

	<p style="text-align: center;"><b><i>Business Activity on Council Land Policy</i></b> Policy No. GOVPOL 23</p>	Version No:	1
		Responsible Officer/s:	Governance Officer
		Classification:	Council
		Issued:	18 October 2021
		Next Review:	October 2025

## 1. Purpose

The District Council of Grant (**Council**) recognises the community value and advantages associated with allowing business to conduct activities such as outdoor dining, mobile food vendors, tourism, sporting and the like on Council land in appropriate locations. Council seeks to encourage and promote such activities as a desirable part of our lifestyle and recognises that such experiences add to the vibrancy and character of our region, have the potential to attract tourism and support a thriving local economy. The purpose of this Policy is to set out rules and procedures for permit applications received for the purpose of conducting business activities on Council land pursuant to the *Local Government Act 1999*.

## 2. Scope

This Policy applies to the use of all Council land, including footpaths, facilities and open spaces in the District Council of Grant area for business related activities or commercial purposes by an organisation, individual, group or business.

## 3. Definitions

<b><i>Community Land</i></b>	Local Government land classified as community land under Chapter 11 of the Act.
<b><i>Local Government Land</i></b>	Land owned by Council or under Council's care, control and management.
<b><i>Mobile Food Business</i></b>	a business that serves food and/or beverages to the public and is of a mobile nature, including but not limited to a van, truck, utility, caravan, trailer or cart.
<b><i>Public Road</i></b>	has the same meaning as in the Act
<b><i>Outdoor Dining</i></b>	the use of the public footpath or a public space for the purpose of extending the seating space of an adjacent business whose main function is the provision of food and/or beverages to the public (i.e. restaurants, cafes, bars, hotels, delicatessens and other food and beverage outlets).
<b><i>Public Space</i></b>	an area that is open and accessible to members of the public.
<b><i>Fixed Food Business</i></b>	means a business the primary purpose of which is the retail sale of food or beverages that is carried on at fixed premises.

## 4. Policy

Whilst Council is supportive of business operators conducting activities on Council land, those activities and services must be delivered in a safe, inclusive and appropriate manner in order to protect the public interest in and all users of the public land upon which such activities take place.

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#### 4.1. Permits

Business activity on Council land requires a permit and may, in some cases, require Development Approval (i.e. where semi-permanent or permanent structures are to be erected, are adjacent to, or the application involves, affects, or has potential to impact a property which has been heritage listed).

There are several permit types that relate to conducting business activities on Council land, depending on the relevant activity:

- Bailing
- Boat launching (see Boat Ramp Policy)
- Diving
- Mountain bike tours
- Fish buyers
- Stock grazing/droving
- Mobile food vendors
- Mooring
- Outdoor dining
- Road rentals (see Road Rent Agreement Policy)
- Special events
- Wood collection (see Collection of Firewood Policy)

Depending on the specific business activity, the relevant permit will include certain criteria and conditions which must be met. Permits will not be approved until all criteria and conditions contained in the Permit form have been satisfied.

#### 4.2. Permit Applications

Applications to conduct a business activity on Council land should be made using the Application/Permit Form relevant to the business activity sought.

Application/Permit forms can be found on Council's website at <https://www.dcgrant.sa.gov.au/services/forms> or requested from Council's principal office at 324 Commercial Street West, Mount Gambier.

A completed application consists of the following (all documents must be included in order for the application to be considered):

- a. A fully completed and signed Permit/Application Form;
- b. A Certificate of Currency for public liability insurance to the value of twenty million dollars (\$20,000,000), specifically indemnifying Council;
- c. A map / plan of the proposed location of the activity; and
- d. Evidence of payment of the prescribed fee to Council.

The CEO has discretion to waive any of the above requirements on a case-by-case basis as appropriate. Applications for boat ramp and fire wood permits do not require public liability insurance to be taken out by the applicant.

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#### **4.3. Transfer of Permit**

Permits are personal to the permit holder and are not transferrable. In the event that the business is sold, the new business operator must apply to Council for a new Permit. Council is unlikely to refuse such applications where a permit has previously been granted and all conditions of the permit satisfactorily complied with.

#### **4.4. Permit Period**

A permit is issued for a maximum period of 12 months from the date of approval, unless otherwise prescribed in the permit. At the expiry of the permit period, the permit holder must submit a new application (with associated documents) if they wish to continue operating their business activity.

#### **4.5. Permit Fee**

All permits will attract a prescribed fee, which will vary depending on the type of business activity conducted. Permits shall not be issued until evidence of payment of the fee to Council is provided.

#### **4.6. Cancellation or Amendment of Permit**

A permit may be cancelled or amended by Council if:

- 4.6.1. The permit holder fails to comply with the conditions of the permit and this Policy, or there are changed conditions affecting activity in the particular location/s nominated in the permit;
- 4.6.2. The Council wishes to alter infrastructure located on public land where the permit applies. In such instances the permit holder will be given a minimum of three (3) months' notice in writing; and/or
- 4.6.3. The Council or Service Authorities require access to the permit area for the purpose of installing and/or maintaining infrastructure.

#### **4.7. Public Liability Insurance**

Permit holders are required to hold public liability insurance with a minimum cover of twenty million dollars (\$20,000,000). Policies must note Council as an "interested party". A certificate of currency for the policy must accompany the application for a permit. Additionally, if the policy expires during the Permit Period, a Certificate of Currency showing the renewed Policy must be provided to Council. Prior to the expiry of the current policy and/or before the activity is commenced or recommended (whichever is sooner).

#### **4.8. No Exclusive Rights**

Any Council land subject to a permit for business activity remains a public space, free to be used by other members of the community. Permit holders and their patrons or customers do not have any exclusive use of or rights over the area.

#### **4.9. Outdoor Dining Permits**

Applications for outdoor dining must be attached to an established "bricks and mortar" business, as an extension of the trading area of that business, and will apply only during opening hours of the business.

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Where an outdoor dining permit includes the service of alcohol, a further application must be made to Council seeking permission, and a Liquor Licence must be sought over the affected area through Consumer and Business Services.

A completed application requires the following additional inclusions (all documents must be included in order for the application to be considered):

- Photographs, images and / or a detailed description of all proposed outdoor furniture to be used (including but not limited to colour, materials, dimensions, location/placement, etc);
- A detailed description of any barriers and additional or already existing signage to be used (including but not limited to dimensions, colour, advertising included on barriers and signage, location/placement, etc); and
- Details that demonstrate disability access will be maintained for any footpaths and pedestrian thoroughfares.

Outdoor dining permits will not commence, and no piece(s) of outdoor furniture may be placed in the permit area, until a permit has been authorised by Council and returned to the permit holder, and all terms and conditions of the permit (including any special conditions) have been satisfied. The permit holder must comply with all terms and conditions set out in the permit at all times.

The use of a public footpath as an outdoor dining area attracts an annual permit fee calculated on the following basis:

Outdoor Dining Setting (1 x table, 4 x chairs, 1 x umbrella):	_____ @ \$30.00
Additional chairs:	_____ @ \$7.50
Additional tables:	_____ @ \$7.50
Additional umbrellas:	_____ @ \$7.50
<b>TOTAL FEE PAYABLE</b> (Minimum charge \$75.00 [dining only])	<b>\$_____ plus GST</b>

#### **4.10. Mobile Food Businesses**

Permits for mobile food business attract additional criteria and conditions, due to their complex nature. In order for an application for a mobile food van permit to be valid, applicants must obtain a permit application form from Council, complete all required information in its entirety and submit to Council:

- Include full details of applicant and contact details
- Include a detailed site plan (with maps and/or images where possible) showing the location(s) where the mobile food business will be located
- Include the proposed start and finish dates for when the permit will be required
- Include details of the proposed trading dates, days of the week and times
- Include a detailed description of the type of product to be sold
- Include a current copy of the applicant's public and products liability insurance cover note to the value of \$20,000,000 which notes the District Council of Grant as an interested party

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- g. Include proof of food business notification with Council's Environmental Health department
- h. Include proof of a valid police check for all operators and staff of the mobile food business
- i. Include or provide any further relevant information as requested by Council officers

#### Rules & Conditions:

The following conditions will apply to all permits issued to operate a mobile food business on a public road and must be observed at all times:

(a) The operation of the mobile food business must not unduly interfere with:

- Safe movement of vehicles driven on roads;
- Vehicles parking or standing on roads;
- A parking area for people with disabilities (within the meaning of rule 203(2) of the Australian Road Rules);
- Public transport or cycling infrastructure (i.e. bus zones, taxi zones and bike lanes);
- Other road related infrastructure;
- Infrastructure designed to give access to roads, footpaths and buildings.

(b) Compliance with requirements relating to mobile food businesses under any other relevant Acts or laws, including but not limited to:

- *Food Act 2001*;
- *South Australian Public Health Act 2011*;
- *Environment Protection Act 1993*;
- *Local Nuisance and Litter Control Act 2016*;
- *Motor Vehicle Act 1959* and *Road Traffic Act 1961*;
- Laws or legislative provisions relating to electrical or gas installations or appliances; and
- Relevant law or legislative provisions relating to health, safety or the environment.

#### Application Considerations (Location & Impact):

A mobile food business holding a permit issued by the Council may operate on a public road anywhere in the Council area other than:

- Mount Gambier Airport
- Mount Gambier and District Saleyards
- Parking Bay at the Tarpeena Public Toilets
- Tenterden Reserve, Port MacDonnell Boat Ramp and Carpark
- Sea Parade, Port MacDonnell between Standish Street and Bookey Street

Subject to complying with these location rules and any other requirements of its permit, applications shall also take into consideration:

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1. To operate a reasonable distance from a fixed food business (during the operating hours of the fixed food business), and
2. To take into account the effect of the operation of the mobile food vending business:
  - i. vehicles and pedestrian traffic, footpaths, disability access, driveways, access points to buildings and parking spaces for people with disabilities;
  - ii. the requirements relating to, and availability of, parking areas;
  - iii. nearby economic viability of businesses; and
  - iv. residential amenity (where applicable).

#### Permit fees

The permit fee for a mobile food business permit will be equal to the minimum rate set out in Council's Rating Policy (FINPOL 19) plus GST (up to the maximum fees set out in the Regulations). This fee will be reviewed annually in line with Council's annual budget process.

The fees payable for a mobile food business permit will be outlined on the application form. In order for the permit to be valid, permit fees will be payable in advance and must be paid in full. However applicants will have the option of committing to paying the permit fee in monthly instalments.

#### Cancellation of Permits

Council may at any time conduct inspections of mobile food businesses without prior warning to ensure compliance with terms and conditions of permits. A Mobile Food Business permit may be cancelled or amended without notice if:

- The permit holder fails to comply with any of the terms and conditions imposed upon them as per their permit; or
- Conditions in the area/s for which the permit holder has been given approval to conduct their business change resulting in it no longer being a viable option to allow a mobile food business to trade in the relevant area/s.

Depending on the severity of a breach of the permit terms and conditions, mobile food business vendors may receive up to two warnings before their permit is cancelled. In the case of a serious breach, the permit may be either cancelled immediately or temporarily suspended until the breach can be remedied. In the case of a permit being cancelled for a breach of terms and conditions, permit fees are non-refundable. Fines and other penalties may apply as per applicable legislation.

## **5. Responsibilities**

The Chief Executive Officer, Environmental Health Officer and Governance Officer are responsible for ensuring compliance with this Policy.

## **6. References / Other Documents**

*Local Government Act 1999*

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*South Australian Public Health Act 2011*

*Road Traffic Act 1961*

## 7. Review

This Policy shall be reviewed by the District Council of Grant at a minimum, once within every four (4) year Council term (or on significant change to legislation or other matters which could affect this policy).

Action	Date	Minute Reference
Adopted by Council	18 October 2021	21166.3