which, at times, are not readily available for established retailing outlets.

Council wishes to promote the opportunity for markets to be conducted, particularly those that showcase and promote products and services generated from within our region. Importantly, Council recognises that some markets are focussed on community outcomes whilst others are a more commercial enterprise. Markets are not conducted on behalf of Council but rather by parties that have an interest in operating markets.

Council must ensure that the venues for markets and the manner in which markets are conducted are acceptable in terms of public health, safety and amenity; complement existing uses of the public land; and should not unreasonably adversely impact on those who operate conventional lawful business enterprises in the vicinity.

Where the market is to be operated on land that is classified as Community Land or other public land that is in the care and control of Council (here after referred to as public land) it is desirable that the revenue from the operation of the markets be used to cover the cost of operating the market, maintenance of the market site, and any remaining profits be returned to the community.

Development Approval

Additional to approval for the use of public land under this policy, development consent may be required under the *Environmental Planning and Assessment Act 1979*. A key determinant of whether development consent will be required is the scale of the proposed market.

Markets having a combined area of less than 300m² occupied by tents, marquees or booths may occur without development consent provided other requirements of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 can be met. Approval under Council's Markets Policy is, however, still required for markets on public land. Where a market involves a combined area of more than 300m² of tents, marquees or booths, development consent will be required in addition to approval under this policy.

Council has designated a number of public open space areas in the shire as key event sites, for which Council has (or will obtain) development consent to provide for markets above the exempt development threshold. These sites are listed in Schedule 1 of this policy. Markets proposed on these sites may occur under the development consent (where in place) subject to compliance with the respective consent conditions. Details of these consents can be provided by Council upon request.

Markets conducted on public land do not require development consent to be granted, as they are considered a special event for the purposes of the *Environmental Planning and Assessment Act* under the *Ballina Local Environmental Plan 2012* (NOTE: some land in the shire is not subject to the BLEP 2012. In these cases, the regulation

framework should be checked with Council's Development and Environmental Health Group).

This policy does not cover apply to markets held on private land. Council's prior market policy included markets on private land, however this created ambiguity. Any market proposal which occurs on private land will typically be addressed through the development application process.

DEFINITIONS

Council	Ballina Shire Council
Market	<p>Retail premises comprising an open-air or an existing building used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.</p> <p>In Ballina Shire a market may operate regularly on no more than one day of a week.</p> <p>"One off" community based or charitable events and fundraisers such as fetes, which are conducted not more than once a year, are not regarded as markets for the purpose of this policy. Markets operating as part of an event which has received Event Approval in accordance with Council's event policy are not regarded as markets for the purpose of this policy.</p>
Ballina Shire Market Guidelines (Public Land)	A document designed to assist market managers comply with the regulations and procedures associated with operating markets on public land in Ballina Shire.
Public Land	Council owned land, Crown land managed by Council or public roads under the ownership or care and control of Council.
Private Land	Any land which is not public land for the purposes of this policy.

SCOPE OF POLICY

This policy applies to:

- Council employees
- Councillors
- Community members
- Not-for-profit community groups
- Commercial organisations
- Market managers

RELATED DOCUMENTATION

Related documents, policies and legislation:

- Local Government Act 1993
- Crown Land Act 1989
- Environmental Planning and Assessment Act 1979
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- Ballina Shire Market Guidelines (Public Land)
- Ballina Local Environmental Plan 2012 an 1987
- Council's Combined DCP - Chapter14 - Advertising Signage
- North Coast Regional Code for Sale of Food at Markets and Temporary Events
- Protection of the Environment (Noise Control) Regulation 2008
- NSW Food Act 2003
- NSW Food Regulation 2004
- Australian Food Standards Code (3.1.1, 3.2.2 and 3.2.3)
- Australian Standard 1596-1997 Storage and Handling of LP Gas
- Australian Standard 5601-2000 Gas Installations
- Australian Dangerous Goods Code 1998 (Federal Office of Road Safety)
- Building Code of Australia - Sanitary and other Facilities, Health and Amenity

REVIEW

The Market Policy is to be reviewed at least every four years.

SCHEDULE 1**Key Event Sites**

Locality	Open space area	Development consent
Ballina	Pop Denison Park	Consent not yet in place
Lennox Head		
Alstonville		