



Gladstone Regional Council

Corporate Standard

Title	COMMERCIAL ACTIVITIES ON COUNCIL LAND
Corporate Standard No.	CS/04-2018
Business Unit/s	CUSTOMER EXPERIENCE
Date of Approval by CEO	
Date of Effect	
Review Date	
Date Repealed	

1.0 PURPOSE:

The purpose of this corporate standard is to detail the processes undertaken when assessing applications for commercial activities on Council land under *Local Law No. 1 (Administration) 2011* and *Subordinate Local Law No. 1.2 (Commercial Activities on Local Government Controlled Areas and Roads) 2011*.

2.0 SCOPE:

This corporate standard applies to all applications for commercial use of Council land including but not limited to the following activity types:

- Commercial Beach Activities
- Commercial Fitness Activities
- Commercial Entertainment Activities
- Mobile and Stationary Vending (including on roadsides).

This corporate standard also applies when commercial operators do not comply with the minimum standards outlined in *Subordinate Local Law No. 1.2 (Commercial Activities on Local Government Controlled Areas and Roads) 2011* and therefore require an approval for the following activities:

- Busking
- Footpath Dining
- Displaying Goods on Footpaths.

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:

- P-2018/11 - Commercial Activities on Council Land Policy
- 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 standard, the following definitions apply:

- **"Authorised Person"** means an Authorised Person appointed under Chapter 5 Division 1 of the *Local Government Act 2009*
- **"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.
- **"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 prescribed proximity outlined in the Council Policy.
- **"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.

6.0 STANDARD STATEMENT:

6.1 KEY RESPONSIBILITIES

6.1.1 Administration Officer

Administration officers are responsible for receiving and lodging applications for commercial activities approvals. Administration officers must also ensure all applications are recorded in ECM and that relevant application fees are received prior to distributing to the Environmental Health team for action.

6.1.2 Environmental Health Officer

The Environmental Health Officer (EHO) allocated with an application is responsible for all assessment processes including obtaining relevant advice from other Council Divisions on the nature of the application and issuing of correspondence to the applicant. The EHO is responsible for all system maintenance on the progress of the application and gaining relevant sign off and approval from delegated decision makers.

6.1.3 Asset Manager

The relevant Asset Manager for the Council land nominated in an application is responsible for providing advice on their support or objection to an application within two weeks from notification by the EHO. Support or objection must be based on the guiding principles and any specific principles for the type of commercial use outlined in the Commercial Activities on Council Land Policy.

6.1.4 Delegated Decision Maker

The position delegated as the decision maker for an application; with the exception of stationary vending, on land within the Gladstone Region is the Manager Biosecurity and Environmental Health or higher position. The decision maker for stationary vending on Council Controlled land is by resolution of Council. The decision maker is responsible for deciding to grant or refuse an application.

6.2 APPLICATION PROCESSING AND ASSESSMENT

All applications for a commercial activities approval on Council Land are submitted and processed as a Licence in Councils Corporate System Pathway - Licensing Module under the Health Class / Commercial Activities Type. Receipting of fees, assessment / inspection reports and outgoing correspondence are all recorded against the particular licence number in Pathway for recordkeeping purposes.

6.2.1 Application Assessment

Applications are assessed on an individual basis as received and generally within a 28 day period from being properly made. Applications are assessed using the respective Application Assessment Proforma and further information may be requested as required.

Assessment of an application must consider the guiding and specific principles outlined in the Council Policy and the provisions outlined in *Subordinate Local Law No. 1.2 (Commercial Use of Local Government Controlled Areas and Roads) 2011*.

For Stationery Vending Applications consideration must be given to the 'Like for Like' existing fixed and mobile operators outlined in the Council Policy.

6.2.2 Decision Making

Once an application has been assessed, a recommendation is made to the Delegated Decision Maker on whether to approve or refuse the application. Standard and Site-specific conditions are applied for approved applications based on the particular activity being undertaken and the recommendation should include any site specific conditions to be applied. Additional Conditions may be implemented dependent on the activity and application.

Standard Conditions

- 1) The approved commercial use is: << insert type of activity i.e. surf school, fitness class>>
- 2) The activities authorised by this approval are limited to the following location, area and periods of time:
 - a) <<Insert location details>>
 - b) <<insert specific area details>>
 - c) <<insert period of days and times>>
- 3) The approval must be displayed in a prominent position so it is easily viewable by persons at the premises. Where the display of the approval is not easily viewable, it must be available to be produced for inspection on demand by an authorised person.
- 4) The approval holder must maintain public liability insurance to the value of \$20,000,000 (\$20 million) against personal injury and property damage resulting from the activities authorised by this approval.
- 5) The approval holder must allow an authorised person to have reasonable access to the premises during normal operating hours to assess compliance with the conditions of the approval.
- 6) The approval holder must ensure that the activities authorised by the approval do not cause a nuisance or create a road safety risk.
- 7) The approval holder must ensure that all facilities and equipment used in the operation of the activity are, at all times, maintained—
 - a) in good working order and condition; and
 - b) in a clean and sanitary condition.
- 8) The applicant must obtain and is responsible for maintaining all other necessary permits and approvals from other relevant local, state and federal agencies prior to commencement of operation.

Commercial Beach Activities

- 1) The approval holder must not —
 - a) place or display any sign or device advertising the activity in the area identified in the approval otherwise than in accordance with an approval of the local government which authorises the use of the local government controlled area for that purpose; and
 - b) place any secured/permanent shade structure in the area identified in the approval.

- 2) The approval holder is responsible for the removal of all extraneous materials from the area defined in standard condition 1 and allocated to the set activity.
- 3) The approval holder and associated employees of the commercial activity must obey any and all verbal or written directions from any on duty life saver or other authorised Council officer.
- 4) The approval does not grant rights of exclusive occupancy over any particular area and public access and safety to all areas is to be maintained at all times.
- 5) Activities are prohibited from operating within 50m of the flagged area/s;
- 6) Where two (2) or more licensed operators share a location a minimum distance of 50 metres must be maintained at any time;
- 7) Operating on Sand Dunes and Dune stabilisation areas are prohibited
- 8) The licensee shall at all times during operating hours provide, maintain and have available for rescue purposes, suitable rescue equipment, first aid, and oxygen equipment.
- 9) All Commercial Surf School Activities must be undertaken in accordance with the guidelines and recommendations of Surfing Australia and/or Academy of Surfing Instructors
- 10) Businesses are to operate with no more than 8 participants per instructor
- 11) Licensee is to provide evidence in having completed accredited courses specific to the type of activity being instructed and endorsed by Surfing Australia or the Academy of Surfing Instructors and/or VETAB providers including
 - a) Current Senior First Aid; and
 - b) Current Surf Bronze Medallion
- 12) Council will not accept any responsibility or liability for any interruption to business caused by the need for Council or any other Authority to carry out any special event or type of maintenance works, natural events or any other interruption to business howsoever caused.
- 13) Area of use must be marked out through use of witches hats/cones;
- 14) Approval does not grant exclusive use of the land and do not confer ongoing occupation rights.

It is noted that matters relating to activities below the low tide mark are not within the jurisdiction of Council and accordingly, will not be actioned if raised at any time.

Display of Goods for Sale on a Footpath

- 1) The approval holder must –
 - a) keep and maintain a clear unobstructed pedestrian corridor of a specified width depending on the density of pedestrian traffic; and
 - b) only use, for the purposes of display of the goods for sale, a structure which is of safe construction and in good condition and repair; and
 - c) only display goods for sale if the goods are in an orderly and sightly condition; and
 - d) only display goods for sale if the goods are the property of, or offered for sale by, the approval holder; and
 - e) remove all goods, and any structure designed for the display of the goods for sale, when the principal premises are not open for business.

Commercial Fitness Activities

- 1) The approval holder must not —
 - a) conduct the activity in or on any carpark area, playground apparatus or equipment for use by the public for the purpose of physical exercise;
 - b) place or display any sign or device advertising the activity in the area identified in the approval otherwise than in accordance with an approval of the local

- government which authorises the use of the local government controlled area for that purpose;
- c) place any secured/permanent shade structure in the area identified in the approval; and
 - d) amplify, or cause to be made, any noise identifying or otherwise drawing attention to the activity, except in accordance with standards laid down under the Environmental Protection Act 1994.
- 2) The approval holder is responsible for the removal of all extraneous materials from the area defined in standard condition 1 and allocated to the set activity.
 - 3) The approval holder and associated employees of the commercial activity must obey any and all verbal or written directions from any authorised Council officer.
 - 4) The approval does not grant rights of exclusive occupancy over any particular area and public access and safety to all areas is to be maintained at all times.
 - 5) All person/s leading the fitness activity must hold suitable and relevant qualifications specific to the training, coaching or exercise being undertaken.

Footpath Dining

- 1) The approval holder must –
- 2) keep and maintain a clear unobstructed pedestrian corridor of a specified width depending on the density of pedestrian traffic; and
- 3) remove all tables, chairs, fixtures and fittings from the area identified in the approval when the principal premises are not open for business; and
- 4) keep and maintain the area identified in the approval, including all tables, chairs, fixtures, fittings and equipment used in the operation of the activity at all times in a clean, sanitary and tidy condition; and
- 5) keep and maintain in and about the area identified in the approval, adequate waste disposal facilities, for example, bins, and be responsible for the removal of all waste from the waste disposal facilities at such intervals as an authorised person may direct; and
- 6) only use furniture in the area which is aesthetically acceptable to the local government and kept in a proper state of repair; and
- 7) regularly clean the area identified in the approval —
 - a) during business hours for the principal premises; and
 - b) daily, after the close of business of the principal premises.
- 8) The approval holder must not —
 - a) place or display any sign or device advertising the activity in the area identified in the approval otherwise than in accordance with an approval of the local government which authorises the use of the footpath for that purpose; and
 - b) not use an umbrella within the area identified in the approval unless the umbrella has not less than 2m clearance above ground level adjacent to the umbrella and is securely anchored to the satisfaction of an authorised person.

Mobile Roadside Vending

1. The approval holder must –
 - a. keep and maintain the vehicle in a clean, tidy and orderly condition at all times; and
 - b. only serve customers from the non-traffic or kerbside side of a vehicle used in the operation of the activity.
2. The approval holder must not —
 - a. park the vehicle used for the activity for a period longer than is necessary to serve a customer who has hailed down the vehicle; or

- b. amplify, or cause to be made, any noise identifying or otherwise drawing attention to the vehicle, except in accordance with standards laid down under the *Environmental Protection Act 1994*; or
 - c. place a sign or device advertising the activity of the approval holder on any local government controlled area or road; or
 - d. operate the activity in a manner which is, or may be, a risk to road safety; or
 - e. permit or allow an animal in or about any vehicle used in the operation of the activity; or
 - f. discharge trade waste generated by the operation of the activity otherwise than in accordance with an approval under the *Water Supply (Safety and Reliability) Act 2008*.
3. Any waste generated by the operation of the activity must only be disposed of —
 - a. in a safe and sanitary manner; and
 - b. in a manner which maintains the vehicle and its surrounds in a clean, tidy, sanitary and hygienic condition.
4. Waste must not be disposed of —
 - a. so as to attract pests; or
 - b. into a water course; or
 - c. at another location other than a location properly intended for the receipt of the waste.

Stationary Vending

1. The approval holder must remove the vehicle / stall from the local government area / road after the close of business each day.
2. The approval holder must keep and maintain the vehicle / stall in a clean, tidy and orderly condition at all times.
3. The approval holder must not —
 - a. amplify, or cause to be made, any noise identifying or otherwise drawing attention to the vehicle / stall, except in accordance with standards laid down under the *Environmental Protection Act 1994*; or
 - b. place a sign or device advertising the activity of the approval holder on any local government controlled area or road; or
 - c. operate the activity in a manner which is, or may be, a risk to road safety; or
 - d. permit or allow an animal in or about any vehicle / stall used in the operation of the activity; or
 - e. discharge trade waste generated by the operation of the activity otherwise than in accordance with an approval under the *Water Supply (Safety and Reliability) Act 2008*.
4. Any waste generated by the operation of the activity must only be disposed of —
 - a. in a safe and sanitary manner; and
 - b. in a manner which maintains the vehicle / stall and its surrounds in a clean, tidy, sanitary and hygienic condition.
5. Waste must not be disposed of —
 - a. so as to attract pests; or
 - b. into a water course; or
 - c. at another location other than a location properly intended for the receipt of the waste.
6. The approval holder must only sell items applied for and approved specifically <<insert items>> to ensure 'Like for Like' goods and services are not offered within the proximity of existing 'Like for Like' operators.

6.2.2.1 Stationary Roadside Vending on State Controlled Roads

Applications for Stationary Roadside Vending on State Controlled Roads will be decided by the Department Transport and Main Roads (DTMR). When requested, Council will assess the merits of the application in accordance with Council's Local Laws, Policy and this Corporate Standard. A letter will be issued in either support or objection to the application and decided by the decision maker. It is noted that DTMR retains the authority as owners of the land to make their decision irrespective of any support or objections made by Council.

6.3 REVIEW OF DECISION

A person who is aggrieved by a decision may apply to the local government for a review of the decision. An application for review of a decision must:

- (a) be in writing; and
- (b) state the reasons why the applicant considers the decision should be reviewed; and
- (c) be lodged within 14 days after the day on which notice of the decision was given to the applicant.

However, any decision made by resolution of Council does not provide for any review provisions internally for that decision. If an applicant is aggrieved by a decision made by resolution of Council, the only review provision is with the Queensland Ombudsman Office.

6.3.1 Carrying Out Review

Council must carry out a review at either a meeting of the local government; or have the review carried out by an Authorised Person. An Authorised Person who carries out a review must not be the original decision maker and must be a person who is no less senior than the original decision maker.

6.3.2 Decision On Review

On completing a review, Council may confirm, vary or reverse the decision under review. The applicant will be provided written notice of the result of the review within 28 days after the receipt of the application.

6.4 ANNUAL RENEWAL PROCESS

Approvals are granted until the 30 June of the current financial year and renewals of approvals are issued by the end of April each year. Applicants will to have current public liability insurance and no outstanding compliance matters before renewal of their approval will be made. Surf Schools will need to provide a current copy of their Accreditation with Surfing Australia or Academy of Surfing Instructors.

7.0 ATTACHMENTS:

Nil

8.0 REVIEW TRIGGER:

This corporate standard 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 effect.

TABLE OF AMENDMENTS		
Document History	Date	Notes (including the prior CS No, precise of change/s, etc)
Originally Approved:	15 January 2015	
Amendment 1	7 February 2017	CS-01-2017
Amendment 2		CS-04-2018 – unfair advantage provisions, consistent decision making, state roads exemption
Amendment 3		

APPROVED:

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LEISA DOWLING
ACTING CHIEF EXECUTIVE OFFICER