

 Sunshine Coast Council	
STRATEGIC POLICY Community Land and Complementary Commercial Activity	
Corporate Plan Reference:	Robust Economy 1.2 Support for local businesses Ecological Sustainability 2.2 Our natural environment preserved for the future 2.4 Healthy waterways and foreshores Health & Wellbeing 4.2 Active lifestyles Social Cohesion 5.1 Equity and opportunities for all 5.3 Sense of identity and belonging Managing Growth 7.1 The areas for growth and renewal are clearly defined 7.4 Timely and appropriate infrastructure and service provision Great Governance 8.1 Ethical, accountable and transparent decision-making
Endorsed by Council on:	27 April 2011
Policy Owner and Department:	Manager Community Response, Community Services Department

INTRODUCTION

The Sunshine Coast region is widely acknowledged as one of the most desirable places in the world to live, work and play. The Sunshine Coast Council’s vision is “to be Australia’s most sustainable region – vibrant, green and diverse”. Our community land is already in high demand for the community uses it is intended for, and Council receives increasing numbers of proposals for commercial activity on community land. Forecast population growth, increased living densities, a more health-aware and physically active community, and the use of community spaces by the large number of visitors that enjoy the region are all factors contributing to the increased demand. There are limitations on allocating community land in areas that are already built, such as coastal communities. As our region continues to experience significant growth, our intention is to balance that growth with the preservation of our environmental, economic and social values.

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.

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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:

- footpath dining and trading, markets, leased sports grounds, advertising signs, community celebrations and events, and street performances which are managed by other policies, and
- 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.

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

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:

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- 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 Sunshine Coast tourism; and
- 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
- cannot operate anywhere other than the community land, such as aquatic activities.

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. 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,
- 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 Environment and Resource Management and the Department of Transport and Main Roads.

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, and the potential for market dominance will be taken into account when awarding permits.

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.

Applicants must address the required assessment criteria and be able to meet the requirements of the permit as issued. Applicant must meet the following minimum requirements:

- i. Commitment to giving priority to community use;
- ii. Commitment to non-exclusive use of community land;
- iii. Commitment to non-transferability of permits;
- iv. Providing and undertaking to meet industry safety standards;
- v. Possess the required level of public liability insurance;
- vi. Not competing with fixed local businesses;
- vii. Commitment to commence full operations within three months from Permit being granted;
- viii. Commitment to providing local employment;
- ix. Pay required permit fee; and
- x. Adhere to all conditions of the permit.

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Assessment of applications will be in terms of the following qualitative areas:

- i. Professionalism of operator, including track record;
- ii. Additional safety standards based on local weather and geographic conditions;
- iii. Quality of equipment, including replacement cycle; and
- iv. Any additional contribution to Sunshine Coast tourism and the community

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 two 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 including:
 - beaches and waterways,
 - popular or high-use parks, and
 - some roadways (formed and unformed), pathways, footpaths and trails.
- “*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
 - There is little or no competition in the marketplace for the requested activity.

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

Council will decide to what extent commercial use 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 commercial 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 Expression of Interest (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 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 expression of interest period closes, applicants may still apply, however there is no guarantee that an assessment will be made until the next expression of interest period. For proposals that are outside the existing categories, an Impact Assessment Report will be required, and a council resolution to either add the new category to the policy or allow a limited trial. The Impact Assessment should be against the principles in this policy.

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Low-use/low-impact applications for an annual permit may be considered at any time.

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 Executive Director, Community Services.

Executive Director, Community Services is responsible for managing the process and procedures that implement this policy, for making decisions about Low-use/low-impact types of commercial use of community land, and recommending to council the permits for both High-use/high-impact and Low-use/low-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. 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 use is irregular, occasional or regular minor use
- There is no impact on the space or the community
- There is little or no competition in the marketplace for the requested use

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.

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RELATED POLICIES AND LEGISLATION

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
Sunshine Coast Regional Council Open Space Strategy

Version control:

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	Eg. Create new			DD/MM/YYYY
	Eg. Review			