

POLICY NAME: COMMERCIAL ACTIVITIES ON PUBLIC LAND
POLICY REF: C10
MEETING ADOPTED: 26 September 2013
Resolution No. 260913/3
POLICY HISTORY: 230611/25; 280411/1; 270510/39; 131207/22



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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:

| | |
|---|--|
| Application Guidelines | The conditions required to be met both to hold and operate a Commercial Activities Licence. This is a separate document maintained by Council. |
| Commercial Activities Licence | The Council approval 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 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 | 5 | 1 instructor per 8 clients | 20 clients | Each Surf School 2 sessions/day |
| Kayak & Canoe Tours | Not limited | 1 instructor per 4 clients – high risk 1 instructor per 12 clients - low risk | 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 |

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Ballina Shire Council

Commercial Activities on Public Land

| Activity | No. of Licences | Student - Teacher Ratio | Maximum Numbers | Number of Classes Per Day |
|--|-----------------------|---|---|---------------------------------------|
| 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 | 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 | 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.

- (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.

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:
 - 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.

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) 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.
- (g) 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.
- (h) 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.

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From: "Scott McCartney" <smccartney@australianlifeguards.com.au>
Sent: Wed, 9 Apr 2014 10:57:39 +1000
To: "Sandra Bailey" <Sandrab@ballina.nsw.gov.au>
Subject: RE: Review of Ballina Shire Council's Commercial Activities on Public Land Policy

Hi Sandra,

Sorry for the late reply as I have been away for the past week.
I have spoken to James Brideson over the phone before I left about this matter.

After reviewing the documents below (relevant section A,B & C) my recommendations are as follows:

Qualifications.

Section A: I believe that one of the 3 qualifications stated in section A should be a requirement for Kayak groups.

These awards focus on the following points:

- Safety and well being (suitable for any water based organisation).
- Surf awareness and skills (Kayak tours must have a good understanding of the ocean/river mouth as well as being fit and healthy).
- The human body (helps understand the capabilities of the human body).
- Resuscitation (important for anyone dealing with activities near water).
- Defibrillation and basic oxygen (only required if they have the lifesaving equipment, but good to have the required knowledge).
- First aid (important for any injuries that may occur).
- Radio operations (doesn't relate to Kayak tours)
- Communications (important to understand how the surf life saving community and other emergency services communicate as they will be required to if an incident occurs on a tour).
- Rescue techniques (only relates if they carry rescue equipment with them during tours).
- Carries and supports and Patrols. (doesn't relate directly to Kayak Tours).

As not all of these topics will relate directly to the Kayak groups there is no other courses that will cover this many broad topics.

Section B: If Section A and C are required than this Section could be removed as it is covered in both section A and C.

Section C: I would make Section C- Senior First Aid compulsory as it should be required in any workplace and gives instructor a great knowledge on how to respond and assist in any first aid incident.

I see the issue with Section A as it takes a few weeks to obtain the award but due to the dangers that are involved with Kayak Tours I believe it is relevant.

If the Kayak Tours had a group that needed there Bronze Medallion and it was over the minimum number required to run a Bronze Medallion then there are instructors that can run 2 days courses instead of the 6 week course done through the local SLSC.

If you need anything else let me know.

Regards
Scott

Sandra Bailey

From: Gary Murphy <gary.murphy@richmondvalley.nsw.gov.au>
Sent: Friday, 11 April 2014 10:04 AM
To: Sandra Bailey
Cc: 'ballina jet boat surf rescue'
Subject: FW: Review of Ballina Shire Council's Commercial Activities on Public Land Policy
Attachments: jet boat surf rescue.pdf

Sandra

Can you please pass on these comments. Sorry for quick email but JRB wont meet again before your deadline and I have done an email consult. There was a bit of discussion when the newspaper article appeared so we had a reasonable idea of the issues.

I have cc'd the JRB email account

Dear Paul

Thanks for the opportunity to comment on you policy regarding commercial activities on public land.

Overall, we repeat our previous advice *that there needs to be a risk based approach depending on where and how Kayaking is to be undertaken. On open water, the ocean and in areas where ocean swells impact the river, a Surf Life Saving qualification may be appropriate. At other locations on the Richmond River, a closed water based swimming/first aid qualification may be appropriate. On smaller water bodies and creeks etc no qualification may be required as life jackets may be adequate under supervision.*

It would appear that kayak/canoe operators are quite specific in identifying where they intend to operate, hence the advice above. We realise this may pose management challenges.

To specifically address the content of the current policy from a JRB perspective (using generic language);


Qualifications – Part A – Surf Bronze for Surf activities, pool bronze for non surf. The SRC is a base level qualification.
Part B – ARTC is about application of oxygen, defibrillation and mechanical airway clearance. We are assuming your tour operators wont have this equipment with them and its probably not really feasible to expect them too. Resuscitation techniques are a component of Bronze medallion and Senior First Aid training.
Part C – basic first aid is taught with both Surf and Pool Bronze qualifications.

Risk and Operational – this process should determine the qualifications required.

Other conditions – Part 4. what's a "high risk tour" v's a "low risk" tour and why are prescriptive ratios identified when this should also be determined by risk assessment as there may be "medium risk" activities. If ratio of 1:12 is ok then max craft in (iii) should be 26 = 24 participants and 2 crew.

The policy doesn't specify the mandatory use of life jackets and the standard of same. The reality is that the wearing of a PFD will minimise many risks associated with these activities and from a risk perspective is possibly more important than mandating qualifications for operators compared to a risk based approach.

Gary Murphy
President
Ballina Jet Boat Surf Rescue

 Please consider the environment - do you really need to print this email?

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Dear General Manager,

We write to you with regard to permits for Stand Up Paddle board instruction and tours in the Ballina Shire Council.

My husband and I, residents of the Ballina Shire Council, recently began a Stand Up Paddle small group tour business. Upon enquiries to the BSC we were informed there is only space for 2 operators within the Shire. Both permits were apparently renewed for an additional 3 years in January 2014 (my initial enquiry being Dec 2013 prior to the renewal) without expressions of interest sought from other parties OR being advertised for tender. It is my understanding that at least one or possibly both of these operators do not actively use the permit to run Stand Up Paddle board tours and/or lessons in the BSC, and are therefore doing little to generate tourism income for this activity for the Shire.

We also understand that there is an unused permit for kayak tours in the Shire. Stand up paddle boards and kayaks are both minimal impact activities based on similar natural resources and it may be appropriate for the Shire to consider issuing this permit to us in the interim until the existing permits expire.

Our small group tours will consist of 3-10 clients experiencing guided Stand Up Paddle tours in natural settings. We plan to offer customers the opportunity to experience other attractions in Ballina Shire and to purchase food and beverages at local establishments. As most tourists primarily travel to and remain in the Byron Bay area, it would be a great opportunity to bring further tourists into the Ballina Shire supporting local businesses with minimal impact.

In light of the above, may we request that you issue an additional permit to allow us to conduct our business in the Ballina Shire.

Kind regards,

Tausili and Mel Toilolo

Sandra Bailey

From: Tausili Toilolo <tausili.toilolo@gmail.com>
Sent: Sunday, 2 March 2014 8:00 PM
To: James Brideson
Subject: Re: Information relating to Commercial Activity Licenses for Stand Up Paddle boarding and Kayaking

Dear James,

Thank you for your time to discuss our recent inquiry and your email response regarding the issuing of Commercial Activities Licenses within the Ballina Shire.

We wish to appeal against the decision to refuse us a license for Stand Up Paddle Boarding (SUP) and provide the following comments in support of our request:

SUP is one of the fastest growing sports in the world. We are a small family partnership residing within the Ballina Shire and our company aims to provide a high standard of Stand Up Paddle Board experiences in a range of safe locations to residents, educational organisations, disability services and visitors to the Northern Rivers region. We have 12 new paddle boards of varying sizes, a 12 person commuter bus, suitable trailer and the necessary Stand Up Paddle Boarding Instructor qualifications and insurances.

Our company, Byron Explora Stand Up Paddle Boards and Tours, aims to contribute to a viable and sustainable tourism industry within the Shire by enabling clients to visit other attractions en route to SUP locations. eg. food, beverage and other tourist attractions.

I first made inquiries with BSC in November 2013, then again in December 2013 and again in early January 2014. All of these contacts we made prior to the renewal of licenses later in January 2014.

Ballina Shire Council has renewed two SUP licenses. We believe one of these licenses are contrary to the policies listed under the link you provided in your email of February 26, 2014.

5.8 (b)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.

We have personally viewed the detailed MOJO Surf website http://www.mojosurf.com/products/byron_bay_surf_school. There is no indication on the site that MOJO offers SUP tours or lessons.

We have further inquired with Sam, a MOJO representative, on the 1800 number listed on their website as to their offer of SUP. We were advised they only offer Surfing. With more prompting about the possibility of Kayaking or Stand Up Paddle, she advised that they have 4-5 boards that are quite large and may possibly be able to be put on the back of a surf school bus should room allow to enable people to Paddle Board on Lake Ainsworth. When asked if we could go and watch this activity to get an idea of it, she advised "not really as we only do this once maybe twice a month or not at all".

In our discussion, you noted these licenses have been renewed for an additional 3 years. According to the policy

5.8 (b)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.

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According to Sam, MOJO Surf have 4-5 boards only. They appear to have no other equipment specific to SUP. This investment (max value of \$3000) does not justify the renewal of their licence based on investment in the license by the operator. Our inquiries also lead us to believe MOJO Surf have not invested in qualifying staff specifically as SUP Instructors. This is an industry standard qualification.

By comparison, we have invested over \$23 000 in setting up our business specifically for SUP operations.

Whilst MOJO would most likely have Public Liability insurance, I understand that they sub contract to their instructors and I am aware that individuals have in the past taken groups for surfing instruction in the Ballina Shire without the required liability insurance necessary for a sub contractor.

The Ballina Shire license conditions permit 2 sessions per day per school with up to 7 boards per instructor and varying client numbers depending on the site being used.

Based on our investigation, even if MOJO was taking 1-2 trips per month with 5 boards (and only allowed 3 clients in Lake Ainsworth) then this would total 3-6 clients a month. This falls short of the capacity provided for in the Ballina Shire Policy of 180 for Lake Ainsworth through to 840 in the Richmond river by this licensee alone.

Our business model aims to bring 1-2 tours/day of varying client numbers dependent on the location of intended use into the Ballina Shire up to 4 days per week. Based on the Ballina Shire Council policy this would equate to between 12 to a max of 54 clients per week. These figures are well short of the sustainable numbers permitted by the Shire's policy.

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.

(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.

It is noted that the MOJO staff member confirmed via telephone that the license is not regularly used (in accordance with the policy) nor are they regularly seen by us utilising the approved sites within the Ballina Shire for the activity of Stand Up Paddle Boarding.

We appreciate your offer to investigate whether the operator is using their recently renewed license and look forward to receiving your advice on this matter. We would appreciate the opportunity to secure such license in the event you find it is not being utilised. Alternatively, we request that council review the current usage by the 2 permit holders and ask that you seek an amendment of the Policy by Council to issue an additional license for our use based on the numbers that have been deemed environmentally sustainable and the limited number of clients currently accessing the Ballina Shire for the purpose of Stand Up Paddle Boarding and associated tourism.

Kind regards,

Tausili and Melanie Toilolo

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From: "Info Summerland Surf School" <info@summerlandsurfschool.com.au>
Sent: Tue, 11 Mar 2014 09:23:58 +1100
To: "Ballina Shire Council" <council@ballina.nsw.gov.au>
Subject: Commercial License sale

To Ballina Shire Council

Dear Sir/Madam,

The owners of Summerland Surf school have decided to retire and sell the surf school. Summerland Surf School has a current licence to operate on most of Ballina Shire's beaches. As a surf school we need access to the surf and as such must have a licence. The Surf School licence is a vital component of the Summerland Surf School business.

Summerland Surf School would like to know the options available by Ballina Shire Council for the sale of the business including the existing licence. The licence would not be transferred out of Summerland Surf School's name as per the contract. Summerland Surf School should be able to sell its business with the licence like any other business.

With kind regards,
Simon & Lorraine Freedon
Summerland Surf School

Sandra Bailey

From: Info Summerland Surf School <info@summerlandsurfschool.com.au>
Sent: Monday, 14 April 2014 9:04 AM
To: James Brideson
Subject: RE: Response Regarding Sale of Business and Commercial License - Summerland Surf School - Freeden

Dear James,

Thank you for your response to our email regarding the potential sale of our business. We have now moved forward with finding a purchaser of Summerland Surf School. As advised this will continue under the Summerland Surf School business name but be operated by the new owner. We wish for our proposal to be put to council that we would sell our Summerland Surf School to Mojosurf and for the licence to be retained and operated by Summerland Surf School under the new ownership.

The inability to transfer licenses and allow more than one license per an operator would restrict us from selling our business and this would be an unfair restriction on the commercial viability of a business we have spent 15 year's operating successfully in the Ballina Shire. We would like the opportunity to be put forward the proposed change to the elected council by informing the councillors of the fair and reasonable business proposition that will only be available to us if council can change the ability to sell a license and the only recently varied ruling on the amount of licenses a licensee can hold.

Please advise when we can present our case to the councillors?

Regards,

Simon Freeden

-----Original Message-----

From: James Brideson [<mailto:jamesb@ballina.nsw.gov.au>]
Sent: Thursday, 20 March 2014 4:29 PM
To: 'info@summerlandsurfschool.com.au'
Subject: Response Regarding Sale of Business and Commercial License - Summerland Surf School - Freeden

To Simon,

In response to your email dated 11 March 2014 I wish to advise as follows.

You are correct in stating that Summerland Surf School is able to sell its business, however any sale of transfer of your commercial activity licence must comply with the licence conditions. As per that licence and as per Council's Commercial Activities on Public Land Policy licenses are not tangible assets and cannot be sold or transferred to a new operator (clause 5.10 of the Policy). Council's Commercial Activities Policy also states that: "If a license becomes vacant, Council reserves the right to determine how it wishes to allocate that license. Council's preference is to call for tenders or expressions of interest when a license becomes vacant to allow all interested parties an opportunity to obtain that license" (clause 5.8)

You have agreed to these conditions in signing your licence.

As these are licence and policy conditions determined by the elected Council the conditions can only be changed by the elected Council.

Therefore if you wish to proceed with a sale or transfer of your licence please confirm the details of that sale / transfer to allow the matter to be reported to the Council. The sale details do not need to relate to price but rather to whom you propose to transfer the licence and the effective date of that transfer. In preparing your response I also draw your attention to clause 5.10 (e) of the Commercial Activities Policy which states as follows:

10.13 Policy (Review) - Commercial Activities on Public Land.DOC

"Licensees are only entitled to hold one licence within each licensed activity".

This means that you are not entitled to transfer / sell your licence to an existing licence holder, unless the elected Council also resolves to over-ride that clause.

I hope this clarifies matters for you and if you wish your proposal to be reported to Council please respond in writing with the details as requested.

Should you require any further information please contact me at Council.

Regards

James Brideson | Natural Resource Officer Civil Services Ballina Shire Council

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