

**POLICY NAME:** DRAFT REVIEW  
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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## 10.9 Policy (Review) - Commercial Activities on Public Land.DOC

### 1. OBJECTIVE

To ensure that there remains an appropriate balance between passive and active recreation on public land for residents and visitors.

To clarify what commercial activities may be carried out on public land and to regulate and manage those activities.

### 2. DEFINITIONS

In this Policy the following definitions apply:

<b>Application Guidelines</b>	The conditions required to be met both to hold and operate a Commercial Activities Licence. This is a separate document maintained by Council.
<b>Commercial Activities Licence</b>	The Council approval for the operation of a commercial activity on public land in Ballina Shire.
<b>Council</b>	Ballina Shire Council
<b>Educationally based community activities</b>	Organised activities for the purpose of providing and distributing educational information. Not for profit.
<b>Licence</b>	Refers to a Commercial Activities Licence.
<b>Mobile Food Vendors</b>	Are vehicles that sell food, ice cream, coffee etc.
<b>Passive Recreational Activities</b>	Low key and low impact recreational / leisure activities undertaken by people on an informal basis.
<b>Political Functions</b>	Organised gatherings of people, for the purpose of expressing political beliefs.
<b>Religious Functions</b>	Organised gatherings of people, for the purpose of expressing religious beliefs.
<b>Public land</b>	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.
<b>Social Gatherings</b>	Small gatherings of people, meeting on an informal and social basis.
<b>Sporting Events</b>	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 Shire Council Local Environmental Plan
- Ballina Shire Council Filming Policy
- Ballina Shire Council Market Policy
- Ballina Shire Council Events on Public Land Policy
- Ballina Shire Council Weddings on Public Land Policy

### 5. POLICY

#### 5.1 Activities requiring a commercial activities licence

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

- (a) Carry out or be involved in commercial and / or business activities on public land.
- (b) Carry out 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
- Spreading of ashes
- Volunteer rescue organisations - training days

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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 – Events on Public Land Policy
- Weddings - Weddings on Public Land Policy.

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

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

Mobile vendors, including food and non food items, are not permitted to operate on beaches or public reserves in Ballina Shire. This does not include the operation of such vendors on public roads.

### 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 Per 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 Crown Lands. Ballina Shire Council requires the licensing of the operation for its use of the public road network to access the beach. Council places no operational conditions on this activity.			
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	4 clients per tour	4 clients	Not limited

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Ballina Shire Council

DRAFT REVIEW Commercial Activities on Public Land

Activity	No. of Licences	Student - Teacher Ratio	Maximum Numbers	Number of Classes Per Day
	limited	operator		
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)	6	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
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	Not	1 instructor per 1	4 ponies at any time	8.30am - 5pm during

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Activity	No. of Licences	Student - Teacher Ratio	Maximum Numbers	Number of Classes Per Day
Private Parties	limited	client		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 activity licences

- (a) All applications shall be submitted in writing, on the Council approved Commercial Activities Licence application form, setting out the proposal in detail and accompanied by the appropriate application fee.
- (b) Any application for a licence that fails to meet the requirements outlined in the Application Guidelines shall be rejected with reasons given and returned to the applicant by Council.
- (c) All applications for licences shall be assessed and determined by the General Manager of Council or by his or her delegate, in consultation, where necessary, with representatives from, but not limited to, Crown Lands, NSW Maritime and the Cape Byron Marine Park.
- (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 activity licences

Any renewal of an expired licence with an existing Licensee will depend on an assessment of the following:

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

In respect to the renewal of an expired licence with an existing Licensee, Council reserves the right not to renew any licence, not to offer the licence, and to call tenders or expressions of interest for the renewal of a licence. This decision will be made by the elected Council.

If a licence becomes vacant, Council reserves the right to determine how it wishes to allocate that licence. Council's preference is to call tenders or expressions of interest when a licence becomes vacant to allow all interested parties an opportunity to obtain that licence.

A renewal of 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 long term licence. Longer term licences will normally be issued for a maximum period of three years, with these licences requiring Crown approval. Any decision to offer a licence for a period of more than one year will be determined by the elected Council.

Current practice is for Council to only provide three year licences for Surf Schools, Elite Surf Coaching and Stand Up Paddle Boarding due to the high level of interest in these licences and the limited number of licences available.

### 5.9 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 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 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.

### 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 based on a resolution of the elected Council.
- (b) Licences are not tangible assets and cannot be transferred to a new operator.

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- (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.
- (e) Licensees are only entitled to hold one licence within each licensed activity.

### 5.11 Additional commercial activity licences

The elected Council will determine any amendment to the number of licences issued for each activity through a review of this policy.

While most licence applications fall into the activities listed in this policy 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 licences then Council may call for tenders or expressions of interest for the limited number of licences 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 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 activity licences

- (a) Council reserves the right to revoke any licensed 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:



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- 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) Where a Licensee holds a one year licence the issuing of two written notices in that period will result in termination of the licence.
- (g) If a Licensee receives three written warnings, within a three year period, Council will terminate the licence.

### 5.14 Nature and 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;

- 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.

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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.

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	Bike hire
	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.
- (g) No pro-rata refunds will be provided where a licence is cancelled, terminated or handed in, during the year for which the licence fee is applicable.
- (h) Where a tender or expression of interest process is conducted due to a vacant licence Council will ensure that such a process will result in the new licensee paying the same fee as other licence holders for the same commercial activity.
- (i) For Surf Schools, Elite Surf School and Stand Up Paddle Boarding, which are typically offered longer term licences (i.e. three years) Council will confirm the value of these licences towards the term of the licence. Options for determination will include, but not be limited to, indexing at or above CPI, independent valuation, price based on turnover or calling fresh tenders / expressions of interest to assess the value of the licences.

### 6. REVIEW OF POLICY

This policy is to be reviewed at least every four years or when new activity licences require approval by the elected Council.

**Sandra Bailey**

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**From:** Nathan Folkes [nat@mojosurf.com]  
**Sent:** Sunday, 8 September 2013 10:10 PM  
**To:** Ballina Shire Council  
**Cc:** craig.jenkins@business.nsw.gov.au; Leanne Paige; Morgan Dittman  
**Subject:** Paul Hickey 475-02 Commercial Activities Policy - Review  
**Attachments:** MOJO AEO DOCUMENT (1).pdf

Dear Ballina Council

We refer to the letter dated 14 August 2013.

We would like to address each summary point of the proposed changes to the existing policy a) through to h)

We are proactively seeking support for our businesses from the policy level so we can continue to grow in the region, support our staff, the community, industry and activity operators.

- **On point a)** We would like to commend you on your support and proposed decision to hand the licenses back to operators without having to go to a formal tender process. Surf schools and activity operators in the region work very hard to promote the regions natural assets, the out doors, activities and operate businesses in the shire. If this is adopted this would be a real benefit to current operators being able to further focus on operating professional businesses in the shire.
  
- **On point b)** We would like to recommend here that the license first be offered to existing operators who have been developing business in the region as they may be experiencing and investing in growing in their business in the region. If this is not taken up then call for EOI from the broader market.
  
- **On point c)** We feel so long as the council is comfortable with this increase in licenses and have the limited resources required here for a balanced position in relation to the community and commercial operators then this may be a positive opportunity for some smaller operators looking to enter the Elite Surf School section of the market.
  
- **On point d)** We do not agree with the restriction or reduction from 2 allowable licenses back to 1 allowable license. Some of our operators have been planning for several years to grow their business based on the opportunity offered and encouraged by the existing policy. Specifically in Mojosurf's case we have worked for several years investing in our teams, infrastructure and the market to be able to grow in this region. To alter this policy now would restrict our opportunity to trade at our full and potential capacity and take away years of planning and investment. We strongly recommend that this policy is not adopted and we are offered the opportunity to grow our surf school in the region. We understand in the last meeting there was the mention of a possible monopoly. We feel this will not be an issue so long as the pool of singular operational capacity is no greater than 40% for all allocated numbers.

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- **On point h)** As operators we are always prepared to contribute to the community infrastructure that we all use. So we welcome set fees for operating on the beaches. As small business operators it is good to know your costs in advance for planning. A variable cost basis if set too high will only damage the industry we currently have and potentially deter operators from working in the region if the prices are not sustainable.

It is also important to understand the economics and contributions the activity industry make to the community via direct and indirect contributions.

Surf school operators have helped save many lives on un patrolled beaches over the years but we also have many staff that live in the Ballina shire and contribute to the communities we live in. Our groups that we bring are show cased to the region with many operators choosing to stop at corner stores, surf clubs and other venues for supplies and snacks.

To support the small businesses and industry Surf Schools and activity operators have developed we would like to make some recommendations which would see us developing a best practise industry that is able to plan, invest and become more sustainable in the communities we operate.

Recommendations for a stable and sustainable activity and operators industry:

- For licenses to be increased in tenure to 10 years with review periods along the way. It is very non commercial to have to be developing business without any real long term opportunity for the staff or proprietors.
- Licenses to be made renewable at the end of any term with a review process.
- That the goodwill of a business owner can be passed on after the commitment and good work they have invested into their business over the years if they decide to one day onsell. The license transfer is approved by council for approved new operators.
- To introduce a business and support panel or work shops to assist businesses in growing in the region and promoting the region.
- The ability to apply for an increase in capacity or an extra license if the business has proven that it is growing in the region and not impacting on the community through a review process.

Please see further our Activity and Experience Operators 4 pager on our business and industry and the benefits Mojosurf alone brings to regional areas within NSW. There are many other businesses like us contributing on a daily basis.

Please help support our industry with supportive policy.

Kind regards

--

**Nathan Folkes AKA NAT**

*Founder and Managing Director Dude*

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**S: [skype mojoitup](#)**

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## Support Activity and Experience Operators



- We are an industry
- We create jobs and careers
- We support education, tourism and NSW
- We compete with the world
- We disperse spending into regional NSW

*We need supportive policies to help us plan, invest and grow.*



## Support Activity and Experience Operators

### **Mojosurf Pty Ltd Profile:**

(One of the many activity operators in NSW)

- Mojosurf started operating in 1998 with 2 staff and \$10k capitol investment.
- Mojosurf is owner operated.
- We teach people from the world over how to be safe in the ocean and learn how to surf.
- 95% or 20833 of our clients are Uni students, young travellers and backpackers from overseas.
- We employ 60 to 80 people seasonally adjusted in regional areas of NSW.
- We will spend over \$1.8million in wages for 2013/14.
- Our total spend in regional areas will be \$4.1 million for 2013/14.
- We have tirelessly worked to achieve our vision and by this we have built an industry, a business and created many jobs.
- We are passionate about what we do and who we are.
- We have an international sales and marketing team and travel the world promoting Australia, NSW and surfing.
- We invest in regional and rural NSW.
- We need supportive operational policy to help us grow
- Our greatest threat are not the sharks in the sea but the policy we operate under that determines our business future.
- There are many companies just like us waiting to grow with proactive and supportive policy.



## Support Activity and Experience Operators

### Recommendations:

- Long term standardised license agreements for all operators and regulatory bodies.
- 10 year license agreements with review periods. This promotes good planning, staff development and Investment.
- Internal entity ownership changes are permissible with approved changes and new operators holding relevant experience and qualifications.
- Transferability in the event of a business being sold to approved operators. Without goodwill transferability a persons business has no value hence no real investment, planning or effort can be applied long term.
- A renewable license agreement after a review process for existing operators without the requirement for tender processes or EOI's.
- The ability to apply for new and additional licenses in any area based on specific impact studies and reports for the area.
- Set license pricing for activity operators so we can financially plan for our businesses.
- A business development and support panel for businesses who have visions of growing in the industry and regions.
- Allow operators to hold more than one license to operate in a region.





19<sup>th</sup> June 2013

To whom it may concern;

As the National Sporting Organisation for the sport of surfing in Australia, Surfing Australia is writing to express its serious concern in regards to the tender process used for surf schools by a number of councils around Australia, including the Byron Shire Council.

The Surfing Australia Surf School Network currently has over 105 member surf schools operating on over 500 beaches across Australia. The surf schools industry is one of the most resilient industries on the Australian coastline offering both the local and visiting communities' safe and informative access to one of Australia's most iconic pastimes; however the tender process used by a select few councils is threatening its ongoing existence.

Under these tender processes, Surfing Australia is seriously concerned as to the following points:

- There are absolutely no terms or conditions governing surf schools' licensing renewals upon expiration, rendering businesses potentially worthless beyond their tenures.
- Any options for mid to long-term investment or growth by these businesses are virtually removed due to their short-term licensing periods
- Future planning and long-term employment options are undermined
- There is no opportunity to transfer these licenses during the term leaving these businesses essentially unsaleable
- The licensing fees offered to council by vying surf schools play a significant role in determining who acquires a limited number of licenses, favouring those with the deepest pockets

Surfing Australia understands the need by council to provide a balance between business activities; general community use; and ensuring ecologically sustainable use and protection of Council managed land and beaches. However, Surfing Australia has successfully worked with a number of councils around Australia in developing licensing policies that fit the needs of all factions without the negative impact of the tender process, and therefore strongly disputes the need for this inefficient and highly unjust system.

Surfing Australia implores these councils to cease using the tender process in regards to surf school licensing, and review the alternatives in collaboration with Surfing Australia as the peak body for the sport of surfing in this country as recognised by the Australian Government through the Australian Sports Commission.

Please do not hesitate to contact Surfing Australia to discuss this matter further.

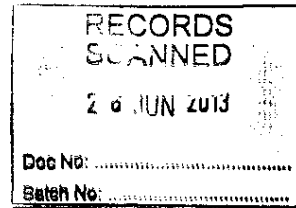
Yours faithfully,

Jim Hughes

Sport Development Manager

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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

Owner Kool Katz Learn To Surf

4/70 Shirley St.,

Bryon Bay 2481

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