

POLICY NAME: COMMERCIAL ACTIVITIES ON PUBLIC LAND
POLICY REF: C10
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1 OBJECTIVE

The objectives of this policy are:

- a) to ensure there is an appropriate balance between passive and active recreation on [public land](#) for residents and visitors; and
- b) to clarify what commercial activities may be carried out on public land, and to regulate and manage those activities.

2 POLICY

2.1 Activities Requiring a Commercial Activity Licence

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

- a) Carry out or be involved in commercial and/or business activities on public land
- b) Those commercial and/or business activities include when acting upon, crossing, transferring on, off or over public land and infrastructure not limited to public land, operational land, road reserves and some water bodies.

2.2 Activities Not Requiring a Commercial Activity Licence

The following activities can be carried out on public land without obtaining a [licence](#) or approval:

- a) Emergency services performed by recognised emergency service organisations
- b) [Passive recreational activities](#)
- c) Informal [social gatherings](#)
- d) Spreading of ashes
- e) Volunteer rescue organisations – training days.

2.3 Activities Not Requiring a Commercial Activity Licence but Requiring Other Approvals

- a) Separate approval is required to carry out some commercial and non-commercial activities on public land, and the approval process is covered by other Council policies. Activities requiring approval under other Council policy areas include for example: Filming, Markets, Special Events, Weddings, Mobile Vendors, Busking, Footpath Use, Signage, Structures and Grazing.
- b) Schools, Universities, recreational sporting clubs, religious organisations and the Lake Ainsworth National Fitness Camp do not require a Commercial Activity Licence but require Council approval.

2.4 Public Land Management

Council manages parks, reserves and sports fields that are classified as either Community or Operational Land. Council also manages areas of Crown land on behalf of the State Government and may issue licences under a management arrangement. Additionally Council manages some parks and reserves on land designated as road reserves.

The legislative authority for this Policy is to be found in:

- Local Government Act 1993 ss 35, 46, 68 and 632
- Local Government (General) Regulation 2005 cl116 and 117
- Crown Land Management Act 2016 Part 3 and Part 5 Div 5.6
- Crown Land Management Regulation 2018 Pt 4
- Roads Act 1993

2.5 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:
 - i) Commercial Activities Licence –application fee (non-refundable) upon application
 - ii) Commercial Activities Licence – licence fee (annual), payable prior to commencement, based on the level of impact assigned to the activity:

Impact Category
Low impact
Medium impact
High impact
Tender

- c) Fees will be determined taking into account, and not limited to, the following:
 - i) Nature of the activity
 - ii) Scale of its operation
 - iii) Use of and impact on the public land
 - iv) Impact on the community, both beneficial and detrimental.
- d) No pro-rata refunds will be provided where a licence is cancelled, terminated or handed in during the year for which the application and licence fees are applicable.
- e) For tendered activities (Surf Schools, Elite Surf Coaching and Stand-up Paddle Boarding), which are typically offered longer term licences (i.e. three years), Council will confirm the value of these licences and the applicable Licence fees following completion of the tender process. Options for determination of the initial Licence fee

and any annual increase in the Licence fee may include, but will not be limited to, a fixed percentage increase, indexing at or above CPI, independent valuation, a Licence fee based on turnover, or calling fresh tenders/expressions of interest to assess the value of the Licences.

- f) After a tender process is finalised, any vacant licences may be applied for and the General Manger will decide who will be issued with the remaining vacant Licences. Any applications for the vacant Licences must meet the Licence specifications. The new Licensee will be required to pay the same fee as other licence holders for the same commercial activity and time period.

2.6 Commercial Activities

The type, number, capacity and impact category of commercial activity licences available annually for issue under this policy are detailed in the following table.

Activity	Licence Capacity	Client Capacity	Class Capacity
Low Impact Category			
Beekeeping	As per DPI Licence	As per DPI Licence	As per DPI Licence
Ecotourism	Not limited	30 clients	2 classes/day
Horse Riding Access South Ballina Beach	As per Crown Licence	As per Crown Licence	As per Crown Licence
Personal Fitness (2 Clients)	Not limited	2 clients	Not limited
Surfing for People with Disabilities	Not limited	2 clients	Not limited
Medium Impact Category			
Dog Training	Not limited	10 dog clients	Not limited
Fishing Tour	Not limited	4 clients	Not limited
Kayak / Canoe Tour	Not limited	20 kayaks	Not limited
Kite Surfing	2	2 kites/6 clients	Not limited
Personal Fitness (10 Clients)	Not limited	10 clients	Not limited
High Impact Categories			
Boat Tour	Not limited	2 boats/vessel capacity	Not limited
Fish Harvesting	As per DPI Licence	As per DPI Licence	As per DPI Licence
Group Fitness (20 Clients)	Not limited	20 clients	2 classes/day
Hang Gliding and Paragliding	1 club containing 5 businesses	8 hang gliders 4 paragliders	As per CASA endorsed operations manual

Activity	Licence Capacity	Client Capacity	Class Capacity
Horse Riding Seven Mile Beach	2	10 horses	2 classes/day 1 Licensee allowed 5 days / week 2 Licensees alternate days so shared, only one operating /day Week days only, no public holidays
Tendered Commercial Activities			
Surf School	5	20 clients	2 classes/day
Elite Surf Coaching	6	7 clients	2 classes/day
Stand-up Paddle Boarding	3	14 clients – Richmond River 7 clients – Seven Mile Beach 3 clients – Lake Ainsworth, Shaws Bay, Prospect Lake	2 classes/day

2.7 Applications for Commercial Activity Licences

- a) All applications shall be submitted in writing on the Council-approved [Commercial Activities on Public Land Licence Application](#) form, setting out the proposal in detail and accompanied by the supporting documentation and application fee.
- b) Applications must comply with the Schedule 1 Standard Specifications and relevant Schedule 2 Activity Specifications outlined in the Commercial Activities on Public Land Specifications. Non-compliance will result in applications being rejected with reason and returned to the applicant by Council.
- c) All applications for licences shall be assessed and determined by the General Manager of Council or delegate, in consultation, where necessary, with relevant Authorities from, but not limited to: Crown Lands, NSW Maritime and the Cape Byron Marine Park.
- d) All applications for licences will be assessed and determined within a three month period from date of receipt.
- e) Council reserves the right to not issue any licence, to not offer any licence, or to call tenders or expressions of interest for the use of a licence to allow all interested parties an opportunity to obtain that licence. This decision will be made by the elected Council.
- f) 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 longer-term licence. Longer term licences will normally be issued for a maximum period of three years, with these licences requiring Crown approval if on Crown land. Any decision to offer a licence for a period of more than one year will be determined by the elected Council.

2.8 Reapplying for Commercial Activity Licences

Any expiring or expired licences (annual) with an existing Licensee requires a new application form with supporting documentation be submitted to Council and assessment of the following:

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

If a Licensee re-applies for a new Licence, there is no guarantee a new Licence will be granted and Council makes no representation about whether or not a new Licence will be granted. Each application for a new Licence will be assessed on its merits in accordance with this Policy. No compensation is payable by Council to a Licensee if a Licensee re-applies for a new Licence and the new Licence is not granted.

2.9 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 sustainable operations
- c) Demonstrated appropriate level of knowledge and understanding of local conditions, natural and cultural history, ecological processes and constraints
- d) Demonstrated experience in, or capacity to meet the licence specifications
- e) Demonstrated ability to comply with 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.
- i) Demonstrated compliance with laws relating to the operation of the Licensee's business.

2.10 Commercial Activity Licence Specifications

- a) Licensees must comply with the Schedule 1 Standard Specifications and applicable Schedule 2 Activity Specifications outlined in the Commercial Activities on Public Land Specifications, which accompany the Commercial Activities on Public Land Licence Application form.
- b) The Schedule 1 Standard Specifications and applicable Schedule 2 Activity Specifications list a number of requirements for the particular Activity current as at

the date of this Policy, however, the Specifications list is not exhaustive and will change over time as laws change. It is for the Licensee to determine all qualifications, licences and permits the Licensee requires at any point in time in order to lawfully operate the Licensee's particular business.

- c) The Licensee must hold all qualifications, licences and permits required for the operation of the Licensee's business, and comply with all laws relating to the operation of the Licensee's business.

2.11 Commercial Activity Licence Provisions

The following provisions will apply to all licences:

- a) Licensees shall not sublet, assign or otherwise deal with the licence.
- b) The Licensee must comply with current industry standards relevant to the operation of the Licensee's particular business.
- c) Should a Licensee fail to operate a licence for a continuous period of four months, then the licence will lapse, unless Council has provided advice to the contrary
- d) Licensees are entitled to hold only one licence within each activity.
- e) The Licensee shall indemnify and keep indemnified Council, and if the activity is conducted on Crown Land, the Crown, against all actions, suits, claims, debts, obligations and other liabilities arising out of the Licensee's activities and the Licensee's operation of its business on public land.

2.12 Additional Commercial Activity Licences and Activities

- a) The elected Council will determine any amendment to the licence capacity, client capacity and class capacity for each activity through a review of this policy.
- b) While licence applications apply to the activities listed in this policy, it is recognised other activities may be proposed. Such applications will be considered on their merit with reference to the industry, other Authorities, existing Licensees, Plans of Management and if suitable by determination of Council through review of this policy.

2.13 Breaches and Unlicensed Activities

- a) Where there is any breach of any licence specifications or this Policy by the Licensee, Council will require the Licensee to take all reasonable action to remedy the breach. This includes, but is not limited to the Council taking steps under Section 2.14 of this Policy.
- b) Where any commercial activities are taking place on public land, the activities are required to be licenced and the operator does not hold the appropriate licence, Council will take steps to end the unlicensed activity, which may include for example, the issuing of written and verbal warnings, undertaking legal action and, where appropriate, the removal of the activity from the public land by an employee of the Council or NSW Police.

2.14 Revoking of Commercial Activity Licences

- a) Council reserves the right to revoke any licenced activity for management reasons including, but not limited to, environmental protection, public safety and changes in policy or legislation.
- b) Licences may also be terminated in the following circumstances:
 - i) If any fees payable, or any part thereof, are in arrears for 30 days, whether formally demanded or not
 - ii) If proof of current public liability insurance cover is not provided prior to commencement of, or during a licence period
 - iii) If the Licensee breaches any conditions of this policy or the licence
 - iv) If the Licensee has committed an act of bankruptcy or insolvency
 - v) 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:
 - i) notifying the Licensee to that effect; or
 - ii) restricting the Licensee from operating the activity on the public land, by force if necessary; or doing both.
- d) If a breach of a specification in the Licence or this Policy is witnessed and recorded by a Council officer or reported to Council and investigated, a written warning notice may be issued to the operator. Council reserves the right to issue verbal warnings for minor deviations from the Licence or this Policy.
- e) A Licensee has a right to provide a written response to a warning notice within 28 days. The General Manager has the authority to determine whether or not the warning notice should be waived, based on the response.
- f) Where a Licensee holds a one year licence, the issuing of two written warning notices in that period may result in termination of the licence.
- g) If a Licensee receives three written warning notices within a three year period, Council may terminate the licence.

3 DEFINITIONS

Commercial Activity Licence:	The Council approval for the operation of a commercial activity on public land in Ballina Shire.
Council:	Ballina Shire Council
Licence:	A Commercial Activity Licence.
Passive recreational activities:	Low-key and low impact recreational/leisure activities undertaken by people on an informal basis.
Religious organisations:	Organised gatherings of people for the purpose of expressing religious beliefs.
Public land:	Land under the ownership or care and control of Council.
Social gatherings:	Small gatherings of people, meeting on an informal and social basis.
Specifications:	The conditions required to be met to both hold and operate a Commercial Activity Licence. This is a separate document maintained by Council.
Sporting clubs:	Organised on a not-for-profit and community basis, where people form for the purpose of playing sports.

4 SCOPE OF POLICY

This policy applies to:

- a) Council employees
- b) Councillors
- c) Community members
- d) Council-owned businesses
- e) Applicants

5 RELATED DOCUMENTATION

Related documents, policies and legislation:

- a) *Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulation 2017*
- b) *Council – Policies (Various)*
- c) *Council – Plans of Management (Various), Ballina Local Environmental Plan*
- d) *Crown Land Management Act 2016*
- e) *Crown Land Management Regulation 2018*

- f) *Fisheries Management Act 1994*
- g) *Local Government Act 1993*
- h) *Local Government (General) Regulation 2005*
- i) *Roads Act 1996*
- j) *Work Health and Safety Act 2011 and Work Health and Safety Regulation 2017*

6 REVIEW

The Commercial Activities on Public Land policy will be reviewed at least every four years.