

POLICY NAME: COMMERCIAL ACTIVITIES ON PUBLIC LAND
POLICY REF: C10
MEETING ADOPTED: 22 June 2017 Resolution No. 220617/11
POLICY HISTORY: 220514/6; 240414/4; 260913/3



TABLE OF CONTENTS

1 OBJECTIVE.....1

2 POLICY.....1

2.1 Activities Requiring a Commercial Activities Licence1

2.2 Activities Not Requiring a Commercial Activities Licence or Approval1

2.3 Activities Not Requiring a Commercial Activities Licence but Requiring Other Approvals1

2.4 Commercial Activities that will Not be Issued with an Approval to Operate on Some Public Land 2

2.5 Number and Type of Commercial Activities Licences to be Issued.....2

2.6 Applications for Commercial Activities Licences.....4

2.7 Commercial Activities Licences – Operating Requirements4

2.8 Renewal of Commercial Activities Licences4

2.9 Matters to be Considered in Assessing Commercial Activities Licence Applications.....5

2.10 General Provisions for Commercial Activities Licences.....5

2.11 Additional Commercial Activities Licences.....6

2.12 Breaches and Unlicensed Activities.....6

2.13 Revoking of Commercial Activities Licences6

2.14 Nature and Determination of Fees and Charges7

3 DEFINITIONS9

4 SCOPE OF POLICY9

5 RELATED DOCUMENTATION9

6 REVIEW.....10

1 OBJECTIVE

The objectives of this policy are:

- a) to ensure that there remains 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 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 public land.

2.2 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:

- 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 Activities Licence but Requiring Other Approvals

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

- a) Filming – [Filming on Public Land policy](#)
- b) Markets – [Markets on Public Land policy](#)
- c) Special events – [Events on Public Land policy](#)

d) Weddings – [Weddings on Public Land policy](#).

Applicants need to check Council’s policies to ensure that the correct application for an activity is submitted.

2.4 Commercial Activities that will Not be Issued with an Approval to Operate on Some 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 (with approval) on public roads.

2.5 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	Number of Licences	Student/Teacher Ratio	Maximum Numbers	Number of Classes Per Day
Bike Hire	Not limited	Not applicable	Capacity of business location for holding bikes	Not limited
Commercial Boat Use of Public Wharves and Pontoons	Not limited	Capacity of boat	Capacity of boat	Not limited
Commercial Fishermen	As per DPI Licence	Not applicable	As per DPI Licence	Not applicable
Dog Training Schools	Not limited	1 instructor per 10 dogs	10 dog clients	8.30 am – 5.00 pm during daylight hours
Ecotourism Tours	Not limited	1 operator per 30 clients	30 clients	Not limited
Elite Surf Coaching	6	1 instructor per 7 clients	7 clients	Each school, 2 sessions/day
Fishing Tours	Not limited	4 clients per tour operator	4 clients	Not limited
Fitness Training Groups	Not limited	1 instructor per 20 clients	20 clients	2 sessions/day/ operator
Guided Bike Tours	Not limited	1 operator per 9 clients	10 bikes at any time	2 sessions/day/ operator
Hang Gliding and Paragliding	1 club or 4 operators	1 instructor per 1 hang gliding client 1 instructor per 2 paragliding clients	8 hang gliders 4 paragliders	As safety conditions prevail
Helicopter Rides	Not limited	Capacity of helicopter	1 helicopter at any time using a reserve	8.30 am – 5.00 pm during daylight hours

Activity	Number of Licences	Student/Teacher Ratio	Maximum Numbers	Number of Classes Per Day
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.			
Hot Air Ballooning	Not limited	Capacity of basket	1 hot air balloon at any time using a reserve	Not limited
Kayak and Canoe Tours	Not limited	1 instructor per 4 clients – high risk 1 instructor per 12 clients – low risk	20 kayaks	Not limited
Kite Surfing Schools	2	6 clients with 1 instructor	2 kites	Not limited
Personal Fitness Trainers	Not limited	1 instructor per 2 clients	2 clients	Not limited
Personal Fitness Trainers	Not limited	1 instructor per 10 clients	10 clients	Not limited
Pony Rides for Private Parties	Not limited	1 instructor per 1 client	4 ponies at any time	8.30 am – 5.00 pm during daylight hours
Sailing Schools	2	Capacity of boat	8 small boats – Shaws Bay	8.30 am – 5.30 pm during daylight hours
			12 small boats – Richmond River	
Sea Plane Rides	1	Capacity of plane	Capacity of plane	8.30 am – 5.00 pm daily
Sky Diving	Not limited	8 parachutes per jump	8 per jump	Daylight operation
Stand-up Paddle Boarding	3	1 instructor per 7 clients	14 clients – Richmond River	Each school, 2 sessions/day
			7 clients – Seven Mile Beach north of Lake Ainsworth	

Activity	Number of Licences	Student/Teacher Ratio	Maximum Numbers	Number of Classes Per Day
			3 clients – Lake Ainsworth, Shaws Bay, Prospect Lake	
Surf Schools	5	1 instructor per 8 clients	20 clients	Each surf school, 2 sessions/day
Wind Surfing Schools	Not limited	2 clients with 1 instructor	3 wind surfers	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.			

2.6 Applications for Commercial Activities 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 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 will be assessed and determined within a three month period from date of receipt.

2.7 Commercial Activities Licences – Operating Requirements

Operating requirements for the listed commercial activities are available in the *Application Guidelines*, which accompany the *Commercial Activities on Public Land Licence Application* form.

2.8 Renewal of Commercial Activities Licences

- a) Any renewal of an expired licence with an existing licensee will depend on an assessment of the following:
 - i) The licensee has demonstrated compliance with the licence conditions
 - ii) The licensee has shown a satisfactory standard of performance in all areas.
- b) In respect to the renewal of an expired licence with an existing licensee, Council reserves the right to not renew any licence, to not 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.

- c) 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.

2.9 Matters to be Considered in Assessing Commercial Activities Licence Applications

Council will assess the information provided in applications for licences based on the following selection criteria:

- a) Demonstrated successful experience in the activity to a high professional standard
- b) Demonstrated history and experience of environmentally acceptable operations
- c) Demonstrated appropriate level of knowledge and understanding of local conditions, natural and cultural history, ecological processes and 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 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.

2.10 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 advice to the contrary

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

2.11 Additional Commercial Activities Licences

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

2.12 Breaches and Unlicensed Activities

Where there is any breach of any licence conditions, including unlicensed activities, Council will 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 public land by an employee of the Council or NSW Police.

2.13 Revoking of Commercial Activities 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) 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
 - 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 condition in the licence 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.

- 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 will result in termination of the licence.
- g) If a licensee receives three written warning notices within a three year period, Council will terminate the licence.

2.14 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:
 - i) Commercial Activities Licence – application fees
 - ii) Commercial Activities Licence – licence fee based on the level of impact assigned to the activity:

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. 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:
 - 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.

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

Impact Category	Activity
Very Low impact	Ecotourism Tours

Impact Category	Activity
	Personal Fitness Trainer (2 clients)
	Horse Riding <u>access to</u> South Ballina Beach
Low impact	Hot Air Ballooning
	Dog Training Classes
	Kite Surfing
	Kayaking and Canoeing
	Wind Surfing
	4WD Fishing Tours
	Guided Bike Tours
	Sailing Schools
	Personal Fitness Trainer (10 clients)
	Pony Rides for Private Parties
Medium impact	Bike Hire
	Sky Diving
	Hang Gliding and Paragliding
	Group Fitness Training
	Commercial Fishermen
	Beach Horse Riding
	Commercial Boat 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 Coaching and Stand-up Paddle Boarding, which are typically offered longer term licences (ie 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.

3 DEFINITIONS

Application Guidelines: The conditions required to be met to both 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: A Commercial Activities Licence.

Mobile food vendors: 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: Land under the ownership or care and control of Council.

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.

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) *Local Government Act 1993*

- b) *Crown Lands Act 1989 and Crown Lands Regulation 2000*
- c) *Roads Act 1996*
- d) *National Parks and Wildlife Act 1974*
- e) *National Parks (Fauna Protection) Regulation 1994*
- f) *Threatened Species and Conservation Act 1985*
- g) [Ballina Coastal Reserve Plan of Management](#)
- h) [Ballina Local Environmental Plan](#)
- i) [Filming on Public Land policy](#)
- j) [Markets on Public Land policy](#)
- k) [Events on Public Land policy](#)
- l) [Weddings on Public Land policy.](#)

6 REVIEW

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