

# Use of a Road for a Business Purpose Policy

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Record number	D20/77992
Responsible Manager	Manager Community Safety
Other key internal stakeholders	Director Community & Cultural Development Manager City Development
Last reviewed	30 November 2020
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## 1. PURPOSE

The purpose of this policy is to provide a general Council position to our community and operational direction to Council officers in regards to how the use of a public road under Council care and control may be permitted for business purposes.

## 2. POLICY

### 2.1 Permits for Use of a Road for a Business Purpose

Vendors sell a range of products from roads including for short term periods for specific occasions (i.e. selling flowers for Mother's Day) and more regular and sustained periods as is the case with ice cream vans and more long term arrangements such as Mobile Food Trucks. The following conditions apply in regard to the issuing of permits for the use of a road for business purpose within the City of Tea Tree Gully.

### 2.2 Short Term Permits - Fixed Point of Sale

Annual events such as Mother's Day where the selling period is clearly of a short defined term (e.g. the eight (8) days prior to Mother's Day and the day itself) requires a single permit per site per applicant. An applicant wishing to sell from multiple sites may include these sites on a single application although a separate fee and assessment process will be required for each site.

Where an applicant wishes to sell products from a location on a regular and/or extended basis exceeding nine (9) consecutive days then a separate fee will apply for each occasion outside of this nine day period. Roadside fruit sellers are an example of such a situation.

A permit shall not be issued unless the necessary approvals under the Development Act 1993 have first been obtained, or it has been determined that a development approval is not required for the establishment of the business.

Where more than one point of sale location applies and a permit is granted and a separate fee will apply for each point of sale location.

### 2.3 Long Term Permits - Mobile Vehicles or Trailers

Where a vendor operates more than one van or point of sale location, a permit may be issued in respect of each van or point of sale, at Council's discretion.

### 2.4 Long Term Permits – Food Trucks

The Local Government Act 1999 and Regulations provide that:

Councils will be required to grant section 222 permits to mobile food vending business upon application;

- a. The permit conditions must be consistent with the Regulations and the Mobile Food Vendor Guidelines.
- b. The Regulations prevent councils from restricting the type of foods sold under permits and cap permit fees at \$200 / month and \$2,000 / year; and

- c. Councils can issue expiation notices where a business is being operated without a permit or breach of permit conditions, or can cancel permits where a breach is 'sufficiently serious'.

Council has developed Mobile Food Vendor Guidelines which are attached to this policy. These guidelines provide information to potential applicants as to the criteria that Council will consider in granting any permit.

## 2.5 Long Term Permits - Cafes, Restaurants and Outdoor Dining

Although they are not a current feature in the Tea Tree Gully landscape Alfresco type arrangements operating on a Council footpath require a permit from Council to occupy its land.

The granting of the permit under this policy may be subject to the requirement to obtain Development approval and a Liquor Licence.

## 2.6 Fees and Charges

Council will charge a fee for issuing these permits and the fees will be based on the following structure:

- a. Short Term Continual Use - Up to a maximum of nine (9) days as a fee per day
- b. Short Term Ad Hoc or Occasional Use - To include stalls such as fruit and vegetable i.e. one day per month for 12 months
- c. Monthly Fee – Mobile Food Vans and selling from Council owned land
- d. Annual Fee – Mobile Food Vans, selling ice cream and coffee and selling from Council owned land
- e. Long Term - Outdoor Dining fee per chair.

## 2.7 Records management

All applications, approvals (with conditions) and refusals are required to be in writing and appropriately recorded in Council's records management system in accordance with Council's Records Management Policy and procedures.

## 3. DEFINITIONS

For the purposes of this policy the following definitions apply:

### CEO

Refers to the Chief Executive Officer (including their delegate) of the City of Tea Tree Gully.

### Act

Local Government Act 1999

[Development Act 1993 Transitioning to the Planning Development and Infrastructure Act 2016](#)

Section 33 of the Development Act 1993

Section 102 of [the Planning Development and Infrastructure Act 2016](#)

Food Act 2001

### Alfresco

An outside eating area.

### Business Purpose

Council owned and that may be used for Business Purpose, even if it is not intended to make a profit.

### City

The geographic area covered by the Council

### Contiguous land

Under section 49 of the Local Government Act 1999, land will be regarded as being contiguous to other land if the land:

- a) Abuts on the other land at any point
- b) is separated from the other land only
  - (i) a road, street, lane, footway, court, alley, railway or thoroughfare
  - (ii) a watercourse or channel
  - (iii) a reserve or other similar open space

### Council

The elected member body or employees acting under delegation or authorisation.

### DIT

Department for Infrastructure and Transport

### Fixed Point of Sale

Situations where the permit is for a single specific/fixed site.

### Long Term Permit

A permit issued for a period of more than nine (9) consecutive days but not greater than one (1) calendar year and will be subject to annual review and renewal.

### Mobile Sales

Includes any arrangement (other than a mobile food vending business) where sales are not from a single fixed point, but the sales transaction occurs on a Council Road.

### Permits

For the purpose of interpretation of this Policy the terms “permits”, “licence” and “authorisation” will have the same meaning.

### Public Street or Road

The road, for the purpose of this Policy, includes the road carriageway, the road shoulder, the kerb and water table, footpath or other similar paths and verge areas.

### Short Term Permit

A permit issued for a period of not more than nine (9) consecutive days or for single non-consecutive days.

## 4. LEGISLATIVE FRAMEWORK AND OTHER REFERENCES

### Local Government Act 1999

Section 188(1)(f) of this Act provides for Council to impose fees and charges in relation to the granting of Permits.

Section 222 of this Act provides that Council can issue a Permit for the use of a road for Business Purposes for periods of up to 5 years.

Section 222(1) of this Act prohibits a person to use a public Road for business unless authorised to do so by a Permit. Use of a Road for Business Purposes that is not authorised by a Permit is an offence under this Act to which a maximum penalty of \$2500 and expiation fee of \$210 apply.

### Development Act 1993 transitioning to the Planning Development and Infrastructure Act 2016

Section 33 of the Development Act 1993 and Section 102 of [the Planning Development and Infrastructure Act 2016](#) require Council as an approving authority to deal with alterations or encroachments over public land places in a satisfactory manner.

Depending on the specific nature and characteristics of the individual business, the selling of ice cream etc. may constitute a change in land use, and may therefore require a separate development approval in accordance with the provisions of the relevant Act.

### Food Act 2001

This Act is to ensure that food for sale is both safe and suitable for human consumption, prevent misleading conduct in connection with the sale of food and to provide for the application of the Food Standards Code.

### 4.1 Other references

Council's documents including:

- a. Application to sell from streets and roads (form)
- b. Application to sell ice cream or coffee from streets and roads (form)
- c. Mobile food vending permit application (form)
- d. Application to sell from Council owned land (form)
- e. By-Law No.2 – Roads, addresses alterations and encroachments over public streets and roads
- f. By-Law 3 – Local Government Land
- g. Fees and Charges Register
- h. Records Management Policy and Procedures

## 5. STRATEGIC PLAN/POLICY

### 5.1 Strategic Plan

The following strategic objectives in Council's Strategic Plan 2025 are the most relevant to this report:

Objective	Comments
<b>Economy</b>	
<i>A population profile that supports a growing economy</i>	This policy assists businesses wishing to operate on Council owned land with clear guidelines within which to operate.
<b>Places</b>	
<i>Streets, paths, open spaces and parks are appealing, safe and accessible</i>	This policy ensures that structures placed on Council owned land are done so in a way that minimises risk to businesses and the general public.

### 5.2 Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. The theme most relevant to this report are: Customers and community relations.

## 6. POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.