

**APPROVAL UNDER SECTION 7 & 9 OF LOCAL LAW NO.1 (ADMINISTRATION) 2011
AND SUBORDINATE LOCAL LAW NO. 1.2 (COMMERCIAL USE OF LOCAL
GOVERNMENT CONTROLLED AREAS AND ROADS) 2011**

TERMS AND CONDITIONS

PHILIP STREET FOOD & COFFEE VENDOR

1. Defined Terms & Interpretation

1.1 Defined terms

In this Agreement:

Terms in bold type below have the meaning shown opposite:

“Activities” means the operation of the mobile food and coffee vendor and contiguous seating area as listed in the Applicant’s application and approved by Council;

“Applicant” means the Applicant selected by Council following the Expression of Interest process and subsequent application set out in Item 1 of Schedule 1;

“Applicant’s Agents” means each of the members, employees, contractors, agents, clients, invitees and volunteers of the Applicant or others (with or without invitation) who may be at the Philip Street Precinct due to the Applicant’s Activities;

“Applicant’s Property” means all property brought by the Applicant onto the Philip Street Precinct;

“Approved Area” means the area within the Philip Street Precinct as outlined in orange on the drawing in Schedule 2;

“Claim” means any claim or legal action and all costs and expenses incurred in connection with it;

“Council” means Gladstone Regional Council;

“Council’s Property” means any assets owned or operated by the Council at the Philip Street Precinct;

“Disadvantaged Member” means a person of a class outlined within Schedule 3;

“Key Values” means the values of wellbeing, learning and connection;

“Operating Times” means the times and dates for use of the Approved Area as approved by Council and set out in Item 2 of Schedule 1;

“Safety Laws” include all laws (including but not limited to *Work Health and Safety Act 2011* and *Work Health and Safety Regulation 2011*), Codes of Practice and policies, corporate standards and procedures relating to Work Health and Safety and all laws and health directives relating to COVID19;

“Services” means all restrooms, electricity, fire prevention, provided in or to the Philip Street Precinct;

“Specified Vehicle” means the vehicle identified at Item 5 of Schedule 1;

“Term” means the term set out in Item 4 of Schedule 1;

“Philip Street Precinct” means the Philip Street Communities and Families Precinct owned and controlled by Council located at 1 Pengelly Street, West Gladstone in the State of Queensland, more particularly described as Lot 1 on SP 312053.

“Social Enterprise” means a businesses that exist to benefit the public and community. Are led by an economic, social, cultural or environmental mission. Trade to fulfil their mission and derive a substantial portion of their income from trade. Reinvest most of their profit/surplus into the fulfilment of their mission.

“Environmentally friendly packaging” means packaging that is biodegradable or can be recycled.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (1) a word of a particular gender includes each other gender;
- (2) reference to the singular includes the plural and the plural includes the singular;

- (3) any Act includes all amendments or substitutions for that Act and the Regulations made under that Act.
- (4) reference to a person includes:
 - (a) a corporation, incorporated association and government body; and
 - (b) the legal representatives and successors of that person;
- (5) 'including' and other similar expressions are not words of limitation;
- (6) reference to a right includes a remedy, authority or power;
- (7) a covenant by a person not to do a thing includes a covenant by that person not to allow, attempt, obtain, permit or suffer the doing of that thing;
- (8) any covenant, agreement or liability by two or more persons shall bind them jointly and each of them severally.

1.3 Severability

If any provision of this Agreement is invalid or unenforceable it shall be severed from the balance of this Agreement, but all other provisions of this Agreement shall remain in full force and effect.

2. Approval to Use and Access Approved Area

- 2.1 Subject to the terms of this Agreement and to the Applicant holding and maintaining all necessary insurances, Council grants to the Applicant and the Applicant accepts a non-exclusive licence to use the Approved Area for the Activities during the Operating Times.
- 2.2 The Applicant agrees that this licence is personal to the Applicant, and the Applicant:
 - (1) has no tenancy, estate or leasehold interest in the Approved Area; and
 - (2) cannot transfer, sublet, assign, mortgage or dispose of any part of its interest in this Agreement.
- 2.3 The Applicant acknowledges that the Applicant has relied on its own investigations as to the suitability of the Approved Area for use by the Applicant and has not relied on any representations made by Council.

3. Facilities and Services

- 3.1 The Applicant may use the Services as reasonably required for the purposes of the conduct of Activities.
- 3.2 Council is not liable to the Applicant for any breakdown or failure to function of Council's Property or any Services for any reason. The Applicant will have no claim against Council for any compensation for any such breakdown or failure.
- 3.3 The Applicant must not misuse or overload any Services.
- 3.4 The Applicant must not use any electrical, sound, lighting or other equipment or devices (other than those supplied by Council) without the prior written consent of Council. If consent is given, such equipment must comply with relevant Australian standards, be tested and tagged under *Electrical Safety Regulation 2013* and be used only in accordance with manufacturer's directions.

4. Promotion and Publications

- 4.1 The Applicant must not display any signs or advertising material in the Philip Street Precinct or surrounds without the prior written consent of Council.
- 4.2 If consent is given to the display of signs, these must be freestanding and placed in areas which would not cause a trip hazard and are agreed by Council. No signs or posters may be affixed to fences, vegetation or buildings.

5. Safety

- 5.1 The Applicant must:
 - (1) ensure the safety of the Applicant's Agents and the security of the property of the Applicant and the Applicant's Agents during use of the Approved Area;
 - (2) comply with, and ensure the Applicant's Agents comply with, Safety Laws and Council's reasonable requirements and directions relating to safety and security, including but not limited to Council's emergency and evacuation plan, and with the directions of emergency service personnel (eg police, fire services and ambulance services).

6. Applicant's obligations

- 6.1 The Applicant must:

- (1) keep, maintain and leave the Approved Area and Council's Property clean and in good repair and condition during Operating Times and at the end of each day of operation, including by:
 - (a) keeping all tables, chairs, fixtures, fittings and equipment used in the undertaking of the Activities at all times in a clean, sanitary and tidy condition;
 - (b) ensuring that adequate rubbish bins are provided and kept in a safe and sanitary manner, including by ensuring that all rubbish bins are regularly emptied, so as not to attract wildlife/pests, create an odour or overflow;
 - (2) comply with all laws relating to the use of the Approved Area and conduct of the Activities;
 - (3) immediately notify Manager of Engagement and Partnerships, Gladstone Regional Council should any damage be caused to the Philip Street Precinct and complete an accident/damage report as directed by Council;
 - (4) comply with any directions of the Manager Engagement and Partnerships in respect to the operation of Council's Property;
 - (5) hold a current food licence, if required by Council;
 - (6) undertake the Activity during all Operating Times;
 - (7) demonstrate compliance with the COVID Safe requirements in accordance with the Public Health Directions in undertaking the Activities within the Approved Area;
 - (8) ensure that the Applicant's Property which is used within the Approved Area is approved by Council and:
 - (a) in an aesthetically acceptable condition; and
 - (b) kept in a proper state of repair;
 - (9) display this Approval during Operating Times and produce it for inspection, as required by Council;
 - (10) only undertake the Activities from the Specified Vehicle and keep and maintain the vehicle in a clean, tidy, orderly and roadworthy condition at all times;
 - (11) at a minimum, supply coffee, tea, non-alcoholic drinks, fresh bakery goods and nutritious light meals and any other products proposed menu submitted as part of the Expression of Interest, or another menu approved in writing by Council;
 - (12) use only environmentally friendly packaging;
 - (13) operate in alignment with the Philip Street Precinct Key Values.
- 6.2 The Applicant must not, and must ensure the Applicant's Agents do not:
- (1) damage any part of the Philip Street Precinct or damage or remove Council's Property;
 - (2) undertake any modifications to the Philip Street Precinct or Council's Property;
 - (3) interfere with the use of the Philip Street Precinct by Council staff or other users, including by interfering with or obstructing pedestrian traffic;
 - (4) cause any damage to any other property or injury to any person as a result of use of the Philip Street Precinct;
 - (5) do anything which might cause nuisance, damage or disturbance to other occupiers or users of the Philip Street Precinct or neighbouring lands, including playing loud or offensive music;
 - (6) bring to or store upon the Approved Area any animals, explosives or any flammable or corrosive chemicals;
 - (7) empty or spill oil or hot water on any part of the Philip Street Precinct;
 - (8) use the Approved Area for any illegal purpose;
 - (9) obstruct or restrict access to any designated exit or any traffic;
 - (10) drive, use or otherwise operate any unregistered or unroadworthy vehicle within Philip Street Precinct;
 - (11) sell any non-food goods without the prior written approval of Council; and
 - (12) operate outside of Operating Times, unless agreed in writing by Council.

7. Insurance and Indemnity

7.1 The Applicant:

- (1) uses the Philip Street Precinct at the Applicant's own risk; and
 - (2) releases Council from and indemnifies Council against all Claims for damages, loss, injury or death arising directly or indirectly from the use of the Philip Street Precinct by the Applicant and the Applicant's Agents, any negligent act of the Applicant or the Applicant's Agents and any breach of this agreement by the Applicant or the Applicant's Agents.
- 7.2 The Applicant is responsible for obtaining its own insurance for the Activities the Applicant undertakes on and within the Approved Area. At a minimum the Applicant must maintain at all times during its use of the Approved Area:
 - (1) insurance for public risk for at least \$20,000,000.00 per claim, such policy to note Council's interest;
 - (2) comprehensive motor vehicle accident and third party insurance; and
 - (3) suitable workcover insurance or equivalent for any employees, subcontractors or volunteers of the Applicant.
- 7.3 The Applicant must provide proof of its insurance to Council in advance of the Term.
8. Requirements at end of the Operating Times and at the end of the Term
- 8.1 At the end of Operating Times, the Approved Area must be left clean and in good repair and:
 - (1) all the Applicant's Property must be removed from the Philip Street Precinct; and
 - (2) all of Council's Property, including furniture and equipment, must be returned to a location directed by Council, if required.
- 8.2 At the conclusion of the Term, the Approved Area must be left clean and in good repair and all the Applicant's Property must be removed from the Approved Area.
9. Changes to Operating Times

Council may, at its absolute discretion, restrict Operating Times due to:

 - (1) Health and safety concerns;
 - (2) Inclement Weather; or
 - (2) Public Health Directions.
10. Governing Law

This Agreement and the Applicant's use of the Approved Area for the Activities is governed by the laws of Queensland and the parties submit to the jurisdiction of Queensland Courts.
11. Waiver

No waiver by Council is effective unless it is in writing.

SCHEDULE 1
APPROVAL PARTICULARS

ITEM	DETAILS
1	Applicant
2	Operating Times Times: Flexible hours to be negotiated with Philip Street Communities and Families Precinct collaborators. Days: At least one day, Monday to Saturday, excluding Christmas Day, Good Friday and other days where the Council has closed the Philip Street Precinct pursuant to clause 11.
3	Fee Application fee: \$642.00 Annual commercial activity approval fee (6 months until 30 June 2021): \$104 Daily fee for commercial occupation of Council land: \$5.00 per day
4	Term 12 months
5	Specified Vehicle Make/Model: Registration:

**SCHEDULE 2
APPROVED AREA**

