

5.3. ROADSIDE VENDING POLICY UPDATE

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DEPARTMENT Environment and Planning

RECOMMENDATION

That Council adopt the updated Roadside Vending General Policy.

EXECUTIVE SUMMARY

Council officers receive enquiries from time to time regarding the sale of goods from the road, known as Roadside Vending. The current policy only permits the sale of whole fruit, vegetables and flowers grown by the approval holder or primary produce harvested by the approval holder.

The intent of the policy is to provide clear objectives and guidelines for the issuing of approvals to carry out Roadside Vending activities. The current policy was due for revision in 2019 and has now been reviewed and updated following the adoption of Council's new Local Laws.

BACKGROUND

Historically, Council has approved a limited number of vendors for roadside vending. The activity is generally constrained due to the number of State controlled roads in the Shire, including Captain Cook Highway, Port Douglas Road, Macrossan Street, Front Street and the Mossman Daintree Road, with these roads requiring approval from the Department of Transport and Main Roads (DTMR).

Typically, the roadside vending activity has not been supported by DTMR due to a lack of suitable and safe pull-over areas in accordance with their requirements.

Previous Councils have also considered the potential impact on small businesses with shop fronts in the Shire selling similar products. As such, approval conditions have generally required vendors to be set up a considerable distance from any competing businesses, normally outside of CBD areas. This is retained in the updated policy.

COMMENT

Some of the recent enquiries for roadside vending, are in fact mobile or itinerant vending, as the vendors have expressed an interest in the use of parks and park related areas. The updated Roadside Vending policy does not address this issue. It is proposed that these types of applications will be considered under Council's Local Laws as a Prescribed Activity.

Where Prescribed Activities are proposed in parks and other Council controlled areas, other considerations such as the Reserve designation, impacts to other park users etc. will need to be assessed.

It is proposed that the sale of food and drink in Council controlled reserves and areas, apart from road reserve, will be assessed through the Prescribed Activity process and brought to Council for a final decision. This Roadside Vending policy is to provide clarity for the assessment of applications to sell goods from road reserve (state and local), within the Shire.

PROPOSAL

- That Council adopt the updated Roadside Vending General Policy. In general, the Policy is in accordance with the following provisions.
- Any applicant wanting to undertake Roadside Vending on a State controlled road, must first seek approval from the Department of Transport and Main Roads before making application to Council.
- All new applications applied for under the Local Law that relate only to the selling of produce, by a primary producer - will be assessed by an Authorised Person in the Environment and Planning department.
- All new applications for anything other than **produce**, can only be approved by a Council resolution.

FINANCIAL/RESOURCE IMPLICATIONS

The current policy is specific in the nature of the goods approved for sale through roadside vending. The updated policy provides for further consideration of additional products, other than produce, by Council resolution. This will increase the time and resources required to assess an application for non-produce items, and as such will require an initial assessment and report to Council.

RISK MANAGEMENT IMPLICATIONS

The current policy is out of date and does not reflect the new Local Laws or current organization structure. Not adopting the updated policy may result in challenges to decisions about Roadside Vending or make compliance and enforcement more challenging.

SUSTAINABILITY IMPLICATIONS

Economic: The policy balances the desire for roadside vendors to trade in appropriate locations while also providing some distance to other businesses. Desirable vendors may attract additional business in some areas, such as the Daintree Gateway Precinct.

Environmental: The sustainability of roadside vending will generally be determined by the types of products being sold. For example, the sale of whole fruit and vegetables would likely result in minimal or no waste products, whereas the sale of coffee, pies or other products may result in waste by-products such as plastic packaging or lids.

Social: Roadside vendors may have the advantage of offering lower prices for similar products being sold in retail stores, providing a benefit for consumers. However, this may also result in some division in the community where business owners feel that they cannot compete because of the overheads required to sustain a retail business such as rent or rates, staff costs and utilities. Council should also consider the implications of amenity and the impact that vendors may have on the aesthetics of the Shire.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 4 - Inclusive Engagement, Planning and Partnerships

In delivering for our communities, economy and environment, Douglas Shire will ensure open and transparent engagement and communication. We will develop robust strategic plans and we will partner with our community and key stakeholders.

Goal 2 - *We will develop forward looking strategies for the future of our communities, and we will ensure balanced and appropriate planning decisions.*

COUNCIL'S ROLE

Council can play several different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Custodian Council owns and manages infrastructure, facilities, reserves, resources and natural areas. In fulfilling its role as custodian, Council will be mindful of the community, the economy, the environment, and good governance.

Regulator Council has numerous statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.

CONSULTATION

Internal: Nil

External: Department of Transport and Main Roads

ATTACHMENTS

1. Roadside Vending General Policy Proposed update March 2021 [5.3.1 - 4 pages]

ROADSIDE VENDING GENERAL POLICY

Intent

The intent of this policy is to provide clear objectives and guidelines for issuing approvals to carry out Roadside Vending Activities on roads under Douglas Shire Council Local Law No. 1 (Administration), Schedule 8, Commercial Use of Local Government Controlled Areas and Roads.

Scope

This policy shall apply to Roadside Vending Activities carried out on all Council and State-controlled roads within the Douglas Shire Council area. The policy does not include vending in parks or other Council controlled areas.

Definitions

Products: an article or substance that is manufactured or refined for sale, can be goods or services.

Roadside Vending:

- (i) The commercial supply of goods or services (products) from a vehicle or place on a road; or
- (ii) the setting up on, or bringing onto a road of a stall, vehicle, equipment or other thing for the commercial supply of goods or services.

Produce: Agricultural and other natural products.

Provisions

General

- Any applicant wanting to undertake Roadside Vending on a State controlled road, must first seek approval from the Department of Transport and Main Roads before making application to Council.
- All new applications applied for under the Local Law that relate only to the selling of produce, by a primary producer - will be assessed by an Authorised Person in the Environment and Planning department.
- All new applications for anything other than **produce**, can only be approved by a Council resolution.

Requirement to Hold Approval

- A person must not carry out a Roadside Vending activity on a road unless authorised by an approval issued by the Douglas Shire Council.

Application for Approval

An application for approval must be made in accordance with the requirements of Local Law 1 (Administration) and must be accompanied by the following:-

1. Details of the nature, time, duration and place of the proposed activities for which the approval is sought;
2. A site plan showing the relevant part of the land to be used for the prescribed activity including boundaries of the site, the outline of the buildings, emergency exits, exclusion zones, trees, public facilities and infrastructure and other obstructions;
3. Details of the type of signage which is intended to be displayed and the method intended to be used to ensure stability of the signage;
4. If the activity is to operate from a vehicle, a copy of a current vehicle registration certificate; and
5. Details of all insurances relevant to the authority held by the person who will be undertaking the activity, including evidence that the applicant holds a public liability insurance policy.
6. Whether the proposed activity would—
 - a. adversely affect existing services located in, on or over an area or road; or
 - b. be in conflict with or not in accordance with any local government policy relating to the activity at the time of the application.
7. Whether the applicant's proposed waste management strategy makes provision for the satisfactory collection, storage and removal of all waste generated by the proposed activity; and

Assessment of Application

- Assessment of all applications will be undertaken with reference to the Department of Main Roads guideline "Roadside Vending on State-controlled Roads".
- Sites where the proposed activity will potentially create water and dust problems will not be favoured.
- Proposed sites, in any new application, unless otherwise approved by a Council resolution, must be a minimum of 1km from any existing retail businesses of a similar nature.

Unit Responsible for Administration

Environment and Planning – Local Laws

Nature of produce Approved for Roadside Vending

Only the following categories of goods will be considered for approval under this policy:-

- Whole fruit, vegetables and flowers grown by the approval holder;
- Primary produce harvested by the approval holder e.g. whole/uncooked seafood;
- Any other products, as determined by Council resolution.

General Conditions of Approval

In issuing an approval, Council may impose conditions including: -

- (a) Reasonable access to local government staff or contractors must be permitted at all times.
- (b) The activity must be conducted in accordance with any standards of the local government applicable at the time of the approval.
- (c) The approval must be displayed in a way that is visible to the public whilst conducting the activity.
- (d) The approval must be produced for inspection on demand by an authorised person.
- (e) If the approval authorises the approval holder to use a specified part of a local government controlled area or road for carrying on a business—
 - (i) pay rental specified in the approval to the local government at specified intervals; and

- (ii) maintain the area where the activity takes place in clean, tidy and orderly condition.
- (f) If the activity involves playing live or taped performances—
 - (i) a requirement that amplified music does not exceed a decibel limit determined by an authorised person.
- (g) If the activity involves use of a footpath—maintain a clear unobstructed pedestrian corridor of not less than 1.5 metres or, in the case of high usage footpaths, a distance greater than 1.5 metres stipulated in the approval.
- (h) The activity must only be conducted on the days and hours specified on the approval.
- (i) maintain public liability insurance for an amount as determined by the local government covering the activity which indemnifies the local government in respect to any liability arising from the activity
- (j) the approval holder must indemnify the local government against claims for personal injury (including death) and damage to property (including economic loss) arising by, through or in connection with the works or activity.
- (k) pay any costs or expenses incurred by local government to rectify any damage caused by the activity;
- (l) ensure that vegetation, soil, sand, rocks, native animals or natural things are not interfered with, damaged or removed;
- (m) not interfere with, paint, permanently mark, damage or remove any buildings, structures, fixtures, fittings or facilities provided by the local government.

Environmental Health Conditions of Approval Where Proposal Involves the Sale of Food

- Where the application involves any food, other than whole fruit and vegetables, the applicant must hold a license to carry on a licensable food business under the Food Act 2006.
- An approval for Roadside Vending does not constitute an approval for the sale of food. Where it is proposed to sell food that constitutes the carrying on of a licensable food business then the applicant must satisfy the requirements of Council's Environmental Health Unit including, if necessary, applying to carry on a licensable food business under the Food Act 2006 and being granted a license.

Issue of Approval

The approval may be issued

- On an annual basis by financial year; OR
- On a pro-rata basis, as determined by Council.

Insurance

- The holder of the approval is to maintain public liability insurance for an amount as determined by the local government covering the activity which indemnifies the local government in respect to any liability arising from the activity
- Such insurance policy must clearly indemnify the Douglas Shire Council and any person associated with the activity as well as the operator and any other person directly involved with the activity.
- Council may withhold issuing the approval until the copy of the insurance policy is provided.

Transfer of Approval

- The holder of an approval may, with the approval of Council, transfer the approval to another person. Such application for transfer must be made on an approved form, must comply with all conditions and must be accompanied with the transfer fee as set by Council resolution.

Policy Review

This policy is to be reviewed annual/whenever legislation changes, or every 2 years if no changes have been required to be enacted, at the direction of the Chief Executive Officer.

Policy Details

Policy Name	Roadside Vending General Policy
Policy Number	63
Policy Version	3
Document Number	1000744
Endorsed by	Chief Executive Officer
Policy Type	Council
Approval Authority	Council
Date Adopted	
Time Period	4 Years
Review Date	30/03/2025
Policy Department	Environment & Planning
Link to Corporate Plan	Inclusive Engagement, Planning and Partnerships
Revoked/Superseded	

This policy is to remain in force until otherwise determined by Council.