



Document tendered by	Mr Nathan Folkes
Received by	Byron Bay Shire Council Operators Association
	Natalie Udonicic
Date:	26 / 8 / 2013
Resolved to publish	<input checked="" type="checkbox"/> Yes / No

19<sup>th</sup> June 2013

To whom it may concern;

As the National Sporting Organisation for the sport of surfing in Australia, Surfing Australia is writing to express its serious concern in regards to the tender process used for surf schools by a number of councils around Australia, including the Byron Shire Council.

The Surfing Australia Surf School Network currently has over 105 member surf schools operating on over 500 beaches across Australia. The surf schools industry is one of the most resilient industries on the Australian coastline offering both the local and visiting communities' safe and informative access to one of Australia's most iconic pastimes; however the tender process used by a select few councils is threatening its ongoing existence.

Under these tender processes, Surfing Australia is seriously concerned as to the following points:

- There are absolutely no terms or conditions governing surf schools' licensing renewals upon expiration, rendering businesses potentially worthless beyond their tenures.
- Any options for mid to long-term investment or growth by these businesses are virtually removed due to their short-term licensing periods
- Future planning and long-term employment options are undermined
- There is no opportunity to transfer these licenses during the term leaving these businesses essentially unsaleable
- The licensing fees offered to council by vying surf schools play a significant role in determining who acquires a limited number of licenses, favouring those with the deepest pockets

Surfing Australia understands the need by council to provide a balance between business activities; general community use; and ensuring ecologically sustainable use and protection of Council managed land and beaches. However, Surfing Australia has successfully worked with a number of councils around Australia in developing licensing policies that fit the needs of all factions without the negative impact of the tender process, and therefore strongly disputes the need for this inefficient and highly unjust system.

Surfing Australia implores these councils to cease using the tender process in regards to surf school licensing, and review the alternatives in collaboration with Surfing Australia as the peak body for the sport of surfing in this country as recognised by the Australian Government through the Australian Sports Commission.

Please do not hesitate to contact Surfing Australia to discuss this matter further.

Yours faithfully,

Jim Hughes

Sport Development Manager

**SURFING AUSTRALIA**

Telephone: +61 7 5599 3800



Nikon





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BSC File No: F725/#E2013/41649

3 July 2013

The Director  
Mojosurf Pty Ltd – Mr N Folkes  
PO Box 507  
BYRON BAY NSW 2481

Dear Mr Folkes

### Change to company shareholders and Sub-Licence Agreement for Commercial Surf School

We refer to previous correspondence; in particular our letter dated 28 May 2013.

As you are aware, the provisions of the Request for Tender do not allow retention of the sub-licence in the event of a change in the shareholding of a company. The terms of the sub-licence provide that the sub- licensee agrees to comply with Council's Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves (the Policy). The provisions of the Policy do not allow retention of the sub-licence in the event of a change in the shareholding of a company.

Legal advice has been sought to determine Council's ability to allow the retention of your sub-licence and by what method.

We have been advised that the change in shareholding in the Company has resulted in the sub-licence becoming no longer valid unless Council agrees to depart from the Policy and consent to the sub-licence continuing.

Any departure from Policy requires a resolution of the elected Council to do so. This process requires a report to the elected Council. For Council to consider allowing the retention of your sub-licence an assessment needs to be undertaken of the operational capacity of the Company since the appointment of the 'new' shareholders and their capacity as appropriate persons to be responsible for the operation of the Company to ensure the Company is able to meet its obligations under the sub-licence. The assessment needs to be included in the report to Council.

We understand Lachlan Bunn (Bunn Pty Ltd) has sold his shareholding and the present company share structure for Mojosurf Pty Ltd is as follows:-

K & N Folkes	25 ORD shares
Nomads Odyssey Pty Ltd	75 ORD shares
N Folkes	75 ORD1 shares
K & N Folkes	50 ORD1 shares
Jailaw Pty Ltd	37 ORD1 shares
Nomads Odyssey Pty Ltd & Jailaw Pty Ltd	1 ORD1 share
Nomads Odyssey Pty Ltd	37 ORD1 shares
Jailaw Pty Ltd	75 ORD2 shares

ALL COMMUNICATIONS TO BE ADDRESSED TO THE GENERAL MANAGER

PO Box 219 Mullumbimby NSW 2482 (70-90 Station Street)

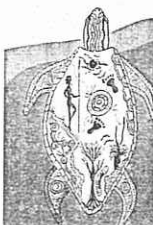
Tel: 02 6626 7000 DX20007 Mullumbimby

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Web www.byron.nsw.gov.au ABN: 14 472 131 473

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14 August 2013

Mojo Surf  
PO Box 507  
BYRON BAY NSW 2481

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Dear Sir/Madam

**Re: Commercial Activities Policy – Review**

As an existing licence holder for a commercial activity on Council owned or controlled land, I wish to advise that Council is currently undertaking a review of the above policy prior to the expiry of your existing licence (i.e. 31 January 2014).

The elected Council has recently resolved to exhibit a number of changes to the existing policy and the amended policy is now on exhibition for public comment. I have enclosed a copy of the amended document for your information.

A summary of the major changes proposed to the existing policy are as follows:

- a) The previous policy required expressions of interest (EOI) / tenders to be called for licences for Surf Schools, Elite Coaching and Stand Up Paddle Boards. Under the amended policy Council now has the option of not calling EOIs / tenders, thus allowing existing licence holders to have their licence renewed without going through a formal tender process. Any decision on this will be made by the elected Council prior to the expiry of existing licences.
- a) However, if an existing licence holder does not wish to renew their licence or surrenders their licence during the licence period, Council will call EOIs for that vacant licence to ensure that this opportunity is opened up to all interested parties.
- b) A key criterion in the EOI process, if conducted, will be for any new operator to have a strong focus on direct promotional / tourism benefits to Ballina Shire.
- c) The number of Elite Surf School licences available is proposed to be increased from four to six.
- d) The number of licences allowed per operator is one licence per commercial activity (i.e. one operator is allowed to have a maximum of one licence for a Surf School, one for the Elite Surf Schools and one for Stand Up Paddle Boarding).
- h) The licence fee on renewal of the Surf School, Elite Coaching and Stand Up Paddle Boards will be determined by the elected Council who will consider a range of factors such as CPI, independent valuation or a price based on turnover.