



Strategic policy

Community Land and Complementary Commercial Activity Policy

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| Corporate Plan reference: | <p>A smart economy <i>A prosperous, high-value economy of choice for business, investment and employment</i></p> <ul style="list-style-type: none"> - Strong economic leadership, collaboration and identity - A natural, major and regional event destination - A regional hub for innovation, entrepreneurship and creativity <p>A strong community <i>In all our communities, people are included, treated with respect and opportunities are available for all</i></p> <ul style="list-style-type: none"> - Safe and healthy communities - Resilient and engaged communities - A creative identity that support community cohesiveness, development and wellbeing <p>A healthy environment <i>Maintaining and enhancing the regions natural assets, liveability and environmental credentials</i></p> <ul style="list-style-type: none"> - Responsive, accessible and well managed assets and infrastructure |
| Endorsed by Council on: | 18 May 2017 OM17/80 |
| Manager responsible for policy: | Manager Customer Response, Customer Engagement and Planning Services Group |

Policy purpose

This policy supersedes all previous policies in relation to commercial use of community land. 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. This policy ensures that community use remains paramount, while allowing for the operation of commercial activities in circumstances that also provide a benefit to the community.

Policy outcome

The outcome of this policy is that any commercial activity on community land is complementary to the land's primary purpose of community use and limited to a level that provides benefits to the community.

Policy scope

This policy applies to ongoing commercial activity on Council-controlled community land. In general this includes freehold land and land under the control or management of Council such as parks, reserves under the Land Act 1994 (Land Act), roadways (formed and unformed) other than State controlled roads, pathways, footpaths, bathing reserves and foreshores. The holding of the land determines the legal framework from which Council may consider applying this policy. Local laws can apply to Council freehold and roads, foreshores and bathing reserves and the Land Act applies to reserves under the Land Act that Council holds as trustee.

This policy does not apply to:

- council-controlled land where a lease authorises the use of the land;
- advertising signs, community celebrations and events, community markets and street performances; and
- commercial activities in National Parks, or on 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.

While this policy does not apply, activities mentioned above may require a local law permit for the activity to occur on Council-controlled land.

Policy statement

Council acknowledges that the purpose of community land is primarily 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* and 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 such as commercial use of community land may enhance the use of community land and provide a benefit to the community. Council may consider granting the commercial use of community land in limited circumstances, in alignment with the principles set out in this policy.

Guiding principles

The following principles apply to all commercial use of community land in accordance with this policy.

1. Community Use Takes Precedence

When making decisions about commercial use of community land, the primary purpose of the land is the first consideration. The uses and users of community land that take precedence over commercial use include, but are not limited to:

- informal social gatherings and celebrations;
- formal events and celebrations;
- quiet reflection;
- passive recreational activities;
- residents and tourists;
- community groups;
- amenity of the local area; and
- council maintenance and/or street scape projects.

An assessment of whether the land can accommodate and sustain an ongoing commercial use will consider the above examples. Where a proposed commercial use conflicts with or cannot be accommodated without detriment to the primary purpose, the proposal will not be approved.

Commercial use of community land for individual gain alone is not in accordance with the purpose for which the land has been set aside. If a commercial activity can be operated from private land, it should occur on private land.

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.

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; or
- contributes to Sunshine Coast tourism;
- 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; and
- supports and complements local businesses.

4. Limited Impact

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

- noise and other pollution;
- visual impacts;
- flora and fauna;
- access;
- safety;
- increased use and degradation of the space;
- the local community's desire and tolerance for the proposed activity; and
- local area's population and growth, and the ability for the location to support various types of activities.

5. Compliance with other agencies' requirements

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

- satisfactory land management plans; and
- approval of other authorising agencies such as the Department of Natural Resources and Mines and the Department of Transport and Main Roads where an activity requires access to land not under Council's control and managed by other agencies.

Assessment of proposals for commercial activities are subject to native title and community consultation.

6. Permit-based Approval - No Exclusive Use or Ongoing Rights

Council has a preference for diversity and competition amongst permit-holders.

Applicants should be aware that permits do not grant exclusive use to the land and do not confer ongoing occupation rights. Further, permits are not transferrable and a permit may be revoked without compensation in specified circumstances such as unsatisfactory safety standards or lack of compliance with permit conditions. At the end of each permit term, a new application must be made, regardless of whether that activity has previously operated in that location or not.

Types of Commercial Use

Council receives a variety of proposals for commercial activity on community land. Some locations can better accommodate proposed commercial activities than other locations due to the existing levels of use and the impacts of the activities proposed.

There are four (4) types of permits available for commercial use of community land:

- “High-use/high-impact” permits for commercial activities that have a higher intensity of use and/or are located in high profile areas and therefore may have a more significant impact on the use of community land.
- “Low-use/low-impact” permits for commercial activities that are not considered “high-use/high-impact”, and where activities will have a lesser intensity of use, including fitness classes, itinerant vendors and activities conducted by not-for-profit organisations. The following will be considered for determining if an activity is low-use/low-impact:
 - further permit applications can easily be accommodated in the area;
 - the activity is irregular, occasional or regular minor use;
 - there is little/no impact on the space or the community use; and
 - the activity is considered a trial to ascertain potential for inclusion as a “high-use/high-impact” activity.
- “Outdoor Dining” for commercial activities that require access to community land for the purpose of conducting outdoor dining in conjunction with an adjacent food and drink business, operating on private land. The following will be considered for determining if an activity is outdoor dining:
 - supports local business;
 - encourages business operators to enhance the use of footpaths;
 - improves amenity;
 - creates vitality and ambience; and
 - ensures community safety.
- “Goods on Footpath” for commercial activities that require access to community land for the purpose of displaying goods for sale in conjunction with an adjacent business, operating on private land. The following will be considered for determining if an activity is goods on footpath:
 - supports local business;
 - encourages business operators to enhance the use of footpaths;
 - improves amenity;
 - creates vitality and ambience; and
 - ensures community safety.

High-use/ high-impact applications are subject to an Expression of Interest (EOI) process every three (3) years for a three (3) year term. Prior to each EOI process, Council will consider locations and activity types for high-use/high-impact activities, and any proposed changes to them.

Council will decide to what extent high-use/high-impact activity may occur and the locations and types of activities that are appropriate (i.e. the number of permits, the types of activities and the specific locations). Some locations have restrictions on their use, which will affect the extent and number of activities that can be accommodated. There may also be further approvals required by State Government departments.

Permit fees and application fees will be developed and approved by Council.

Review of permit areas (locations and activities) will occur every three (3) years, at least one year prior to the expiration of the three-year permit terms. On completion of the review of permit areas, an EOI will be called for permit areas.

An assessment panel will assess applications from the EOI process. Assessments will be made in accordance with the guiding principles of this policy, taking into account the results of a review of the previous term including, where appropriate:

- performance and professionalism of permit holders;
- feedback from Councillors, previous applicants, permit holders and the community, risk management/safety analysis; and
- any complaints received.

Once an EOI period closes, applicants may still apply, however there is no guarantee that an assessment will be made until the next EOI period.

For proposals that are outside the existing activities, an Impact Assessment Report will be required, and a Council resolution to either add the new activity to the policy or allow a limited trial. The Impact Assessment should be assessed against the guiding principles in this policy.

Low-use/low-impact applications for an annual permit may be considered at any time in accordance with Council's local laws and any other relevant legislation, and feedback from the Divisional Councillor.

Permit fees and application fees will be charged in accordance with Council's adopted fees and charges at the time. Fee exemptions may apply for not-for-profit organisations.

At the expiry of permits each year, permit holders will be invited to renew their permit for a further 12 months and pay the required fees and charges.

Low-use/low-impact permits may be appropriate for a trial period to ascertain the suitability for inclusion as a high-use/high-impact permit. Following a successful trial, an Impact Assessment Report will be required, and a Council resolution to award a permit in accordance with the high-use/high-impact three (3) year permit terms.

Outdoor Dining applications for an annual permit may be considered at any time in accordance with Council's local laws and any other relevant legislation, and feedback from the Divisional Councillor.

Permit fees and application fees will be charged in accordance with Council's adopted fees and charges at the time. Fee exemptions may apply for not-for-profit organisations.

At the expiry of permits each year, permit holders will be invited to renew their permit for a further 12 months and pay required fees and charges.

Goods on Footpath applications for an annual permit may be considered at any time in accordance with Council's local laws and any other relevant legislation, and feedback from the Divisional Councillor.

Permit fees and application fees will be charged in accordance with Council's adopted fees and charges at the time. Fee exemptions may apply for not-for-profit organisations.

At the expiry of permits each year, permit holders will be invited to renew their permit for a further 12 months and pay required fees and charges.

Roles and responsibilities

Council is responsible for making decisions about the type of activities, locations and extent of high-use/high impact types of commercial use of community land, and the final approval of permits.

Assessment Panel is responsible for assessing applications for high-use/high-impact types of commercial use of community land and making recommendations to the Manager Community Response.

Community Land Permits Team is responsible for assessing applications for low-use/low-impact, markets, outdoor dining and goods on footpath types of commercial use of community land, in consultation with internal and external stakeholders, including Divisional Councillors.

Manager Customer Response is responsible for managing the process and procedures that implement this policy, for making decisions about low-use/low-impact permits, outdoor dining and goods on footpath types of commercial use of community land, and recommending to council the permits for high-use/high-impact types of commercial use of community land.

Measurement of success

Limited complementary commercial activity that benefits the community has been accommodated while preserving the primary use of community land.

Definitions

Commercial

Engaging in trade or production which deals with the exchange of goods and services, whether for a fee or otherwise.

Community land

Refers to 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.

High-use/high-impact locations

These locations have a higher intensity of use and therefore a potentially more significant impact on community land including:

- beaches and waterways;
- popular or high-use parks; and
- some roadways (formed and unformed), pathways, footpaths and trails.

Low-use/low-impact locations

These are locations other than “high-use/high-impact” locations where activities will have a lesser intensity of use.

High-use / high-impact activities

Commercial activities that have a higher intensity of use and/or are located in high profile areas and therefore may have a more significant impact on the use of community land.

Low-use / low-impact activities

Commercial activities that are not considered “high-use/high-impact”, and where activities will have a lesser intensity of use, including fitness classes, itinerant vendors and activities conducted by not-for-profit organisations.

Not-for-profit-organisation

An organisation that does not operate for profit, personal gain or other benefit of particular people.

Outdoor Dining applications

Commercial activities that require access to community land for the purpose of conducting outdoor dining in conjunction with an adjacent food and drink business operating on private land.

Goods on Footpath applications

Commercial activities that require access to community land for the purpose of displaying goods for sale in conjunction with an adjacent business, operating on private land.

Primary purpose

Refers to the purpose set out in the trust deed, or in the case of Council freehold and leasehold land, the intention for use when the land was set aside for the community. Examples of primary purpose include sport and recreation, environmental purposes and beach protection and coastal management.

Secondary use

Use of community land that does not align with the land's primary purpose, or is commercial in nature.

Related policies and legislation

Council's Corporate Plan 2018 - 2022

Council's Local Laws

Land Act 1994

Environmental Protection Act 1994

Marine Parks Act 2004

Local Government Act 2009

Transport Operations (Road Use Management) Act 1995

Transport Operations (Marine Pollution) Act 1995

Transport Operations (Marine Safety) Act 1994

Sustainable Planning Act 2009

All other Council policies relating to Council-controlled land

Version control:

| Version | Reason/ Trigger | Change (Y/N) | Endorsed/ Reviewed by | Date |
|---------|--|--------------|--|------------|
| 1.0 | Create new policy | | Manager Community Response, Community Services | 26/05/2017 |
| 1.1 | Update as per new Organisational Structure | | | 23/11/2017 |

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