



Gladstone Regional Council

Council Policy

Title	COMMERCIAL ACTIVITIES ON COUNCIL LAND
Policy Number	P-2018-11
Business Unit/s	CUSTOMER EXPERIENCE
Date of Adoption	2 OCTOBER 2018
Resolution Number	G/18/3541
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Date Repealed	

1.0 PURPOSE:

The purpose of this policy is to outline the framework and principles for making decisions about the allocation and use of community land for commercial activities when considering granting an approval under *Local Law no. 1 (Administration) 2011* for the prescribed activity of "Commercial Use of Local Government Controlled Areas and Roads".

2.0 SCOPE:

The policy applies to commercial activity on all Local Government Controlled Areas and Roads¹ in the Council area. In general, this includes all land under the control or management of Council such as offices, depots, facilities, parks, reserves, roads and road reserves, footpaths, bathing reserves and foreshores. Council retain the control and management of the land (owned and as Trustees) when subleasing areas or roads to a third party.

This policy does not override other policies and processes but only applies to the extent to which they are not in conflict with other policies or processes. To be clear, this policy does not apply to temporary entertainment events and any activity associated with the event.

The policy does not apply to:

- personal training sessions where five individuals or less are participating;
- activities of minimal use that occur ancillary to a permanent facility;
- commercial activities on National Parks, land and waterways that are controlled directly by the State, including schools, private land and any other land and waterways that Council does not control unless the State Government has specifically granted such control over those areas to Council²;
- activities associated with private functions e.g. photographers, party goods hire etc.;
- commercial activities where the activity operates in conjunction with the lessee and is only operating during the time the land is used for its primary purpose.

¹ Refer to *Local Law No. 1 (Administration) 2011* for full definition of "local government controlled area" and "road".

² The State may, for example, grant control to Council over part of State Government controlled road reserves.

3.0 RELATED LEGISLATION:

- *Land Act 1994*
- *Local Government Act 2009*
- *Local Law No. 1 (Administration) 2011*
- *Subordinate Local Law No. 1.2 (Commercial Use of Local Government Controlled Areas and Roads) 2011*
- *Environmental Protection Act 1994*
- *Transport Operations (Road Use Management) Act 1995*
- *Planning Act 2016*
- *Safety in Recreational Water Activities Act 2011*
- *Work Health and Safety Act 2011*
- *Coastal Protection and Management Act 1995*

4.0 RELATED DOCUMENTS:

- Commercial Activities on Council Land Corporate Standard (CS-04-2018)
- Application Form - Commercial Activities - Fitness, Beach, Other (AF - COA01)
- Application Form - Commercial Activities - Stationery or Mobile Vending (AF - COA09)

5.0 DEFINITIONS:

To assist in interpretation of this policy the following definitions apply:

- **"Commercial"** means soliciting or carrying on the supply of goods or services (including food or drink) for profit
- **"Community land"** means public open space (including waterways) that has been set aside for the community either by the State, where Council is trustee, or by Council, in the case of freehold and leasehold land, for which Council has the responsibility to manage.
- **"Community use"** means the use of community land for artistic, social, recreational or cultural activities that do not incorporate commercial activities.
- **"Minimal Use"** means activities that have minimal or limited interference or disruption with the pedestrian or vehicle operation of a road and/or road corridor.
- **"Mobile roadside vending"** means an operator soliciting or carrying on the supply of goods or services (including food or drink) for profit in circumstances where:
 - a) the operator travels from place to place: and
 - b) the operator supplies the food or services to a customer in response to the customer waiving down the operator
- **"Operation of temporary entertainment event"** means the opening to the public, or the preparation for opening to the public, of an entertainment event and for which the opening to the public does not constitute development under the Planning Act.
- **"Primary purpose"** means the purpose for which the land was set aside for the community. Examples of primary purpose include sport and recreation, environmental purposes, beach protection and coastal management.

- **"Secondary use"** means the use of community land that does not align with the land's primary purpose, or is commercial in nature.
- **"Stationary Roadside Vending"** means an operator soliciting or carrying on the supply of goods or services (including food or drink) for profit in circumstances where-
 - a) the operator carries on the activity from -
 - i) a specified place; or
 - ii) a number of specified places; but
 - b) the activity is not footpath dining.
- **"Like for Like"** means an operator soliciting or carrying on the supply of goods and services that are similar in nature to where other approved fixed and mobile operators exist within the below proximity of the proposed location:

Suburb	Proximity
Agnes Water/1770	1km
Baffle Creek	1km
Boyne Island/Wurdong Heights	1km
Boyne Valley	1km
Calliope	1km
Clinton/Byellee/Callemondah	1km
Gladstone City	500m
Kin Kora	500m
Kirkwood	500m
Lowmead	1km
Miriam Vale	1km
New Auckland	500m
Rosedale	1km
South Gladstone	500m
South Trees/Glen Eden	1km
Sun Valley	500m
Tannum Sands/Benaraby	1km
Turkey Beach	1km
West Gladstone	500m
Not Specified	1km

6.0 POLICY STATEMENT:

Council acknowledges the primary purpose of local government-controlled areas and roads is for community use. Council is committed to ensuring that land set aside for the community is preserved for such community use in accordance with its obligations under the *Land Act 1994*, the *Local Government Act 2009* and relevant Local Laws. The preservation of community land for its primary purpose is paramount; however, it is recognised that in some circumstances, a secondary use for commercial purposes may enhance the use of the community land and provide a benefit to the community.

Applicants must address the guiding principles; any additional principles specific for the type of commercial use proposed and be able meet the requirements of the approval as issued.

6.1 GUIDING PRINCIPLES

The following principles apply to all commercial use on community land and will be considered when assessing any applications for such use.

6.1.1. Community Use Takes Precedence

The primary purpose of the land is for community use and as such, any conflict with the below uses or users of the land must be resolved for approval to be given:

- Informal social gatherings and celebrations
- Formal events and celebrations
- Quiet reflection
- Passive recreational activities
- Residents and tourists
- Community groups
- Amenity of the local area

6.1.2. Alignment with Council's Vision

Proposals for the commercial use of community land must align with Council's vision and strategic direction as articulated in Council's Corporate Plan.

6.1.3. Community Benefit

Commercial use of community land must provide benefits to the community, and may include commercial activities that:

- promote the primary purpose of the land; or
- support or service the needs of the users of that land, where they are unable to be serviced from adjoining private land; or
- contributes to the Gladstone region's tourism; or
- will not diminish the purpose of the land or level of service provided, i.e. will not have an unreasonable adverse effect on free and equitable access to the land or its use; or
- cannot operate anywhere other than the community land, such as aquatic activities.

6.1.4. Limited Impact

Commercial use of community land must not unduly impact on the primary users of the community land, local businesses, the environment or Council assets and maintenance programs. To assess the potential impact on the community land, the following will be considered:

- noise and other pollution,
- visual impacts,
- flora and fauna,
- access,
- vehicle parking,
- safety,
- increased use and degradation of the space,
- operational maintenance activity times and durations,
- the local community's desire and tolerance for the proposed activity,
- the local area's population and growth,
- existing businesses and 'like for like' menu items, and
- the ability for the location to support various types of activities.

6.1.5. Compliance with other agencies' requirements

Depending on the location, some applications may also specify special requirements such as the following:

- accreditation with Surfing Australia and/or Academy of Surfing Instructors
- satisfactory land management plans, and
- approval of other authorising agencies such as the Department of Environment and Heritage Protection, Department of Natural Resources and Mines and the Department of Transport and Main Roads.

6.1.6. Annual Approvals - No Exclusive Use or Ongoing Rights

Council has a preference for diversity and competition amongst approval-holders, and the potential for market dominance will be taken into account when awarding approvals.

Applicants should be aware that approvals do not grant exclusive use to the land and do not confer ongoing occupation rights. Approvals are transferrable however transfer must be approved by Council and will only be valid for the remainder of the existing approval period. Further, an approval may be revoked without compensation in specified circumstances such as unsatisfactory safety standards or lack of compliance with approval conditions.

6.2 TYPES OF COMMERCIAL USE

Council receives a variety of proposals for commercial activities on community land and are generally categorised as below. If an application is made outside of the below types of commercial use, it will be assessed based on the guiding principles above and relevant legislation.

6.2.1 Commercial Beach Activities

The primary purpose of the commercial use is for activities located on a beach reserve, foreshore or boat ramp/jetty that can only occur within the coastal area (i.e. surf schools). The activity on Agnes Water Main Beach will be limited to 3 Surf Schools due to ensuring safety of users and to ensure the use of the land is maintained. Other beach areas will be assessed on a merit basis. Applicants are required to address the guiding principles, possess the required level of public liability insurance for the duration of their activities, and provide proof of accreditation with approved bodies annually and upon application. In addition, applicants must address the below criteria to the satisfaction of Council:

- a) how the activity contributes to providing local employment;
- b) whether the goods or items are supplied by local suppliers;
- c) whether the goods or services proposed are needed to meet public demand.

6.2.2 Commercial Fitness Activities

The primary purpose of the commercial use is for fitness activities located in parks, reserves or beaches that involve health and well-being (i.e. personal fitness training, yoga classes). Applicants are required to address the guiding principles and possess the required level of public liability insurance for the duration of their activities.

6.2.3 Commercial Entertainment Activities

The primary purpose of the commercial use is for activities involving a form of entertainment (i.e. laser skirmish, paint ball). Applicants are required to address the guiding principles and possess the required level of public liability insurance for the duration of their activities.

6.2.4 Mobile and Stationary Vending

The primary purpose of the commercial use is for undertaking mobile or stationary vending from a stall, mobile van, trailer or the like. The activity may or may not be applicable to road reserves. Applicants are required to address the guiding principles and possess the required level of public liability insurance for the duration of their activities.

In addition, applicants must address the below criteria to the satisfaction of Council:

- d) whether the activity competes with fixed premises and offers 'like for like' menu items;
- e) how the activity contributes to providing local employment;
- f) whether the goods or items are supplied by local suppliers;
- g) whether the goods or services proposed are needed to meet public demand.

Applicants must apply to Council for a permit to operate on land that is subleased, if they are operating

Applications for Stationary Roadside Vending on State Controlled land are exempt from Councils approval process as the applicant will be required to gain approval from Queensland Department Transport and Main Roads. Applicants can request Council to provide a letter of support or objection for submission with their application to Department Transport and Main Roads.

6.3 MINIMUM STANDARDS FOR SPECIFIED ACTIVITIES

Schedule 1 of *Subordinate Local Law No. 1.2 (Commercial Use of Local Government Controlled Areas and Roads) 2011* outlines minimum standards for the below activities:

- Footpath dining
- Goods for sale on footpath
- Busking

If a commercial operator complies with the minimum standards for the above activities, there is no requirement to gain a separate approval from Council prior to operating the activity. However, if an operator cannot meet the minimum standards, an application in accordance with the guiding principles will need to be made and approved prior to operation.

6.4 COMMERCIAL ACTIVITIES OCCURRING AS PART OF A TEMPORARY ENTERTAINMENT EVENT

Temporary entertainment events require approval from Council where operated on a Council controlled area or road. Where such approval has been granted, separate commercial activity approvals for each individual stall holder are not required.

6.5 APPLICATION PROCESS

Applications for new commercial activities can be made at any time and must be made on the current approved application form. Any applications submitted with required information missing will be requested to provide further information before proceeding.

When assessing and determining a decision on an application, Council will consider (as a minimum) the following:

- a) if the proposed activity aligns with the Guiding Principles outlined in this policy;
- b) if the proposed activity aligns with additional specific principles outlined in this policy for the type of commercial activity proposed;
- c) if the application complies with the requirements of *Subordinate Local Law No. 1.2 (Commercial Use of Local Government Controlled Areas and Roads) 2011*;

- d) If there are any existing business in a set proximity, based on population density;
- e) If the products are complementary or 'like for like' to any existing operators in the set proximity; and
- f) whether all fees and required documents have been submitted.

Application and annual fees are determined by resolution of Council prior to commencing annual renewal processes (end April).

All applications for new or renewal of approvals will receive a decision in writing with the reasons for the decision clearly articulated. Any approved decisions will incorporate a set of minimum standards or conditions for operating on Council Land that must be complied with.

7.0 ATTACHMENTS:

Nil

8.0 REVIEW MECHANISM:

This policy will be reviewed when any of the following occur:

- 1. The related legislation or governing documents are amended or replaced; or
- 2. Other circumstances as determined by resolution of Council or the CEO; or
- 3. Three years from date of adoption.

TABLE OF AMENDMENTS			
Document History	Date	Council Resolution No.	Notes (including the prior Policy No, precise of change/s, etc)
Originally Adopted	4 September, 2012	G/12/1214	Originally Policy No. P-5.0.01
Amendment 1	18 November, 2014	G/14/2237	
Amendment 2	7 February 2017	G/17/2976	
Amendment 3	2 October 2018	G/18/3541	Previous Policy No. P-2017/01

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ACTING CHIEF EXECUTIVE OFFICER