



**muswellbrook
shire council**

Street Trading Policy

Policy No S28/1

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Policy Objective

To facilitate the regulated use of a public asset in the interest of promoting and consolidating the viability of the Muswellbrook and Denman commercial areas.

To inject vitality, amenity and ambience into the street environment through the expansion of permitted activities on public land.

To protect existing levels of public amenity and safety from the adverse impact of street trading activities by adequately addressing potential risk management issues.

Maintain equity in the regulation of restricted public land usage by promoting both fairness and certainty to street traders.

Protect the financial interest of ratepayers by charging a reasonable fee to administer the commercial use of a public asset and by ensuring that Council assets are not damaged by the use.

To ensure that street trading activities do not conflict with the interests and land uses of the owners of adjoining land.

Policy Statement

Muswellbrook Shire Council is committed to encouraging street trading but acknowledges that in a business competitive environment this activity must be regulated for equity and fairness to business proprietors whilst protecting the rights of pedestrians and people with a disability to ensure a reasonably safe and clear passageway on footways. The question of equity is addressed by the consistent enforcement of compliance with conditions of approval and the application of a reasonable fee on those conducting street trading as part of a business. The protection of pedestrians is addressed through the consideration of risk management issues with respect to the placement, design and maintenance of street furniture and fixtures.

1. Application

The term “Street Trading” used in the context of this policy refers to long term or periodic occupation on the footway and road carriageway in the Muswellbrook and Denman commercial areas defined in this policy for the purposes of either selling or displaying goods (including food or drink) or providing a service to customers, pertaining to an existing business in the street.

The scope of this policy extends to the most commonly practised forms of street trading, including activities of a short term and longer term nature. For the purposes of this Policy, short term street trading is defined as any activity that extends for any time from a part day up to a month. Longer term street trading covers activities which occupy a part of the footway on a daily or weekly basis and involves a lease arrangement.

- a) Extended Street Trading
 - i) Footway Dining
 - ii) Merchandise and Sign Display
 - iii) Street Vending Vehicles
- b) Casual Street Vending –
 - i) Street Stalls/Ticket Selling/Public Collection
 - ii) Busking

2. Risk Management

Council has responsibility for the care, control and management of public roads and has specific powers and responsibilities under the Local Government Act 1993, Roads Act 1993 and Disability and Discrimination Act 1992. Council's power to grant conditional consent to a street trader does not extend to delegating its common law duty of care. The management of public risk in allowing street trading is the primary objective of this Policy. The setting up of footway restaurants and the display of merchandise on the footways can impact on the free movement of pedestrians particularly the elderly, people with disabilities and children. It is therefore imperative that street trading not place pedestrians or passing road traffic at greater risk of an accident and that this type of activity only be permitted in locations where it can be safely accommodated. The principles of acceptable locations would include:

1. An unobstructed clearway located within a consistent space on the footway for the safe and comfortable movement of pedestrians especially children, the elderly and people with disabilities including wheelchair users.
2. Any structure, railing, table, chair or shade structure is structurally safe, stable and well secured; and does not pose a hazard to people or Council assets.
3. The location of the activity does not infringe regulatory or signposted parking restriction or obstruct driveways or property entrances without the owner's permission.
4. The activity is not located in streets where the speed limit is greater than 50kmph unless appropriately designed collision protection devices have been installed.
5. The activity is permitted to operate during hours of darkness only in areas where street lighting or other forms of lighting is designed for the purpose.

In order that Council may be seen to have diligently exercised its risk management responsibilities formal street vending approval processes are instituted including but not limited to:

- The conditions under which the street trading activity is granted approval.
- The standards relating to the erection and maintenance of any structure.
- The responsibility for inspecting, cleaning and maintaining the roadway or footway.
- The standards of public health and hygiene including cleanliness of the area the subject of approval.
- The circumstances under which the approval may be withdrawn.
- The manner and form of corporate indemnity and/or monetary securities against legal liability howsoever arising from the street vendor's occupation of the footway the subject of approval.
- The insurance requirements including the terms, conditions, cover and minimum level of indemnity required.

3. Street Trading Agreement

A Street Trading Agreement shall be required where the street vending activity involves occupation of the footway on a daily basis during business hours and for an extended period. This street trading agreement acknowledges the commercial use of a public place and may require the payment of a fee for the use of a public place for the benefit of a business.

4. Street Trading Approvals

Street Trading requiring approval under the Local Government Act 1993 or Roads Act 1993, may also require approval from Council or another authority under other legislation (e.g. development approval in accordance with the Environmental Planning and Assessment Act 1979). Should any doubt exist as to whether a particular activity requires approval, it is advised to consult with Council prior to commencing the activity.

4.1 Footway Dining

Approval Procedure

Approval may be granted under the Roads Act Section 125. Applications may only be submitted by a food business proprietor who has existing approval to operate a restaurant or fast food business and wishes to extend the serving area onto the adjacent footway of a public road.

NSW Roads and Maritime Services' concurrence is required prior to issuing any footway dining approvals on classified roads (State and Regional Roads).

Food shop owners should make themselves aware of the requirements of the Companion Animals Act 1998 with regards to dogs in outdoor dining areas.

Applications are lodged using the prescribed application form and payment of the application fee. The application shall include at least:

- a) The proposed location of the activity including a sketch drawn to scale showing the proposed table and chair layout relative to the footway and other existing objects located thereon and the property boundaries.
- b) The proposed period of operation, including times and days of the week.
- c) The nature of any signs including advertising signs, shade structures portable barriers, and waste containers.
- d) Whether any alcohol is to be served.
- e) Details (including photographs) of any existing damage to the footway to be used.
- f) Except in the case of one off events of markets and festivals, written evidence from the owner or owners of the land fronted by a footpath immediately adjacent to the subject of an application.

Approval to conduct footway dining is subject to the applicant entering into a Street Trading Agreement which incorporates a lease over the designated area of footway.

All fees are determined by Council each year as set out in the Schedule of Fees and Charges.

Failure to keep any street trading agreement fee payments current will constitute grounds for termination of the Street Trading Agreement.

Applicants are required to lodge a copy of current public liability insurance with a minimum cover of \$20 million for any one event and with Muswellbrook Shire Council noted as an interested party on the insurance certificate. A new certificate of insurance is to be submitted to Council following any renewal of insurance.

Footway dining approvals are transferable to a new proprietor subject to notification to Council and production of details of physical structures proposed and proof of public liability insurance cover.

Approval Criteria

Applications for footway dining will need to demonstrate that the following approval criteria can be met:

- a) A two (2) metre wide unobstructed passage of footway is maintained at all times. This clearance shall be measured transverse to and between the property boundary alignment and kerb line. Distances less than 2 metres may be permitted in exceptional circumstances and where the use of the footway is not compromised.
- b) Tables, chairs, barriers, shade structures (including canopy) shall be positioned wholly between so as not to overhang or encroach beyond the side boundaries and shall be wholly contained within the frontage of the food business premises.

- c) Shading structures shall provide a minimum vertical clearance of two (2) metres above footway level.
- d) Shade structures, tables and barriers shall be securely supported and suitably anchored to withstand unexpected wind gusts and shall be monitored for sturdiness at all times.
- e) The designated footway dining area shall be enclosed by means of portable metal framed barricade where alcohol is to be served and consumed in the footway dining area; or where there are four (4) or more table settings proposed. The barricade shall be set back a minimum of 700 millimetres from the kerb line to permit pedestrian access to and from parked motor vehicles. Barricades shall be purpose designed for footway dining and where they incorporate advertisement panels, advertisements shall be restricted to the advertising of product sold on the premises.
- f) All footway dining furniture shall be to an approved structural standard and of matching thematic design and shall conform to the aesthetic qualitative standard of “smart contemporary outdoor furniture.”
- g) All portable footway dining furniture shall be removed from the footway whilst ever the food business is closed.
- h) The footway dining shall not restrict access to, or incorporate usage of, existing street furniture provided for public use.
- i) In streets where the 85th percentile speed of vehicular traffic exceeds 50 kmph, a protection barrier shall be installed 600mm behind the kerbline which conforms to the standard specified in the publication “Roadside Dining Protection – A Guideline for Local Government Authorities in South Australia.”
- j) Compliance with conditions and regulations relating to the preparation, storage and serving of food in a public place.
- k) The designated footway dining area shall be maintained in a clean and tidy condition at all times.
- l) Approval shall be sought from the Liquor Administration Board and the Local Area Commander, NSW Police with regard to the consumption of alcohol in the footway dining area, whether or not it is located within a designated alcohol free zone in both townships.
- m) A right of access exists with all utility services authorities with infrastructure in the footway for the purpose of repairs and maintenance. There will be no compensation payable for interruption to footway dining due to infrastructure repair or maintenance other than as a time credit given in the term of the lease.
- n) Materials shall not stain or damage Council’s paving materials.

4.2 Merchandise and Signage Display

Approval may be granted under the Local Government Act Section 68 PART E(2) “Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road” to business proprietors to display goods and merchandise and portable signs within a designated zone on the footway directly fronting the business premises. Approval may be granted provided the goods are a sample of what is displayed for sale within the premises and the sign refers only to the business which is the subject of the Street Trading Approval to occupy the area of footway.

The placement of objects on the footway against the front of a business of a “non saleable” nature, such as pot plants, require an approval but will not be subject to a street trading agreement.

Approval Procedure

Application may only be lodged by a business proprietor who has existing development approval to conduct the business within the premises and seeks to extend the existing merchandise display area to the adjacent footway on a public road.

Applications are lodged using the prescribed application form and payment of the application fee. The application shall include at least:

- a) The proposed location of the business including a sketch drawn to scale showing the proposed layout of display, relative to the footway, and other existing objects as well as property boundaries.
- b) The proposed period of display including times and days of the week.
- c) The position, size and wording of any signs including advertising signs, tables, display structures.
- d) Details (including photographs) of any existing damage to the footway to be used.
- e) Written evidence from the owner or owners of land immediately adjoining the proposed location that they have no objection to the proposal.

All fees are determined by Council each year as set out in Council's Schedule of Fees and Charges.

Failure to keep any street trading agreement fee payments current will render the Street Trading Agreement liable for termination.

Applicants are required to lodge a copy of current public liability insurance with a minimum cover of \$20 million for any one event and with Muswellbrook Shire Council noted as an interested party on the certificate.

Merchandise display approvals are transferable to a new proprietor only if there is a continuation of the same Business at the premises, and appropriate notification to Council is given including proof of public liability insurance cover.

Approval Criteria

Applicants for Merchandise and Sign Display approval will need to demonstrate that the following approval criteria can be met:

- a) A two (2) metre wide unobstructed passage of footway is maintained at all times. This clearance is measured transversely to the property boundary alignment and kerbline. Distances less than 2 metres may be permitted in exceptional circumstances and where the use of the footway is not compromised.
- b) The merchandise display is contained within a strip that extends 750mm out from the property's front boundary and does not extend beyond the property's side boundaries. A clear space equivalent to the width of the premises doorway shall be maintained between the sign and the doorway into the premises.
- c) Portable signage shall be limited in number to one per business and the size restricted to a maximum of one (1) metre in height and 500 millimetres in width. Collapsible signs shall be capable of being locked into a rigid structure when erected.
- d) The legs/supports of all display furniture and signs shall be secure and shall not extend or protrude beyond the designated display area nor beyond the displayed goods.
- e) The designated display area shall be maintained in a clean and tidy condition at all times.
- f) The merchandise display furniture and signage shall be removed from the footway whilst ever the premises are closed for business.
- g) No sale or transactions in connection with the business's merchandise shall be conducted from the footway.
- h) Public address systems or spruiking are not permitted from the footway.
- i) Materials used shall not stain or damage Council's paving materials.

4.3 Street Vending Vehicles

There are two categories of approval given to this class of street trading.

a) Standing Vehicle

This includes any vehicle which is stopped on a public road or a public place for the purpose of selling any article.

b) Mobile Vehicle

This includes a registered vehicle plying on public streets and making brief intermittent stops for the hawking of ice-cream, confectionary etc.

Approval for both categories of vehicle may be granted under the Local Government Act Section 68 PART F(7) *“Use a standing vehicle or any article for the purpose of selling any article in a public place”*.

Approval Procedure

Applications are lodged using the prescribed application forms and payment of the application fee. The application shall include at least:

- a) The proposed route/area of operation or standing site (as applicable) as indicated on a map or sketch plan.
- b) The proposed period of operation, including times and days of the week.
- c) The nature of any ancillary articles to be used including waste containers, supplementary lighting, power source, and signs.

All fees and charges are determined by Council each year as set out in the Schedule of Fees and Charges.

Failure to keep rental payments current will constitute grounds for termination of the Street Trading Approval.

Any vendor may be required to cease trading should an authorised officer of Council consider the vendor is not complying with Council policy or relevant food legislation.

Applicants are required to lodge a copy of current public liability insurance with a minimum cover of \$20 million for any one event with Muswellbrook Shire Council noted as an interested party on the insurance certificate.

Street Vending approvals are transferable to a new operator only if there is a continuation of the same business subject to the notification to Council and the proof of public liability insurance cover being lodged.

Approval Criteria

- a) This approval only relates to operation of a street vending vehicle on a public road (not being a classified road under the control of the RMS). A vehicle shall not enter any Public Reserve unless special permission to do so is first obtained nor shall such vehicles operate within 200m of the entrance to a Reserve so as to cause obstruction to pedestrian or vehicular traffic.
- b) The operation of the vending vehicle shall not restrict access along a footway or obstruct vision to other vehicular traffic on the road.
- c) The vending vehicle shall display a sign requesting patrons not to loiter around the vehicle.
- d) Litter containers shall be provided for the convenience of customers.
- e) Waste water shall be contained within the vehicle for later disposal to the sewerage system.
- f) Street vending vehicles are not permitted to operate within 100 metres of a permanent retail outlet selling a similar product if that outlet is open. This is to be measured as the shortest distance along a trafficable route.

- g) The standing vending vehicle shall only stand in a floodlit area.
- h) Compliance with conditions and regulations relating to the preparation storage and serving of food in a public place as determined by the Manager Environment or delegate. Street vending vehicles serving or selling food must be inspected by Council's Environmental Health Officer PRIOR to operation.
- i) The vehicle must be removed from its location within 15 minutes of closure and the area around the vending vehicle must be left in a clean and litter free state.
- j) Chimes or like devices used to attract attention shall not be used between the hours of 8.00pm and 8.00am nor shall be used within 90 metres from any hospital, schools during school hours or churches in service.
- k) Vehicles are required to display a flashing amber light while stopped for the purpose of serving customers. Indicators must be fitted which will inform the driver, by visible and audible means, that the light is flashing. The light must begin to flash within one second of being switched on and continue to flash to a rate of not less than 60 times per minute (Vehicle Standards Information, VS218, Review 4, February 2009)
- l) Vehicles shall comply with vehicle registration regulations including the display of signs on the vehicle warning motorists of the presence of children in the vicinity.
- m) Street vending vehicles must:
 - i. not unduly obstruct the free passage of pedestrians, especially children, people with prams, the elderly and people with disabilities, including wheelchair users
 - ii. not be located where they would breach regulatory or signposted parking/standing restrictions (e.g. barrows in kerbside lanes when parking restrictions apply), and
 - iii. not be located in front of driveways or entrances to properties unless the permission of the property owner has been obtained.
- n) Street vending activities catering for passing traffic (generally rural and non-CBD situations in urban areas) must:
 - i. not be located where speed limit is 80 km/h or higher, unless safety and efficiency is not compromised,
 - ii. not be located on a hill or a bend where sight distance is limited (refer to Road & Maritime Services' Road Design Guide),
 - iii. not be located in front of driveways or entrances to properties unless the permission of the property owner has been obtained,
 - iv. not be located where motorists are forced to park in the kerbside lane, where parking/standing restrictions apply,
 - v. have sufficient parking near the site,
 - vi. provide sufficient traffic warning signs in advance of the facility (signs should be placed only during periods of selling activity),
 - vii. not be located in a two-lane, two-way (one lane in each direction) street, unless safe approach to the facility and safe departure from the facility is available, and
 - viii. only be allowed from vehicles standing in the kerbside lane if an additional lane is available for moving traffic in that direction of travel, and there are no kerbside standing/parking restrictions.

4.4 Street Vending

Approval may be granted under the Local Government Act Section 68 PART E(2) “Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road” and the Roads Act Section 138 “erect a structure or carry out a work in, on or over a public road”.

A Street Vending Approval is granted in the case of casual or ad hoc requests to sell packaged food, conduct stalls or sell raffle tickets and the like on a public road.

1. Street Stalls/Ticket Selling/Public Collections
2. Busking

All fees and charges are determined by Council each year as set out in the Schedule of Fees and Charges.

4.4.1 Street Stalls/Ticket Selling/Public Collections

Approval must be obtained to undertake this activity in a public place. The approval will require compliance with the following conditions:

- a) Street Stalls
 - i. Restricted to charitable and non profit organisations based within Muswellbrook LGA.
 - ii. Compliance with the requirements of the Food Act and any other relevant statute.
 - iii. One organisation only being granted permission for any one day at any one of the designated locations.
 - iv. Notification of Council's approval being given to the Local Police.
 - v. No hindrance being caused to the flow of pedestrian traffic.
 - vi. Any other requirements considered necessary in the given circumstances.
 - vii. All persons working at the stall are to wear identification including the representative organisation's name .
- b) Ticket Selling
 - i. No undue hindrance to be caused to pedestrian traffic.
 - ii. Concurrence of the Local Police being obtained.
 - iii. Selling not being conducted in the near vicinity of any approved street stall
 - iv. One organisation only being granted permission to sell tickets on any one day on any street and at least 300m from another location approved to sell tickets.
 - v. A minimum of two (2) metres clear passage shall be maintained on the footway. Distances less than 2 metres may be permitted in exceptional circumstances and where the use of the footway is not compromised.
 - vi. Ticket selling stands shall be limited to a table not exceeding 2.0m x 1.0m.

4.4.2 Busking

Approval must be obtained to busk in a public place. The approval will require compliance with the following conditions:

- i. A person wishing to busk in a public place must make application advising the duration, hours, location and the form of busking to be performed.
- ii. The applicant providing notification to the Local Police of the Council's approval.

- iii. There being no hindrance to the flow of pedestrian traffic.
- iv. The applicant obtaining the permission of any of any shop keepers outside whose premises he/she wishes to perform for the full duration of the performance.
- v. Buskers must not use amplification or powered equipment.
- vi. The performance is not to involve animals or dangerous implements.
- vii. The performance not causing public disturbance by nature of the level of noise, the language or equipment use or the acts performed.
- viii. The performance shall not include drawing or marking the footway or affixing any matter or structure to the footway paving.
- ix. A busker may place a receptacle for the receipt of gratuities but shall not directly solicit the offering of money from pedestrians in respect of either the performance or the selling of other goods.
- x. Council reserves the right to refuse any application or revoke an approval at any time.
- xi. One busker only being granted permission for any one day at any one location.

5. Enforcement of Street Trading Approval Conditions

Under Section 113 of the Local Government Act Council is required to maintain a Register of Approvals which includes:

- The registration number of the application for the approval
- The date on which the application for the approval was made
- The amount of fee or rent payable
- The dates on which such fee or rent or parts thereof was paid
- The name and address of the business premises
- A Brief description of the nature of the street vending activity
- The duration of the approval
- Whether the approval has been revoked or modified.

The conditions of approval for each Street Trading Agreement are subject to a random audit of compliance which may be conducted at any time, and any number of times for the duration of the approval.

Should an instance of non compliance be detected the business proprietor will be notified and requested to rectify the situation. Failure to respond to this notification will result in the matter being placed in the hands of Council's compliance officer.

Failure to obtain approval for street vending or comply with approved conditions is an offence which may result in the issuing of a penalty notice or a fine as prescribed under the Local Government Act and Roads Act as applicable.

Legislation

Local Government Act 1993

Under Section 68 of the LGA persons are required to obtain Council approval to:

“Erect an advertising structure over a public road, or expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road, or having an article beneath an awning over the road”

“Use a standing vehicle or any article for the purpose of selling any article in a public place”.

Roads Act 1993

Under Section 125 “a Council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road to use part of the footway for the purposes of the restaurant”.

Under Division 3 Council may approve the erection of a structure in, on or over a public road in a built-up area connected with the purpose of selling any article or service. This approval may be subject to conditions including the charging of rent and specifying the period of consent.

Under Section 142, the person who has right to the control, use or benefit of a structure erected on a road must maintain the structure in a satisfactory state of repair.

Council has power under Section 139C to revoke a street trading consent whether due to a breach of condition(s) of consent or a change in traffic or other road safety circumstances.

Associated Council Documentation

Authorisation Details

Authorised by:	Council
Minute No:	163
Date:	13 December, 2016
Review timeframe:	April 2018
Department:	Environmental Services
Document Owner:	Manager Planning & Building

6. Details History

Version No.	Date changed	Modified by	Amendments made
V1	9/11/2015	Council	Additional objective, Clause 4.1 f, Clause 4.2 e
V2	13/12/2016	Council	Amendment to Clause 4.1f