

RESOLUTION 05.0328

Moved Councillor Jarvis that Council adopt Policy 4.4 with modifications as follows:

POLICY STATEMENT 4.4

Shire of Gingin

Trading Activities Within Lancelin Foreshore Reserves

1.0 POLICY AREA

This Policy applies to Lancelin Foreshore Reserves.

2.0 POLICY OBJECTIVES

This policy will:

- Maximise safety for beach users;
- Ensure only approved traders are permitted to operate from Council's Lancelin foreshore reserves;
- Minimise disruption to beach users;
- Provide a guideline for the processing of trading applications; and
- Minimise conflict between different traders.

3.0 POLICY STATEMENT

3.1 General Standards

3.1.1 Licence Conditions for Surfing, Windsurfing and Kitesurfing Trading Activities.

- Approval of the Trading Permit is to be reviewed on an annual basis.
- The operator is required to hold Public Liability Insurance coverage of a minimum of \$10 million. A Certificate of Currency shall be deposited with Council at the time of payment of the annual fee. The Insurer must be registered with Australian Prudential Registration Authority (APRA), or as approved by Council.
- Surfing Coaches must possess relevant Coaching Certificates as required by Surfing Australia or international equivalent. Windsurfing Coaches must possess relevant Coaching Certificates as required by the Australian Yachting Association or international equivalent. Kitesurfing Coaches must possess relevant

Coaching Certificates as required by the Australian Kiting Association or international equivalent.

- **A Permit holder must possess all necessary safety training as required by the governing body of the relevant activity. Where a trading business is not covered by a relevant governing body, the applicant must obtain a Senior First Aid Certificate inclusive of current CPR qualifications, which shall remain current throughout the operation of the venture, if so directed by the Local Government.**
- **The operation must not in any way obstruct either vehicular or pedestrian traffic along the Foreshore Reserve where public access is permitted.**
- **The vehicles, trailers and all associated equipment are to be removed from the Reserve daily and stored off site.**
- **The Trader shall comply with, but not be limited to, the provisions of Council's Local Laws relating to Activities in Thoroughfares and Public Places and Trading Local Law (2004).**
- **At no point shall the business encroach into any sun-sheltered areas provided for the general public.**
- **Council accepts no responsibility for any loss, damage or otherwise, which may occur as a consequence of this approval.**
- **Signage, if any, shall comply with the Shire of Gingin Local Law relating to signs.**
- **The Permit provides no exclusive rights to any area of the Foreshore Reserve.**
- **If, in the opinion of the Local Government, the Permit holder does not utilise, or substantially utilise, the Permit issued, the Local Government reserves the right to revoke the Permit at any time or to refuse renewal.**
- **Surfing Instructor to student ratio to be no more than 1:8 in the water.**
- **Kitesurfing Instructor to student ratio to be no more than 1:2 for Level One instructors and 1:4 for Level Two instructors in the water.**

- **Windsurfing Instructor to student ratio to be no more than 1:6 in the water.**
- **During the months of November to April, the total number of students allowed for each Coaching Permit is 32 for Surfing, 18 for Windsurfing and 12 for Kitesurfing.**
- **The Permit holder is to provide all necessary first aid and rescue equipment as required by the governing body of the relevant activity.**
- **Sub-letting of Trading Permit is not allowed.**
- **Transferring of Permits shall comply with Part 7.8 of the Shire of Gingin's Activities in Thoroughfares and Public Places and Trading Local Law (2004).**
- **Operations are not to be conducted within 50m either side of the Lancelin Back Beach Pedestrian access.**
- **A Permit holder is to produce to an authorised person, his or her permit, immediately upon being required to do so by that authorised person.**

3.1.2 Fees and Charges.

Fees and charges for Trading Permits shall be as approved in the Shire of Gingin Municipal Budget for each financial year.

3.1.3 Criteria

All applicants for Surfing, Windsurfing and Kitesurfing Coaching operations shall be required to prepare a Management Plan addressing the following criteria:

- **Previous coaching experience;**
- **Safety of students;**
- **Safety of Public;**
- **Compliance with relevant Shire of Gingin Local Laws and Policies; and**
- **Sound customer service and public relations skills.**

3.1.4 Number and Type of Permits relating to Surfing, Windsurfing and Kitesurfing

Permits for Surfing, Windsurfing and Kitesurfing Coaching and Hire operations may be approved by the Chief Executive Officer in consultation with Ward Councillors as follows:

Precinct 1	Nil
Precinct 2	2 x Kitesurfing Permits
Precinct 3	Nil
Precinct 4	Nil
Precinct 5	Nil
Precinct 6	2 x Windsurfing Permits
Precinct 7	Nil
Precinct 8	3 x Surfing Permits

3.1.5 Trading Permits for other beach related activities may be approved by the Chief Executive Officer in consultation with the Ward Councillors.

3.1.6 In respect to permits issued under this Policy, an Advice Note shall be incorporated in the Permit confirming that there may be conditions imposed under other prevailing State Legislation for which the permit holder shall have proper regard.

CARRIED UNANIMOUSLY

PART 6 - TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - Stallholders and traders

Subdivision 1 - Preliminary

6.1 Interpretation

In this Division, unless the context otherwise requires -

"Competition Principles Agreement" means the Competition Principles Agreement executed by each State and Territory of the Commonwealth and the Commonwealth of Australia on 11 April 1995;

"public place" includes -

- (a) any thoroughfare or place which the public are allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,

but does not include premises on private property from which trading is lawfully conducted under a written law.

"stall" means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold, hired or offered for sale or hire;

"stallholder" means a person in charge of a stall;

"stallholder's permit" means a permit issued to a stallholder;

"trader" means a person who carries on trading;

"trader's permit" means a permit issued to a trader; and

"trading" includes –

- (a) the selling or hiring of, the offering for sale or hire of or the soliciting of orders for goods or services in a public place;
- (b) displaying goods in any public place for the purpose of –
 - (i) offering them for sale or hire;
 - (ii) inviting offers for their sale or hire;
 - (iii) soliciting orders for them; or
 - (iv) carrying out any other transaction in relation to them; and
- (c) the going from place to place, whether or not public places, and –
 - (i) offering goods or services for sale or hire; or
 - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services,

but does not include –

- (d) the delivery of pre-ordered goods or services to the purchaser of those goods or services or to the person nominated by the purchaser of those goods or services whether or not payment for those goods or services is accepted on delivery; or

the taking of further orders for goods or services from the purchaser of those pre-ordered goods or services or from the person nominated by the purchaser of those pre-ordered goods or services when those orders are taken at the same time as a previous order is being delivered, whether or not payment is made for those goods or services at the time of taking the order;
- (e) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder's permit;
- (f) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;
- (g) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and
- (h) the selling or hiring or the offering for sale or hire of –
 - (i) goods by a person who represents a manufacturer of the goods; or
 - (ii) services by a person who represents a provider of the services,

which are only sold directly to consumers and not through a shop.

Subdivision 2 - Permits

6.3 *Trader's permit*

- (1) A person shall not carry on trading unless that person is –
 - (a) the holder of a valid trader's permit; or
 - (b) an assistant specified in a valid trader's permit.
- (1) Every application for a trader's permit shall –
 - (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants, if any, to be engaged by the applicant in trading, as well as their names and addresses if already engaged;
 - (c) specify the location or locations in which the applicant proposes to trade;
 - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of trading;
 - (e) specify the proposed goods or services which will be traded; and
 - (f) be accompanied by an accurate plan and description of any proposed structure or vehicle which may be used by the applicant in trading.
- (4) The conditions subject to which the local government may approve an application for a trader's permit include that the permit holder is permitted to

remain at a particular location for as long as there is a customer making a purchase, but if there is no customer making a purchase the permit holder must move on from that location within a reasonable time of the last purchase having been made.

6.5 *Relevant considerations in determining application for permit*

(1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to –

- (a) any relevant policies of the local government;
- (b) the desirability of the proposed activity;
- (c) the location of the proposed activity;
- (d) the principles set out in the Competition Principles Agreement; and
- (e) such other matters as the local government may consider to be relevant in the circumstances of the case.

(2) The local government may refuse to approve an application for a permit under this Division on any one or more of the following grounds –

- (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought;
- (b) that the applicant is not a desirable or suitable person to hold a permit;
- (c) that –
 - (i) the applicant is an undischarged bankrupt or is in liquidation;
 - (ii) the applicant has entered into any composition or arrangement with creditors; or
 - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager has been appointed in relation to any part of the applicant's undertakings or property; or
- (d) such other grounds as the local government may consider to be relevant in the circumstances of the case.

6.6 *Conditions of permit*

(1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include –

- (a) the place, the part of the district, or the thoroughfare to which the permit applies;
- (b) the days and hours during which a permit holder may conduct a stall or trade;
- (c) the number, type, form and construction, as the case may be, of any stand, table, structure or vehicle which may be used in conducting a stall or in trading;

- (d) the goods or services in respect of which a permit holder may conduct a stall or trade;
 - (e) the number of persons and the names of persons permitted to conduct a stall or trade;
 - (f) the requirement for personal attendance at the stall or the place of trading by the permit holder and the nomination of assistants, nominees or substitutes for the permit holder;
 - (g) whether and under what terms the permit is transferable;
 - (h) any prohibitions or restrictions concerning the -
 - (i) causing or making of any noise or disturbance which is likely to be a nuisance to persons in the vicinity of the permit holder;
 - (ii) the use of amplifiers, sound equipment and sound instruments;
 - (iii) the use of signs; and
 - (iv) the use of any lighting apparatus or device;
 - (i) the manner in which the permit holder's name and other details of a valid permit are to be displayed;
 - (j) the care, maintenance and cleansing of the stall or any structure used for trading and the place of the stall or any structure;
 - (k) the vacating of the place of a stall or trading when the stall is not being conducted or trading is not being carried on;
 - (l) the acquisition by the stallholder or trader of public risk insurance;
 - (m) the period for which the permit is valid; and
 - (n) the designation of any place or places where trading is wholly or from time to time prohibited by the local government.
- (2) Where a permit holder by reason of illness, accident or other sufficient cause is unable to comply with this local law, the local government may at the request of that permit holder authorize another person to be a nominee of the permit holder for a specified period, and this local law and the conditions of the permit shall apply to the nominee as if he or she was the permit holder.

6.7 Exemptions from requirement to pay fee or to obtain a permit

- (1) In this clause –

"charitable organisation" means an institution, association, club, society or body whether incorporated or not, the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and from which any member does not receive any pecuniary profit except where the member is an employee or the profit is an honorarium; and

"commercial participant" means any person who is involved in operating a stall or in conducting any trading activity for personal gain or profit.

- (2) The local government may waive any fee required to be paid by an applicant for a stallholder's permit or a trader's permit on making an application for or on the issue of a

permit, or may return any such fee which has been paid, if the stall is conducted or the trading is carried on –

- (a) on a portion of a public place adjoining the normal place of business of the applicant; or
 - (b) by a charitable organisation that does not sublet space to, or involve commercial participants in the conduct of a stall or trading, and any assistants that may be specified in the permit are members of that charitable organisation.
- (3) The local government may exempt a person or a class of persons, whether or not in relation to a specified public place, from the requirements of this Division.

Subdivision 3 - Conduct of stallholders and traders

6.8 Conduct of stallholders and traders

- (1) A stallholder while conducting a stall or a trader while trading shall –
- (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
 - (b) not display a permit unless it is a valid permit; and
 - (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Weights and Measures Act 1915*.
- (2) A stallholder or trader shall not –
- (a) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
 - (b) act in an offensive manner;
 - (c) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
 - (d) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

Subdivision 2 - Permits

6.10 Permit required to perform

A person shall not perform in a public place without a permit.

6.11 Variation of permitted area and permitted time

- (1) The local government may by notice in writing to a permit holder vary –
- (a) the permitted area;
 - (b) the permitted time; or
 - (c) both the permitted area and the permitted time,

shown on a permit.

- (2) The local government may direct a permit holder to move from one permitted area to another permitted area, if more than one area is specified in a permit.

6.12 Duration of permit

A permit is valid for a period of 3 months after the date on which it is issued unless it is sooner cancelled under this local law.

6.13 Cancellation of permit

The CEO may cancel a permit if in her or his opinion the volume of sound caused by the permit holder in connection with the performance adversely affects the enjoyment, convenience or comfort of other persons in a public place, or if, in her or his opinion, or in the opinion of an authorized person, the performance otherwise constitutes a nuisance.

6.14 Obligations of permit holder

A permit holder shall not in a public place –

- (a) perform wearing dirty, torn or ragged clothing;
- (b) act in an offensive manner; or
- (c) place, install, erect, play or use any musical instrument or any device which emits music, including a loud speaker or an amplifier -
 - (i) other than in the permitted area; and
 - (ii) unless the musical instrument or device is specified in the permit.

PART 7 - PERMITS

Division 1 – Applying for a permit

7.1 Application for permit

- (1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law shall -
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.

- (4) The local government may require an applicant to give local public notice of the application for a permit.
- (5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

7.2 *Decision on application for permit*

- (1) The local government may –
 - (a) approve an application for a permit unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a permit.
- (2) If the local government approves an application for a permit, it is to issue to the applicant a permit in the form determined by the local government.
- (3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.
- (4) Where a clause of this local law refers to conditions which may be imposed on a permit or which are to be taken to be imposed on a permit, the clause does not limit the power of the local government to impose other conditions on the permit under subclause (1)(a).
- (5) Where a clause of this local law refers to the grounds on which an application for a permit may be or is to be refused, the clause does not limit the power of the local government to refuse the application for a permit on other grounds under subclause (1)(b).

Division 2 - Conditions

7.3 *Conditions which may be imposed on a permit*

The local government may approve an application for a permit subject to conditions relating to -

- (a) the payment of a fee;
- (b) the duration and commencement of the permit;
- (c) the commencement of the permit being contingent on the happening of an event;
- (d) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (e) the approval of another application for a permit which may be required by the local government under any written law;
- (f) the area of the district to which the permit applies;
- (g) where a permit is issued for an activity which will or may cause damage to a public place, the payment of a deposit or bond against such damage;

- (h) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government; and
- (i) the provision of an indemnity from the permit holder indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder.

7.4 Imposing conditions under a policy

(1) In this clause –

"policy" means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 7.2(1)(a).

- (2) Under clause 7.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.
- (3) The local government is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 7.2(2).
- (4) An application for a permit is to be taken not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.
- (5) Sections 5.94 and 5.95 of the Act shall apply to a policy and for that purpose a policy is to be taken to be information within section 5.94(u)(i) of the Act.

7.5 Compliance with and variation of conditions

- (1) Where an application for a permit has been approved subject to conditions, or where a permit is to be taken to be subject to conditions under this local law, the permit holder shall comply with each of those conditions.
- (2) The local government may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.

Division 3 - General

7.6 Duration of permit

A permit is valid for one year from the date on which it is issued, unless it is –

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 7.10.

7.7 Renewal of permit

- (1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit.

- (2) The provisions of –
- (a) this Part; and
 - (b) any other provision of this local law relevant to the permit which is to be renewed,
- shall apply to an application for the renewal of a permit *mutatis mutandis*.

7.8 Transfer of permit

- (1) An application for the transfer of a valid permit is to –
- (a) be made in writing;
 - (b) be signed by the permit holder and the proposed transferee of the permit;
 - (c) provide such information as the local government may require to enable the application to be determined; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.
- (3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by –
- (a) an endorsement on the permit signed by the CEO; or
 - (b) issuing to the transferee a permit in the form determined by the local government.
- (4) Where the local government approves an application for the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

7.9 Production of permit

A permit holder is to produce to an authorized person her or his permit immediately upon being required to do so by that authorized person.

7.10 Cancellation of permit

- (1) Subject to clause 8.1, a permit may be cancelled by the local government if the permit holder has not complied with a –
- (i) condition of the permit; or
 - (ii) provision of any written law which may relate to the activity regulated by the permit.
- (2) On the cancellation of a permit the permit holder –
- (a) shall return the permit as soon as practicable to the local government; and

- (b) is to be taken to have forfeited any fees paid in respect of the permit.

PART 8 - OBJECTIONS AND APPEALS

8.1 Application of Part 9 Division 1 of Act

When the local government makes a decision -

- (a) under clause 7.2(1); or
- (b) as to whether it will renew, vary, or cancel a permit, the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

PART 10 - ENFORCEMENT

Division 1 - Notices given under this local law

10.1 Offence to fail to comply with notice

Whenever the local government gives a notice under this local law requiring a person to do any thing, if the person fails to comply with the notice, the person commits an offence.

10.2 Local government may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 10.1, the local government may do the thing specified in the notice and recover from that person, as a debt, the costs incurred in so doing.

Division 2 - Offences and penalties

Subdivision 1 - General

10.3 Offences

- (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

Subdivision 2 - Infringement notices and modified penalties