

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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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	Bike hire
	Skydiving
	Hang gliding & paragliding
	Group Fitness training
	Commercial fishermen
	Beach Horse Riding
High Impact	Commercial Use of Public Wharves and pontoons
	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: "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 Freeden
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:

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"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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