

POLICY NAME: COMMERCIAL ACTIVITIES ON PUBLIC LAND
POLICY REF: C10
MEETING ADOPTED: 23 June 2011
Resolution No. 230611/25
POLICY HISTORY: 280411/1; 270510/39; 131207/22



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1. OBJECTIVE

To retain public land for passive and active recreation for residents and visitors.

To establish what commercial activity may be carried out on public land and to regulate and manage the commercial activity.

2. DEFINITIONS

In this Policy the following definitions apply:

Application Guidelines	Conditions required to be met for the application for a Commercial Activities Licence.
Commercial Activities Licence	The approval containing consent for the operation of a commercial activity on public land in Ballina Shire.
Council	Ballina Shire Council
Educationally based community activities	Organised activities for the purpose of providing and distributing educational information. Not for profit.
Licence	Refers to a Commercial Activities Licence.
Mobile Food Vendors	Are vehicles that sell food, ice cream, coffee etc.
Passive Recreational Activities	Low key and low impact recreational / leisure activities undertaken by people on an informal basis.
Political Functions	Organised gatherings of people, for the purpose of expressing political beliefs.
Religious Functions	Organised gatherings of people, for the purpose of expressing religious beliefs.
Public land	All Council owned or controlled land including Crown land that Council is the Trust manager of and community and operational land as classified under the Local Government Act 1993.
Social Gatherings	Small gatherings of people, meeting on an informal and social basis.
Sporting Events	Organised on a not-for-profit and community basis, where prizes are distributed on an amateur basis.

3. SCOPE OF POLICY

This Policy applies to the following land:

- Crown Reserves Under Trusteeship of Council
- Council owned community land
- Council owned operational land
- Council roads

4. RELATED DOCUMENTATION

Related legislation, documents and policies:

- Local Government Act 1993
- Crown Lands Act 1989
- Crown Lands Regulation 2000
- Roads Act
- National Parks and Wildlife Act 1974
- National Parks (Fauna Protection) Regulation 1994
- Threatened Species and Conservation Act 1985
- Ballina Coastal Plan of Management
- Ballina Local Environmental Plan 1987
- Filming Policy
- Market Policy
- Special Events Policy
- Weddings on Public Land

5. POLICY**5.1 Activities requiring a commercial activities licence**

A Commercial Activities Licence is required to be obtained under this Policy if it is intended to:

- (a) Carryout or be involved in commercial and / or business activities on public land. An application for a licence from Council will be required to be submitted.
- (b) Carryout activities on public land that are not limited to activities taking place wholly on public land but also include activities that involve crossing the public land, or transferring people or items on, off or over the public land. This includes the embarking or disembarking of people / items from or to water based activities adjoining the public land. Council requires licensing of any activity or part of an activity involving a reserve.

5.2 Activities not requiring a commercial activities licence or approval

The following activities can be carried out on public land without obtaining a licence or approval:

- Emergency services performed by recognised emergency service organisations
- Passive recreational activities
- Informal social gatherings

10.7 Surf School Licences - Allocation.DOC

- Spreading of ashes
- Volunteer rescue organisations - training days

The activities listed in this clause are allowed provided that they are not undertaken for commercial gain.

5.3 Activities not requiring a commercial activities licence but requiring other approvals

Consent is required to carry out other commercial and non commercial activities on public land and the consent process is covered by other Council policies. Activities that, if carried out on public land, require consent under other policies of Council:

- Filming - Filming Policy
- Markets - Market Policy
- Special Events - Special Event Policy
- Weddings - Weddings on Public Land.

A search of Council policies should be carried out to ensure that the correct application for an activity is submitted.

5.4 Commercial activities that will not be issue with an approval to operate on public land

Mobile food vendors will not permitted to operate on beaches or public reserves in Ballina Shire. This does not include the operation of such vendors on public roads.

Mobile vendors selling or hiring out non food items will not permitted to operate on beaches or public reserves in Ballina Shire.

Applications for these commercial activities will not be accepted

5.5 Number and type of commercial activities licences to be issued

The number of licences to be issued annually for commercial activities and the type of activities are detailed in the following table:

Activity	No. of Licences	Student - Teacher Ratio	Maximum Numbers	Number of Classes / day
Surf Schools (by tender)	5	1 instructor per 8 clients	20 clients	Each Surf School 2 sessions/day
Kayak & Canoe Tours	Not limited	1 instructor per 4 kayaks/canoes	20 Kayaks	Not limited
Horse Riding Guided Tours Seven Mile Beach	2	1 instructor per 4 clients	10 horses	2 sessions/day 1 operator / day on alternate days. Week days only, no public holidays
Horse Riding Guided Tours South Ballina Beach	This commercial activity is approved by the Land and Property Management Authority. Ballina Shire Council requires the licencing of the operation for its use of the public road network to access the beach. Council places no operation conditions on this activity.			

10.7 Surf School Licences - Allocation.DOC

Ballina Shire Council

Commercial Activities on Public Land

Activity	No. of Licences	Student - Teacher Ratio	Maximum Numbers	Number of Classes / day
Kitesurfing Schools	2	2 kites with 6 clients and 1 instructor	2 kites	Not limited
Wind Surfing Schools	Not limited	2 clients with 1 instructor	3 windsurfers	Not limited
Fishing Tours	Not limited	4 clients per tour operator	4 clients	Not limited
Hang gliding & Paragliding	1 Club or 4 Operators	1 instructor per 1 hang gliding client and 1 instructor per 2 paragliding clients	8 Hang gliders 4 Paragliders	As safety conditions prevail
Fitness Training Groups	Not limited	1 instructor per 20 clients	20 clients	2 sessions/per day/ operator
Commercial Fishermen	As per DPI Licence	Not applicable	As per DPI Licence	Not applicable
Sea Plane Rides	1	Capacity of Plane	Capacity of Plane	8.30am to 5.00pm daily
Skydiving	Not limited	8 parachutes per jump	8 per jump	Daylight operation
Elite Surf Coaching (by tender)	4	1 instructor per 7 clients	7 clients	Each school 2 sessions per day
Personal Fitness Trainers	Not limited	1 instructor per 2 clients	2 clients	Not Limited
Helicopter Rides	Not limited	Capacity of helicopter	1 helicopter at any time using a reserve	8.30am – 5.00pm during daylight hours
Dog Training Schools	Not limited	1 instructor to 10 dogs	10 dog clients	8.30am – 5.00pm during daylight hours
Ecotourism Tours	Not limited	1 instructor to 30 clients	30 clients	Not limited
Stand-up Paddle Boarding (By tender)	2	1 instructor per 7 clients	-14 clients in Richmond River -7 clients Seven Mile Beach north of lake Ainsworth -3 clients in Lake Ainsworth, Shaws Bay and Prospect lake	Each school 2 sessions per day

10.7 Surf School Licences - Allocation.DOC

Activity	No. of Licences	Student - Teacher Ratio	Maximum Numbers	Number of Classes / day
Sailing Schools	2	Capacity of boat	8 small boats - Shaws Bay 12 small boats Richmond River	8.30am - 5.30pm during daylight hours
Commercial Boat Use of Public Wharves and Pontoons	Not limited	Capacity of boat	Capacity of boat	Not limited
Pony Rides for Private Parties	Not limited	1 instructor per 1 client	4 ponies at any time	8.30am - 5pm during daylight hours
Guided Bike Tours	Not limited	1 instructor per 9 clients	10 bikes at any time	2 sessions per day per operator
Hot Air Ballooning	Not limited	Capacity of basket	1 hot air balloon at any time using a reserve	Not limited
Bike Hire	Not limited	N/A	Capacity of business location for holding bikes	Not limited
Other Activities	To be decided on the merit of each application and with reference to other commercial activities already in operation and by determination of Council through a review of this policy.			

5.6 Applications for commercial activities licences

- (a) All applications shall be in writing on the approved form, setting out the proposal in detail and accompanied by the appropriate application fee.
- (b) Any application for a licence under this policy that fails to meet the requirements as outlined in the Application Guidelines shall be rejected with reasons given and returned to the applicant by Council.
- (c) All applications for licences under this policy shall be assessed and determined by the General Manager of Council or by his or her delegate, in consultation with representatives from, but not limited to, Department of Lands, NSW Maritime Authority and Cape Byron Marine Park, where appropriate.
- (d) All applications for licences are to be assessed and determined within a three month period from date of receipt.

5.7 Commercial activities licences - operating requirements

Operating requirements for the listed commercial activities are available in the Application Guidelines that accompany the Commercial Activities Licence application form.

5.8 Renewal of commercial activities licences

The renewal of an expired licence will depend on the following:

- (a) Strict compliance with the policy and licence conditions is required.
- (b) The renewal of a licence will be dependent on the licensee showing a satisfactory standard of performance in all areas.
- (c) Breaches of licence conditions, or lapses in standards, may result in licence cancellation.
- (d) Council, reserves the right not to renew licences to replace an expired licence.
- (e) If a licence becomes vacant, Council reserves the right to determine how it wishes to allocate that vacant licence. Options that Council will consider include, but are not limited to the calling for tenders or expressions of interest for the licence.
- (f) A renewal of a licence will be issued for a period of one year unless the issuing of the licence is subject to a tender and in this case licences will be issued for three years.

5.9 Matters to be considered in assessing commercial activities 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 the keeping of records and prompt payment of fees.
- (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 minimal impact techniques, environmental protection and ethics of appropriate behaviour.
- (g) Demonstrated compatibility with the Reserve purpose or any Plans of Management.

5.10 General provisions for commercial activities licences

The general provisions listed in this clause will apply to all licences.

- (a) Licences will be issued for a maximum period of twelve months; however this period may be extended to a maximum period of three years if a tendering process is followed.
- (b) Licences are not tangible assets and cannot be transferred to a new operator.

- (c) Licence conditions will use industry standards, where applicable.
- (d) Should a licence holder fail to operate a licence for a continuous period of four months, then the licence will lapse, unless Council has provided prior approval.

5.11 Additional annual commercial activities licences

Council must determine any amendment to the number of licences issued for each activity by a review of this policy.

While most licence applications fall into the listed activity categories it is recognised that other activities may be proposed. These applications will be considered on their merits and with reference to other commercial activities already in operation and the general requirements set out in this policy. The issuing of a commercial licence for an activity not listed in this policy will be subject to approval by a resolution of Council.

If there are more applications than allocated licenses then Council may call for tenders or expressions of interest for the limited number of licenses and in this case the applications will be assessed on their merits.

5.12 Breaches and unlicensed activities

Where there is any breach of any licence conditions, including unlicensed activities, Council is to take all necessary action to remedy the breach. This includes, but is not limited to, the issuing of written and verbal warnings, undertaking injunction proceedings and other legal action and where appropriate the removal of the activities from the reserve by an employee of the Council or NSW Police.

5.13 Revoking of commercial activities licences

- (a) Council reserves the right to revoke any licenced activities for management reasons including, but not limited to, environmental protection, public safety and changes in policy or legislation.
- (b) The licence may also be terminated in the following circumstances:
 - If any fees payable, or any part thereof are in arrears for 30 days, whether formally demanded or not;
 - If proof of current public liability insurance cover is not provided prior to commencement of, or during a licence period.
 - If the Licensee breaches any conditions of this policy or the licence;
 - If the Licensee has committed an act of bankruptcy; and
 - If the Licensee commits an unlawful act or breaches the requirements of any other relevant Authority.
- (c) If the licence is to be terminated due to the circumstances set out in this clause, the Council, may terminate the licence by:
 - Notifying the Licensee to that effect; or

- Restricting the Licensee from operating the activity on the reserves, by force if necessary; or doing both.
- (d) If a breach of a condition in the licence is witnessed and recorded by a Council Officer or reported to Council and investigated, a written warning may be forwarded to the operator. Council reserves the right to issue verbal warnings for minor deviations from the licence.
- (e) A Licensee has a right to provide a written response to a warning within 28 days. The General Manager has the authority to determine whether or not the warning should be waived based on the response.
- (f) If a Licensee receives three written warnings, within a three year period, the Council will terminate the licence.
- (g) While a Licensee holds a one year licence the issuing of two written notices in that period will result in termination of the licence.

5.14 Nature and determination of fees and charges

- (a) Council will determine the fees and charges applicable as per this policy, as part of its Management Plan and budget deliberations.
- (b) Council will determine, at a minimum, the following fees;
- Commercial Activities Licence – Application Fees
 - Commercial Activities Licence – Licence Fee based on the level of impact that the activity has assigned.

Category
Very Low impact
Low impact
Medium Impact
High Impact
Tender

- (c) The Licence application fee must be paid when an application is submitted to Council and this application fee will not be refunded should the application be refused.
- (d) The Licence fee must be paid annually in advance.
- (e) Fees will be determined taking into account, and not limited to, the following:
- nature of the activity,
 - scale of its operation,
 - use and impact on the reserve, and
 - impact on the community both beneficial and detrimental.

The following table details the level of impact that each of the approved commercial activities have been assigned. This will determine the level of fees that will be paid.

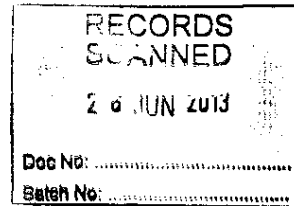
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Impact Category	Activity
Very Low impact	Ecotourism tours
	Personal Fitness Trainer
	Horse Riding access to South Ballina Beach
Low impact	Hot air ballooning
	Dog training classes
	Kitesurfing
	Kayaking & Canoeing
	Wind surfing
	4WD Fishing tours
	Guided Bike tours
	Sailing Schools
	Pony Rides for Private Parties
	Medium Impact
Skydiving	
Hang gliding & paragliding	
Group Fitness training	
Commercial fishermen	
Beach Horse Riding	
Commercial Use of Public Wharves and Pontoons	
High Impact	Sea plane rides
	Helicopter rides

- (f) Council will be calling for tenders for the available Commercial Activities Licences for Surf Schools, Stand-up Paddle Boarding and Elite Surf Schools and fees will be set as part of this process.

6. REVIEW OF POLICY

The Management of Commercial Activities on Public Land Policy is to be reviewed at least every four years or when new activity licenses require approval by Council.



To

General Manager
Ballina Council
Cherry St
Ballina NSW 2478
(02) 6686 4444

20/06/2013

re: Surf School Tendering Process

Dear Paul,

As an existing and functional surf school in Ballina Shire, I would prefer, if possible, that we went

down the road of fixed surf school fees increased by x percent each year rather than go to tender.

I've heard there have been applications of interest for additional licenses in the area. I feel that

any licenses that have been sub-let out (i.e. Summerland to Mojo) could go to tender as if you need sub-let

and henceforth cannot successfully operate your own business the opportunity should be given to

someone else to do so. However, if you have run a safe and successful operation for the 3 year license

duration I feel you've earned the right to continue operating that license without having to undergo a

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bartering tender process.

Hopefully this is an option you will consider as fair and viable and hence present it to the councillors.

Yours Thankfully,

Terry Hannon

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