



Planning Proposal 17/013
» Roadside Stalls

April 2018 (V2. Exhibition) 18/19740

ballina
shire council



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1. Introduction

1.1 Summary of Planning Proposal

This planning proposal seeks to provide for small scale roadside stalls as exempt development, subject to proponents obtaining an approval under section 138 of the Roads Act 1993.

The planning proposal seeks to include a provision within Schedule 2 of the Ballina Local Environmental Plan 2012 to identify roadside stalls as exempt development subject to a number of criteria. The criteria proposed relate to land use zoning, location, activity, size and safety aspects of a proposed roadside stall. It is anticipated that the provision will reflect the following:

Roadside stalls

Roadside stalls to which this clause applies must comply with the following:

- a. *Be located on land zoned RU1 Primary Production zone or RU2 Rural Landscape zone;*
- b. *Must be located wholly on private land;*
- c. *Must be only for the sale of primary produce;*
- d. *Must not exceed an area of 4m² in relation to the area from which produce is sold;*
- e. *Must have a relevant approval for works within the road reserve, under the provisions of section 138 of the Roads Act 1993 with respect to the roadside stall; and*
- f. *Only one roadside stall per landholding.*

The required approval for works within the road reserve (s138 of the Roads Act 1993) will consider road safety criteria and works. Further information regarding these safety considerations is provided in Section 3.1 of this planning proposal.

This planning proposal is to apply to all land to which the Ballina Local Environmental Plan 2012 applies.

1.2 Council Resolutions

Council considered this planning proposal at its Ordinary Meeting held on 14 December 2017. The Council resolved as follows [Minute No. 141217/15]:

1. *That Council endorses the preparation of a planning proposal which proposes to introduce exempt development criteria for small scale roadside stalls in zoned rural areas within Ballina Shire as outlined in this report.*
2. *That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.*

3. *That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.*
4. *That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.*
5. *That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.*

A copy of the report considered by the Council is contained in Appendix 4.

1.3 Gateway Determination

The NSW Department of Planning and Environment issued a Gateway determination with respect to this matter, dated 16 March 2018. A copy of the Gateway determination is provided in Appendix 1.

The Gateway determination agreed that the planning proposal's inconsistency with section 9.1 Direction 5.4 Commercial and Retail Development along the Pacific Highway is justified in the terms of the Direction.

The Gateway determination delegated Council as the plan-making authority with respect to finalisation of the subject the planning proposal.

The following matters have been clarified with respect to the planning proposal in accordance with the Gateway determination:

- Consistency in the definitions of roadside stalls within the standard instrument and the local clause, particularly relating to handcrafted goods and primary produce; and
- The number of roadside stalls to be permitted per holding.

2. Objectives & Intended Outcomes

The objective of this planning proposal is to:

- Provide for low impact roadside stalls, located in rural parts of Ballina Shire, as exempt development subject to obtaining approval under Section 138 of the Roads Act 1993.

The intended outcomes of this planning proposal are to:

- Facilitate alternative means for rural landholders to sell on-farm produce in a low impact manner and reduce food waste.
- Support rural food tourism in the region by enhancing visitor experiences associated with tourist drives.

- Provide a balanced regulatory approvals process that does not unnecessarily burden landholders with regulatory requirements, whilst ensuring that road safety is not compromised.

3. Explanation of Provisions

3.1 The Proposal

This planning proposal seeks to amend the Ballina Local Environmental Plan to identify roadside stalls in certain circumstances as Exempt Development in Schedule 2.

It is anticipated that the exempt development outcome sought will be achieved through the following provision or a similar provision.

Roadside stalls

Roadside stalls to which this clause applies must comply with the following:

- a. Be located on land zoned RU1 Primary Production zone or RU2 Rural Landscape zone;*
- b. Must be located wholly on private land;*
- c. Must be only for the sale of primary produce;*
- d. Must not exceed an area of 4m² in relation to the area from which produce is sold;*
- e. Must have a relevant approval for works within the road reserve, under the provisions of section 138 of the Roads Act 1993 with respect to the roadside stall; and*
- f. Only one roadside stall per landholding.*

This planning proposal does not propose any map changes.

The proposal does not seek to impact on public health outcomes or food standards which apply to prepared or processed foods. As a consequence the planning proposal is intended to exempt roadside stalls only where primary produce is sold.

As part of addressing item (e) above, Council intends to give consideration to the following when assessing the granting of s138 approvals for small scale roadside stalls:

There must be adequate space within the road verge to allow parking for at least two vehicles and must:

- i. be sufficient to enable vehicles to enter and exit the roadway in a forward direction;*
- ii. be of consistent vertical alignment and grade with the roadway;*

- iii. *have an all-weather gravel sealed shoulder with sufficient width to allow vehicle occupants to enter and exit vehicles in a safe manner, being a minimum area of 3.5m x 15m; and*
- iv. *have adequate unimpeded minimum sight distances in both directions (in accordance with AS2890.1.2004) as outlined in the following table:*

<i>Speed zone</i>	<i>Minimum sight distance</i>
<i>60km/hr</i>	<i>65m</i>
<i>80km/hr</i>	<i>105m</i>
<i>100km/hr</i>	<i>160m</i>

The above road safety considerations will be incorporated into an information sheet for the information of landholders and for the guidance of staff.

An application fee of \$165 is proposed to apply with respect to Roads Act approvals issued in association with exempt roadside stalls.

Property owners who wish to provide a roadside stall which exceeds or does not satisfy the above criteria may lodge a development application and have this considered in accordance with the relevant LEP and DCP provisions for roadside stalls.

3.2 Mapping Overview

The proposal does not involve changes to the LEP map sheets.

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of any strategic study or report?

No. The amendments are a result of a general review of the function and operation of the LEP with respect to roadside stalls.

Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

An LEP amendment is the best way of achieving the proposed outcomes as the proposal directly relates to exempt development criteria.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal is generally consistent with the objectives and actions set out in the North Coast Regional Plan as they seek to ensure efficient operation of the Ballina LEP 2012.

The planning proposal supports the objectives of the North Coast Regional Plan that relate to supporting regional tourism (Direction 8) and the viability of agriculture (Directions 11 & 12).

Q4 Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The planning proposal is consistent with the elements and specified outcomes contained within Council's Community Strategic Plan 2017 – 2027 (CSP) as its objectives align with the principles of good governance and ensuring that planning instruments are operating optimally. The planning proposal also supports the CSP objectives relating to attracting new businesses and visitors and improving liveability in the shire.

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

No inconsistencies with applicable State Environmental Planning Policies (SEPPs) have been identified. The amendments constitute minor changes to the exempt development schedule and as such, a detailed assessment relative to each SEPP is not included in this planning proposal.

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

A Section 117 Direction checklist for the planning proposal is provided at Appendix 3.

4.3 Section C – Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. The amendments proposed are of a minor nature.

Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No. The amendments proposed are of a minor nature.

Q9 Has the planning proposal adequately addressed any social and economic effects?

There are no significant social or economic outcomes likely to result from the planning proposal as the amendments are of a minor nature.

An overall benefit associated with efficiency in the implementation of the plan is expected.

4.4 Section D – State and Commonwealth Interests**Q10 Is there adequate public infrastructure for the planning proposal?**

The amendments proposed are of a minor nature and do not have implications for the provision of public infrastructure. The proposal provides for appropriate protections for road safety and infrastructure maintenance.

Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation will be undertaken with relevant agencies as required by the Gateway determination during the public exhibition stage of the LEP amendment.

5. Mapping

This planning proposal does not involve the amendment of any LEP maps.

6. Community Consultation

This proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*.

7. Timeline


The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination	March 2018
Government Agency Consultation	April 2018
Public Exhibition Period	May 2018
Public Hearing	N/A
Submissions Assessment	June 2018
RPA Assessment of Planning Proposal and Exhibition Outcomes	June 2018
Submission of Endorsed LEP to DP&I for Finalisation	N/A
RPA Decision to Make the LEP Amendment (if delegated)	July 2018
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	August 2018

Council is seeking delegation of planning functions for the processing of this LEP amendment.

Appendices

Appendix 1 – Gateway Determination



Planning & Environment

Gateway Determination

Planning proposal (Department Ref: PP_2018_BALLI_002_00): to make roadside stalls exempt development, subject to them meeting certain standards, by listing them in Schedule 2 of Ballina LEP 2012.

I, the Director Regions, Northern at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to make roadside stalls exempt development, subject to them meeting certain standards, by listing them in Schedule 2 of Ballina LEP 2012, should proceed subject to the following conditions:


1. The planning proposal should be clarified prior to public exhibition with regard to:
 - (a) consistency in the definitions of roadside stalls within the standard instrument and the local clause, particularly relating to handcrafted goods and primary produce; and
 - (b) the number of roadside stalls to be permitted per holding.

2. Community consultation is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment 2016) and must be made publicly available for a minimum of 14 days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).

3. Consultation is required with the following public authorities and / organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
 - NSW Rural Fire Service; and
 - NSW Roads and Maritime Services.

Each public authority/organisation is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

PP_2018_BALLI_002_00 (IRF18/1017)

 **Planning & Environment**


4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:

- a. the planning proposal authority has satisfied all the conditions of the Gateway determination;
- b. the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
- c. there are no outstanding written objections from public authorities.

6. The time frame for completing the LEP is to be 6 months following the date of the Gateway determination.

Dated 16 day of March 2018.



16-3-2018

Jeremy Gray
Director Regions, Northern
Planning Services
Department of Planning and
Environment

Delegate of the Minister for Planning

PP_2018_BALLI_002_00 (IRF18/1017)

Appendix 2 – Maps

This planning proposal does not involve the amendment of any LEP maps.

Appendix 3 – Section 117 Direction Checklist

Section 117 Direction Checklist (Updated Directions Dated 15 May 2017)	
Planning Proposal – Roadside Stalls	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Consistent. The planning proposal does not seek to rezone land or introduce provisions that would increase the permissible density of the land.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Consistent. The planning proposal is consistent with the Rural Planning Principles of State Environmental Planning Policy (Rural Lands) 2008.
2. Environment and Heritage	
2.1 Environment Protection Zones	Justifiably inconsistent The planning proposal does not adversely impact on environmentally sensitive areas and is of minor significance.
2.2 Coastal Protection	Consistent. Some parts of land affected by the planning proposal are located within the coastal zone. The proposal does not create significant inconsistency with the applicable coastal planning documents.
2.3 Heritage Conservation	Consistent. Ballina LEP 2012 contains provisions (clause 5.10 and Schedule 5) which are consistent with this direction.
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Does not apply to planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. The planning proposal does not relate to planning for caravan parks or manufactured home estates.
3.3 Home Occupations	Consistent. The proposal will not affect any existing permissibility or exemptions for home occupations.
3.4 Integrating Land Use and Transport	Does not apply to planning proposal.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.

Section 117 Direction Checklist (Updated Directions Dated 15 May 2017)	
Planning Proposal – Roadside Stalls	
Direction No.	Compliance of Planning Proposal
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Justifiably inconsistent. The planning proposal may affect land identified as being subject to the presence of acid sulfate soils. However the enabling of roadside stalls is of minor significance in this regard.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Does not apply to planning proposal.
4.4 Planning for Bushfire Protection	Justifiably inconsistent. Council will consult with the NSW Rural Fire Service in relation to the proposed LEP amendment.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent. The planning proposal is generally consistent with the North Coast Regional Plan 2036.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Consistent.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.
5.10 Implementation of Regional Plans	Consistent. The planning proposal is generally consistent with the North Coast Regional Plan 2036.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes that are not in Council ownership.

Section 117 Direction Checklist (Updated Directions Dated 15 May 2017)	
Planning Proposal – Roadside Stalls	
Direction No.	Compliance of Planning Proposal
6.3 Site Specific Provisions	Consistent. The planning proposal does not introduce any site specific provisions.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Ballina Shire.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Does not apply to Ballina Shire.
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.5 Implementation of Greater Parramatta Priority growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.

Appendix 4 – Reports and Resolutions

MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
40 CHERRY STREET BALLINA,
ON 14/12/17 AT 9.00 AM

Cr Eoin Johnston declared an interest in Item 9.5 and left the meeting at 11:53 am.

9.5 Economic Development - Roadside Stalls Policy

A Motion was moved by Cr Nathan Willis and seconded by Cr Sharon Cadwallader

1. That Council endorses the preparation of a planning proposal which proposes to introduce exempt development criteria for small scale roadside stalls in zoned rural areas within Ballina Shire as outlined in this report.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

A Motion was moved by Cr Nathan Willis

That the Motion be put to the vote.

The Motion was LOST.

FOR VOTE - Cr Sharon Parry, Cr Nathan Willis, Cr Keith Williams and Cr Sharon Cadwallader

AGAINST VOTE - Cr David Wright, Cr Phillip Meehan, Cr Jeff Johnson, Cr Stephen McCarthy and Cr Ben Smith

ABSENT. DID NOT VOTE - Cr Eoin Johnston

The Motion was CARRIED.

141217/14 RESOLVED

(Cr Nathan Willis/Cr Sharon Cadwallader)

1. That Council endorses the preparation of a planning proposal which proposes to introduce exempt development criteria for small scale roadside stalls in zoned rural areas within Ballina Shire as outlined in this report.

MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
40 CHERRY STREET BALLINA,
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2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.
 3. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
 4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
 5. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Eoin Johnston

Paul Hickey, General Manager, Cr Jeff Johnson and Cr Sharon Cadwallader declared an interest in Item 9.6 and left the meeting at 12:03 pm.
Cr Eoin Johnston returned to the meeting at 12:03 pm.

9.5 Economic Development - Roadside Stalls Policy

9.5 Economic Development - Roadside Stalls Policy**Delivery Program** Strategic Planning**Objective** To outline the Council's current planning policy relating to roadside stalls and seek direction regarding potential changes to the policy.

Background

Council considered its approach to roadside stalls at the Ordinary Meeting held 27 October 2016 and resolved as follows:

1. *That Council receive a report on options and case studies of how councils have allowed safe roadside street stalls to operate to provide benefits such as the sale of local produce, less miles travelled for the distribution of produce and an enhanced social fabric.*
2. *That this proposal be considered as part of the preparation of Council's Economic Development Strategy.*

This matter has been considered, at a broad policy level, in the context of the draft Economic Development Strategy which was presented to Council at the October 2017 Ordinary meeting.

The draft strategy includes an action to facilitate low scale commercial activities in rural areas such as roadside stalls and rural food tourist activities through changes to the land use planning regime (item C6).

Having regard for the content of the draft Economic Development Strategy, this report seeks to action point one of the Council's October 2016 resolution.

Key Issues

- Rural activity
- Regional food tourism
- Road safety

Information**Existing requirements for roadside stalls**

Roadside stalls are defined as follows under the terms of the Ballina Local Environmental Plan 2012:

roadside stall means a place or temporary structure used for the retail sale of agricultural produce or hand crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property.

Clause 5.4 of the LEP requires that the gross floor area of roadside stalls not exceed eight square metres.

9.5 Economic Development - Roadside Stalls Policy

Under Council's current LEP, roadside stalls are permitted, with consent, on land zoned RU1 Primary Production and RU2 Rural Landscape, meaning a development application is required to be lodged, assessed and determined.

Chapter 7 (Rural Living and Activity) of the Ballina Development Control Plan (DCP) 2012 requires that:

Roadside stalls must be erected within the property boundary with no part of the roadside stall, other than access, to be located in the road or road reserve.

Chapter 2 of the Ballina DCP 2012 requires the provision of four car parking spaces per roadside stall (located on private land).

A key rationale for the current planning requirements in the assessment of roadside stall applications is road safety, with the need for safe sight distances (in both directions) and access being a basic requirement for approval.

In summary, the existing planning provisions require that roadside stalls be located entirely on private land, be limited in area to eight square metres and that four car parking spaces be provided on site. Additionally, engineering requirements may also require the property access to be upgraded, depending on the circumstances. These provisions seek to support road safety within the public road network.

Currently, Council receives very few applications for roadside stalls. Possible reasons include:

- Scarcity of safe roadside stall locations (having regard to sight distances and access)
- Low return on investment for landholders from selling produce at a roadside stall considering the costs associated with compliance with Council's standards and requirements (and payment of DA fee) and
- Low level of compliance activity by Council resulting in illegal operation of roadside stalls.

There may be circumstances where road conditions are suitable for access to be provided within the road reserve (with the stall located on adjacent private land), making Council's current requirements onerous under the circumstances.

To the extent that this may be case, this report considers whether less onerous regulatory arrangements could be introduced to facilitate low risk roadside stalls and improve any existing levels of non-compliance.

In terms of existing compliance activities, Council staff respond to reports of unsafe roadside stalls typically where road users accessing the stall are engaging in dangerous road manoeuvres.

Benefits of roadside stalls

Beyond the obvious financial benefit to rural landholders of having roadside stalls, other benefits (for the shire) include:

9.5 Economic Development - Roadside Stalls Policy

- Tourism – adding value to visitor experiences (particularly tourist drives), and contributing to the local 'food culture' experience.
- To local residents – contributing to the local 'food culture' and providing interest, activities and connection to place.
- Reduction of waste – providing an alternative outlet for excess (or blemished) fresh produce that might otherwise go to waste.

Alternative approach

Alternatives to the current approach have been considered to provide for small scale roadside stalls with respect to minimising the regulatory requirements whilst maintaining protections for road users.

As part of the review of Council's approach, the way in which roadside stalls are addressed in other jurisdictions has been examined. The research undertaken did not identify any case studies of particular relevance to the circumstances in Ballina Shire. Given this, the following information concentrates on a planning pathway to reduce the need for development consent for roadside stalls specific to Ballina Shire.

There are few approaches that provide for a suitable balance between the key issues. In this regard, enabling all roadside stalls across the shire without due consideration of potential impacts, particularly in relation to the road network, is not recommended.

An alternative approach that could achieve a reduced regulatory approach for some roadside stall proponents involves the following:

- Council could exempt roadside stalls from requiring development consent in certain circumstances by inclusion of roadside stalls within Schedule 2 of the Ballina Local Environmental Plan 2012.
- The criteria by which roadside stalls would be considered exempt development could include a requirement that an approval for works within the road reserve be obtained (under section 138 of the Roads Act 1993, with Council typically being the roads authority). This would mean Council engineering staff would review the circumstances of the proposed roadside stall to ensure compliance with applicable road safety standards, particularly in relation to site distances and verge widths.

Exempt development is small scale development that has minimal environmental impact and must be undertaken in accordance with specified criteria set out in either the Exempt and Complying Developments Codes SEPP or councils' local environmental plans (Schedule 2).

Essentially, designation as exempt development "turns off" the consent requirements of the LEP and the planning controls in the development control plan (DCP).

If the above approach is pursued, it is proposed that the following criteria would be included in Schedule 2 of the BLEP 2012:

Roadside stalls to which this clause applies must comply with the following:

9.5 Economic Development - Roadside Stalls Policy

- a. *Be located on land zoned RU1 Primary Production zone or RU2 Rural Landscape zone;*
- b. *Must be located wholly on private land;*
- c. *Must be only for the sale of primary produce;*
- d. *Must not exceed an area of 4m² in relation to the area from which produce is sold; and*
- e. *Must have a relevant approval for works within the road reserve, under the provisions of section 138 of the Roads Act 1993 with respect to the roadside stall.*

The concurrence of the Roads and Maritime Service is required for works within a Classified Road, which include major rural arterial roads (for example, Wardell Road).

This would be addressed as part of the s138 approval process and may limit the potential for roadside stalls to be located on Classified Roads.

Importantly, this change will relax the planning provisions but will not enable all roadside stalls without the need for development consent.

That is, property owners who wish to provide a stall which exceeds or does not satisfy the above criteria may lodge a development application in the normal way.

In addition, it is proposed that an information sheet be prepared to inform applicants of Council's road safety requirements that would form part of the s138 assessment, namely:

There must be adequate space within the road verge to allow parking for at least two vehicles and must:

- i. be sufficient to enable vehicles to enter and exit the roadway in a forward direction;*
- ii. be of consistent vertical alignment and grade with the roadway;*
- iii. have an all-weather gravel sealed shoulder with sufficient width to allow vehicle occupants to enter and exit vehicles in a safe manner, being a minimum area of 3.5m x 15m; and*
- iv. have adequate unimpeded minimum sight distances in both directions (in accordance with AS2890.1.2004) as outlined in the following table:*

Speed zone	Minimum sight distance
60km/hr	65m
80km/hr	105m
100km/hr	160m

It is acknowledged that costs for works within the road reserve which may be required, such as grading and gravelling the roadside where parking is to be provided, may still be a deterrent to applicants.

However, it is considered reasonable that such costs be borne by applicants and that road safety not be compromised.

9.5 Economic Development - Roadside Stalls Policy

With respect to application fees for an approval (under s138) for works within the road reserve, it is considered that a fee of \$165 (inclusive of GST) be set to offset Council staff time associated with assessment of the application would be appropriate. Council may elect to waive the charging of a fee or set an alternative fee.

To progress and implement the changes suggested Council will need to amend the Ballina LEP 2012. Given this, it is recommended that Council prepares a planning proposal to enable roadside stalls as exempt development under the criteria outlined above.

Sustainability Considerations

- **Environment**
The provision for roadside stalls has the potential to reduce food wastage, thereby having positive environmental outcomes.
- **Social**
Roadside stalls contribute to the social values associated with agricultural areas by contributing to sense of place. Maintaining road safety is an important consideration in providing for roadside stalls.
- **Economic**
Roadside stalls provide potential economic benefits associated with rural tourism.

Legal / Resource / Financial Implications

Progress of this matter can be accommodated within existing resources.

Having regard to public safety (and associated legal responsibilities), it is important that Council ensures that appropriate regulatory oversight is maintained when allowing activities, such as roadside stalls, within the shire's road reserves.

Consultation

Should the Council resolve to introduce exempt development criteria for small scale roadside stalls, an amendment to the Ballina Local Environmental Plan 2012 is required.

The LEP amendment process will include a public exhibition phase that will provide an opportunity for stakeholders and the broader community to provide feedback on the proposed approach. Stakeholders could include Council's Local Traffic Advisory Committee.

Options

The Council has the following options with respect to changing the current planning provisions relating to roadside stalls:

1. Maintain existing arrangements in relation to roadside stalls,

9.5 Economic Development - Roadside Stalls Policy

2. Change Council's planning provisions to enable small scale roadside stalls in certain circumstances as exempt development under the terms of the Ballina Local Environmental Plan 2012, or
3. Defer further action in relation to roadside stalls pending further information.

If option one is preferred, this would mean no change to the current approach to roadside stalls in Council's planning instruments. Under this approach, no further action is required although it would be prudent to update the economic development strategy post its exhibition to remove reference to roadside stalls as an area targeted for policy adjustment.

Option two provides a pathway to enable some roadside stalls as exempt development. Exempt development is a considerably easier and less expensive pathway for landholders wishing to have a roadside stall to follow. However, it is important to recognise that not all roadside stall proposals will meet the exempt development criteria and would therefore be subject to the existing requirements for this land use.

If option two is the preferred approach, Council will need to prepare a planning proposal to amend the Ballina LEP 2012. This is the recommended approach as it suggested that it provides for an improved balance between safety and oversight in relation to the public road network and enabling of economic opportunities for rural landholders in relation to roadside stalls.

With respect to the exempt development criteria, the inclusion of a requirement to obtain a s138 Roads Act approval is central to enabling road safety to be adequately considered. It is considered appropriate that Council introduces a modest fee of \$165 (for preliminary assessment purposes only – no annual charge) for applications made in this regard.

The matter of the fee will be further addressed at the conclusion of the planning proposal process. In the meantime, the proposal to introduce a fee will be incorporated into public exhibition documentation associated with the planning proposal.

The recommendation below enables staff to prepare and submit a planning proposal (consistent with the content of this report) to the Department of Planning and Environment for Gateway determination.

In the event of an affirmative Gateway determination allowing the proposal to proceed, staff would then undertake the procedural steps to progress the proposal to finalisation including public exhibition. A further report would be submitted to the Council in relation to the completion of the amendments following the public exhibition phase of the process.

Where Council proceeds to submit a planning proposal for Gateway determination, it has the option of requesting delegation of certain plan making functions from the Department.

Under these delegations, Council performs some of the plan making functions that would otherwise be completed by the Department.

In the subject case it is recommended that Council seeks the delegation.

9.5 Economic Development - Roadside Stalls Policy

Option three provides Council with an opportunity to receive further information about the policy and planning approach to roadside stalls.

If the preferred approach is to adjust the proposed exempt development criteria, wait for the completion of the economic development strategy (expected in the second quarter of 2018) or obtain additional information before deciding on the progress of this matter, deferral to a Councillor briefing is suggested.

Alternatively, if the Council does not wish to alter the current planning provisions relating to roadside stalls in the shire, it is open to Council to cease further work.

RECOMMENDATIONS

1. That Council endorses the preparation of a planning proposal which proposes to introduce exempt development criteria for small scale roadside stalls in zoned rural areas within Ballina Shire as outlined in this report.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

Attachment(s)

Nil



File no. NTH18/00046
Your Ref: BSCPP 17/013 (18/19822)

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2018

Dear Sir/Madam

**BSCPP 17/013 Roadside Stalls Planning Proposal (18/19822) – Ballina Shire Council
Roadside Stalls Proposed as Exempt Development.**

I refer to your letter of 22 March 2018 regarding the abovementioned planning proposal referred to Roads and Maritime Services for consideration.

Roles and Responsibilities

The key interests for Roads and Maritime are the safety and efficiency of the road network, traffic management, integrity of infrastructure assets and the integration of land use and transport.

In accordance with Section 7 of the *Roads Act 1993* (Roads Act) Ballina Shire Council is the Roads Authority for all public roads in the subject area. Roads and Maritime's concurrence is required prior to Council's approval of works on classified roads under Section 138 of the Roads Act.

Roads and Maritime Response

Roads and Maritime has reviewed the information provided and does not support the planning proposal at this time as it has the potential to adversely impact the safety and efficiency of the classified road network.

The following comments are offered to assist Council in moving forward with the proposal:

1. It is unclear if Council has considered the requirements of Section 139A-F of the Roads Act or the requirements of the Street Vending Guidelines referred to under Section 139F.
2. Street Vending is generally not supported in high speed rural locations (80km/h or higher) unless safety and efficiency is not compromised.
3. Roads and Maritime is unlikely to support street vending as exempt development on classified roads in high speed rural environments.

If you have any further enquiries regarding the above comments please do not hesitate to contact Liz Smith, Manager Land Use Assessment on (02) 6640 1362 or via email at: development.northern@rms.nsw.gov.au

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Liz Smith'.

for Monica Sirol
Network & Safety Manager, Northern Region
Date: 12 April 2018

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Headquarters
Locked Bag 17
Granville NSW 2142

Telephone: 1300 NSW RFS
e-mail: records@rfs.nsw.gov.au

Facsimile: 8741 5433



The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Your Ref: BSCPP 17/013
Our Ref: R18/599
DA18041012579 AB

ATTENTION: Simon Scott

4 May 2018

Dear Mr Scott

Planning Proposal - Agency Comment: Ballina LEP 2012 - Roadside Stalls

I refer to your correspondence dated 22 March 2018 seeking advice for the above Planning Proposal in accordance with the 'Environmental Planning and Assessment Act 1979'.

The New South Wales Rural Fire Service (NSW RFS) has considered the information provided and has no specific recommendations in relation to bush fire protection.

Should you wish to discuss this matter please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely

John Ball
Manager

For general information on bush fire protection please visit www.rfs.nsw.gov.au

Belinda Wheat
251 Ellis Road
ALSTONVILLE NSW 2477
0411 062 599

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Response to Planning Proposal 17/013 Roadside Stalls

23 April 2018

Dear Mr Hickey

The benefits to the local community of Roadside Stalls are known, briefly stated within the Planning Proposal 17/013 Roadside Stalls (Appendix 4), so let it be known there are good reasons to ensure the criteria for operating small scale roadside stalls be non-burdensome. To ensure this time-honoured community tradition continues long into the future, I ask that existing council policy within Australia (Adelaide Hills Council) be considered as fair and reasonable criteria and applied to our Shire. I believe, that should Council approve the Planning Proposal as is, there will be no increase in compliance by Roadside Stall operators due to the burdensome requirements therein.

Roadside stalls do not generate sufficient cash flow to make it viable to spend the money required in order to be compliant with Ballina Shire Council's proposed rules on Roadside Stalls, making these rules burdensome for the landholder and therefore unlikely to be complied with. For a landholder to *"have an all-weather gravel sealed shoulder with sufficient width to allow vehicle occupants to enter and exit vehicles in a safe manner, being a minimum area of 3.5m x 15m;"* and to pay the proposed \$165 application fee, so that they may sell minimal amounts of produce from their land, is not a *"balanced regulatory approvals process that does not unnecessarily burden landholders with regulatory requirements,..."*

Roadside Stalls by name are stipulated as being concerned with the road, however they are accessible for all community members regardless of how they wish to travel to patronise them, shall that be by foot, bike, scooter, or car. As with a pedestrian, a motorist must use their discretion and follow all road rules to safely access the produce for sale. It appears the burdensome rules in this proposal are designed to in some way reduce the possibility of unsafe access to Roadside Stalls by car.

I suggest Ballina Shire Council look to Adelaide Hills Council for progressive policy on Roadside Stalls, noting that small roadside produce sellers are not required to contribute any fee to council:

"5.13 The general approach to fees is:

- a) permit fees are set in Council's Fees and Charges Register.
- b) a permit fee will apply:

- i. to the use of the road reserve within townships and urban areas to display and sell goods or for promotional and similar purposes;
- ii. in all areas where goods sold are imported or manufactured
- iii. in all areas where goods are sold from large and/or permanent stalls;

c) No permit fee will apply:

- i. to small temporary stalls in rural areas selling seasonal goods and produce from adjoining land, with the exception of stalls selling imported horse manure** (given the environmental benefit of removing excess manure from properties in accordance with best practice horse keeping);
- ii. to fundraising stalls or to the short term, occasional placement of trading tables within townships and urban areas, except where such tables are to be placed on a weekly, monthly or annual basis, in which case an incremental fee will be charged as indicated in Council's Fees and Charges Register."

Along with no permit fee, the Adelaide Hills Council indemnifies itself through insurance and it's Policy Statements/Principles:

"5.9 A permit holder must indemnify Council from all actions and damages whatsoever which may be brought against them for any wilful or negligent act;"

"5.11 Public liability insurance for permit holders to the value of at least \$20 million will be provided through an appropriate insurance policy obtained by the Adelaide Hills Council."

Adelaide Hills Council makes no comment on the requirement to provide a gravel sealed parking area, and to the extent of needing to address road safety, include in their policy:

"5.8 Only those parts of a road reserve which are considered safe for pedestrian and vehicular traffic may be utilised. Assessment of acceptable sight distance for rural roadside verge stalls will be based on the following general approach for minimum safe stopping distance (SSD) either side of the location of the stall: a) 60kph road = 73 metres SSD; Roadside Trading (Use of Public Road Verges for Business Purposes) Page 6 b) 80 kph = 114 metres SSD; and, c) 100 kph = 165 metres."

Safety of Roadside Stalls, compliance to the above criteria and protection of Council is ensured through assessment within the permit application process as stated:

"6.4 Application process

1. Application form to be completed and lodged with Council together with required information (NB: a single application may be lodged for special events)
2. Application received, registered and acknowledged
3. Council officer, or officers inspect the site to assess suitability of the site
- 4. Assessment of application taking into account the following issues:**
 - a) appropriate location of the vehicle, table, stall or other temporary structure, having regard to the safety of other road users and pedestrians;**
 - b) assessment of acceptable sight distance for rural roadside verge stalls in accordance with clause 5.8;**
 - c) control of obstructions;

- d) location of nearby infrastructure, properties and driveway crossovers;
 - e) control of visual amenity, cleanliness and litter;
 - f) scale and nature of proposal;
 - g) the protection of Council against any public liability claims arising out of any failure by the permit holder;**
 - h) and any other relevant factors.
5. Referral to other sections within Council, when relevant;
 6. Determine any conditions which should apply; and
 7. Application granted or refused
 8. If the application is granted, and the determined fee paid, then the permit will be issued."

Road users make safety decisions when pulling over in a range of circumstances, to take a phone call, tend to children, have a rest from driving, and do so all the time on road verges that are not all-weather gravel sealed. The Roads authority does not deem it unsafe/illegal to pull over where one deems safe and abiding by road rules to do so. I do not believe that Council should burden landholders with providing a gravelled road verge, and should put the onus back on the motorist to make safe driving decisions when accessing roadside stalls.

Roadside stalls throughout our shire also exist within townships and urban areas. I believe these stalls should be allowed, included in and covered by the Roadside Stalls Policy. Many households throughout our region have backyard gardens, sizable enough that produce may be grown and surpluses occur at times. Should this scenario exist within the Adelaide Hills Shire, the urban Roadside Stall is covered by the Council's Roadside Trading Policy, with a permit application cost of NIL, as stipulated in their Fees and Charges Register 2017/2018:

"2.7 Display & sale of seasonal goods and produce adjacent to a residential property- Small temporary/seasonal from adjacent property: Adopted Fees & Charges 2017/18 (incl. GST) Nil."

Regarding access to these stalls via car, within urban areas roads are restricted in speed and provide sufficient sealed roadside for safely pulling over. I do not see reason to exclude these stalls from those covered by the proposed Roadside Stall Policy.

It would be a detriment to the Ballina Shire community, local and tourist, to see less of our valued roadside stalls due to arduous Council policy. Food waste in Australia is of current concern and again I suggest Council look to South Australia government for direction. A project bid led by a committee of industry participants with coordination by the Department of Primary Industries and Regions South Australia (PIRSA) recently resulted in 'Fight Food Waste Cooperative Research Centre (CRC)', a \$133 million, 10 year research centre to target food waste to improve the future sustainability and profitability of the Australian food industry. With Australia's food waste at \$20 billion each year, Council should be encouraging local growers to share/sell their excess produce by deciding on an easy and non-burdensome Roadside Stall Compliance Policy.

In summary, I believe Roadside Stalls should be encouraged in the Shire, they should be exempt development and any regulations imposed by Council should be at Council's cost. Indemnification of Council within the permit application process, and a Shire wide public liability insurance policy for

roadside stalls would allow stall holders to operate without risk to themselves or Council.

Yours Sincerely

BKWheat

Belinda Wheat

References:

Adelaide Hills Council Policy: Roadside Trading (Use of Public Road Verges for Business Purposes)
Policy

<http://www.ahc.sa.gov.au/ahc-council/Documents/Strategies%20Policies%20and%20Plans/New%20folder/Roadside%20Trading%20150310.pdf>

Adelaide Hills Council Fees and Charges Register 2017/2018

<http://www.ahc.sa.gov.au/ahc-council/Documents/Strategies%20Policies%20and%20Plans/New%20folder/Fees%20and%20charges%202017-18.pdf>

Note: these guidelines were updated in June 2017 to include current legislative and Departmental references. They otherwise reflect the information presented in the 1996 version.

STREET VENDING

Foreword

Street vending activity involves the selling of articles either directly or from a stall or standing vehicle or at a footpath restaurant or take-away service facility on public roads and public places. Street vending has general community support and may improve the amenity of streets and public places and provide added convenience and economic benefit for the community.

There are several State Government organisations with responsibility for aspects of street vending. Roads and Maritime Services (RMS) is responsible for the safe and efficient use of the State's roads. NSW Police has responsibility for law enforcement.

The Office of Local Government (OLG) has responsibility for local government legislation and promoting efficiency in local government administration.

Local Councils have specific operational responsibility for the regulation of street vending activity in NSW. The *Local Government Act 1993* requires anyone engaged in street vending activity to obtain prior approval from the local Council and to comply with Council conditions. The *Roads Act 1993* requires prior consent for street vending structures and allows Councils to charge rents in built-up areas.

This manual was first prepared in 1996 jointly by the former Roads and Traffic Authority and the then Department of Local Government in association with the then Police Service and the then Local Government and Shires Associations of NSW. The manual provides guidance on relevant policy and clarifies responsibilities of Councils, RMS, NSW Police and street vending operators.

Councils are required to consider and apply this manual when determining applications for street vending approval under the *Local Government Act 1993*, or consent for street vending structures on public roads under the *Roads Act 1993*.

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1. Introduction

This manual provides Councils and street vending operators with guidance to more effectively and consistently control and operate street vending activities within a public road or a public place. In particular, this manual outlines the responsibilities and criteria for approvals so that problems associated with street vending are minimised.

This manual is mandatory where street vending is carried out from street vending structures in built-up areas and Council wishes to charge rent for such activities. See Section 6, Criteria for approvals, of this manual for more information.

2. Definitions

Arterial roads – these roads predominantly carry through traffic from one region to another and form principal avenues of communication for metropolitan traffic movements. Arterial roads are usually part of the declared classified road system.

Carriageway – that portion of the road reserve devoted particularly to moving vehicles. See Figure 1.

Classified road – means any of the following: a main road, a highway, a freeway, a controlled access road, a secondary road, a tourist road, a tollway, a State work. See *Roads Act 1993*, Part 5 for further details.

Kerb – a raised border of rigid material formed at the edge of a carriageway. See Figure 1.

Mobile vending vehicle – see definition of street vending vehicle.

Prescribed flashing warning light - means the light required to be fitted to street vending vehicles by Clause 126 of Schedule 2 to the *Road Transport (Vehicle Registration) Regulation 2007*.

Public place – means a public road, bridge, jetty, wharf, road ferry, public bathing reserve, public baths, public land and other land which is a public place under the *Local Government Act 1993*.

Public road – means a road which the public are entitled to use.

Public street – means any street, road, lane, thoroughfare, footpath, or place open to or used by the public, and includes any place at the time open to or used by the public on the payment of money or otherwise.

Road reserve – the entire right-of-way devoted to public travel, including footpaths, shoulders, verges and carriageways – the whole width between adjacent property boundaries. See Figure 1.

Road users – includes pedestrians, motorists, cyclists and motor cyclists.

Shoulder – the portion of the carriageway beyond the traffic lanes and contiguous and generally flush with the surface of the pavement.

Standing vehicle – includes any vehicle, whether registered or not, which is stopped on a public road or a public place for the purposes of selling any article.

Street vending vehicle – means –

- a) For the purpose of an approval under Section 68 of the *Local Government Act 1999*, to use a standing vehicle or any article for the purpose of selling an article in a public place, this term includes all types of vehicles (registered or unregistered) which are used for the sale of articles in a public road or public place.
- b) For the purpose of Clause 126, Schedule 2 of the *Road Transport (Vehicle Registration) Regulation 2007* and Rule 221-2 of the *Road Rules 2014*, a street vending vehicle means a motor vehicle or trailer used for the hawking of ice cream (including any form of frozen confection containing ice cream, flavoured ice, fruit-ice, water-ice or a substitute for ice cream) or chocolates, sweets or other confectionery (defined in *Road Transport (Vehicle Registration) Regulation 2007*).

Street vending – involves the selling of articles either directly or from a stall or standing vehicle in a public street or a public place.

Examples of street vending activities include:

- sale of fruits and vegetables from barrows on a footpath
- sale of newspapers from a stand on a footpath
- sale of food, drinks, fruits or vegetables from a stall, a standing vehicle or structure (e.g. kiosks) in a pedestrian mall, near a tourist area, sporting venue or the like not being on private land
- sale of food or articles from a box, stall or table located on a footpath, including stalls operated by charitable organisations
- sale of any goods from a stall, stand, or standing vehicle located in a kerbside lane or on the side of a carriageway
- setting up of footway restaurants or take-away facilities for sale or serving of drinks in a pedestrian area
- sale of flowers from a box on the side of a carriageway
- sale of food, confectionary or other articles from a standing street or mobile vending vehicle on the side of a carriageway.

Street vending structure – a structure or article in respect of which consent may be granted under Section 138 of the *Roads Act 1993* or in respect of which approval may be granted under Section 68 of the *Local Government Act 1993*.

Vehicle – any type of vehicle e.g. a motor vehicle, trailer, tram, bicycle etc. whether registered or not.

3. Traffic and safety problems

The practice of street vending can have an adverse effect on traffic safety and operation. Street vending activities should not be approved on public streets where there is a conflict with road users which cannot be resolved. However there are locations where street vending can be accommodated without compromising the safety and convenience of road users. Such locations may include public roads:

- in urban areas with wide footpaths
- where the speed limit is less than 80 km/h and the carriageway has wide shoulders.

The selling of goods to passing motorists from the kerbside lane or verge is potentially dangerous as vehicles may have to suddenly stop creating unsafe situations with moving traffic. Similarly, the setting up of footway restaurants and take-away facilities in public places and on footpaths may jeopardise the free movement of pedestrians especially, children, the elderly and people with disabilities (including wheelchair users). Dangerous situations may also arise when pedestrians are forced onto the carriageway by the encroachment of street vending stalls or footway restaurants.

These problems may arise because of the:

- (a) lack of defined entry and exit to street vending locations
- (b) inadequacy or lack of parking in areas
- (c) hazardous location of advertising signs, and
- (d) inadequate room for the mobility of pedestrians, especially people with disabilities, and for the passage of prams and wheelchairs.

Street vending activities often produce more hazardous traffic conditions than comparable off-street developments as no defined entry and exit or parking locations exist, leading to random, uncontrolled and unexpected traffic manoeuvres. This is particularly the case when street vendors are selling articles to passing motorists on:

- roads where the speed limit is 80 km/h or higher
- busy arterial roads.

A number of activities such as selling newspapers, charity collections and cleaning windscreens from the carriageway of a public street (especially at intersections controlled by traffic signals) may cause obstruction, hindrance and/or prevent the free passage of road users. In some circumstances these activities are potentially unsafe and may lead to injuries and deaths.

4. Legislation

It is an offence under the *Local Government Act 1993* to carry out any street vending activity without the prior approval of the Council of the area in which the activity is conducted. The offence is punishable by an on-the-spot penalty.

Section 68 (Item 7, Part F) of the *Local Government Act 1993* requires any person, using a standing vehicle or any article for the purpose of selling any article in a public place, to obtain the prior approval of the Council. The Act sets the procedure for making an application for approval and the determination of applications by the Council. The Council may refuse approval or grant approval subject to conditions. The Council may also require the payment of an application fee and may fix the period for which the approval will operate. The applicant is entitled to be advised of any regulatory requirements in advance and to know the reasons for the Council's decision. The applicant may appeal to the Land and Environment Court if dissatisfied with the Council's decision.

Street vending vehicles are to meet the requirements of Clause 126 of Schedule 2 of the *Road Transport (Vehicle Registration) Regulation 2007* (i.e. must be fitted with a prescribed flashing warning light).

Section 125 of the *Roads Act 1993* empowers the Council to approve footway restaurants, and requires RMS concurrence if these facilities are on classified roads.

The *Roads Act 1993* includes a number of provisions (mainly Sections 139A to E) in respect of consents for the use of a structure.

Section 139F of the *Roads Act 1993* outlines matters to be taken into account when considering whether to grant, extend or transfer a street vending consent including that the relevant roads authority must comply with guidelines on street vending issued by RMS and the Office of Local Government (Section 6 of this manual).

While a consent is in force, the taking of action in accordance with the consent is taken not to constitute a public nuisance and does not give rise to an offence against the *Roads Act 1993* or any other Act.

Road Rule 236 prohibits pedestrians causing a traffic hazard or obstruction, including from displaying advertisements, selling or offering articles for sale or washing or cleaning, or offering to wash or clean, the windscreen of a vehicle.

5. Responsibilities

5.1 Councils

Councils have general responsibilities for the stewardship and management of public roads and public places.

Councils have specific powers and responsibilities under the *Local Government Act 1993* to control street vending activity and the *Roads Act 1993*, gives Councils power to control footway restaurants and structures on public roads.

Under the *Local Government Act 1993*, Councils may use local approval policies to establish formal criteria for street vending approvals.

In determining applications for street vending approval, Councils should consider:

- (a) the requirements of any relevant Acts and Regulations
- (b) this manual
- (c) any traffic safety and management issues and relevant advice provided by the Local Traffic Committee(s)
- (d) the circumstances and nature of the proposed street vending activity and its likely impact, and
- (e) any relevant health and hygiene requirements, including food handling standards and appropriate provision for the collection and disposal of litter.

RMS, in principle, does not favour street vending activities on classified roads for traffic and safety reasons. Council should nonetheless consult with RMS and consider Section 6 of this manual dealing with criteria for approvals.

Under the *Roads Act 1993*, Councils have responsibility to:

- (a) determine an application to use an area of footpath adjacent to a restaurant for purposes of footway restaurants (Section 125)
- (b) obtain the concurrence of RMS prior to granting consent to erect any structure on a classified road (Section 138), and
- (c) comply with this manual regarding consents where street vending is carried out from a structure on or over a public road, which is not in a built-up area.

5.2 Roads and Maritime Services

RMS has functions under the *Transport Administration Act 1988*, relating to traffic management and safety. These functions include promoting traffic safety measures or activities for the prevention of, and minimising of, the effect of accidents on roads or road related areas. RMS' responsibility is to give advice on matters relating to traffic safety and management either directly or through the Local Traffic Committee. This may include advice on the effect street vending activities will have on traffic safety.

RMS' views should always be considered by Council when determining applications for street vending approvals on classified roads.

5.3 NSW Police

NSW Police may undertake enforcement of the road transport legislation.

In relation to street vending activities, the role of NSW Police includes control of activities involving charity collections, windscreen cleaning and sale of newspapers from carriageways of public streets and to provide advice on matters relating to safety and enforcement through the Local Traffic Committee.

5.4 Street vending operators

Councils are the sole approval authority for street vending within the road reserve and public places. Accordingly, the operator of a street vending proposal under the *Local Government Act 1993* and *Roads Act 1993* must first apply to local Council as the roads authority for approval in writing.

The application should provide details of:

- (a) the proposed location(s) of the activity
- (b) the proposed period of operation, including times and days of the week
- (c) the type of business including full details of the goods for sale
- (d) the nature of any signs, including warning and advertising signs, and
- (e) any further information required by the Council.

When operators carry out street vending they must comply with the conditions detailed in the written approval issued by the Council, and the approval may be revoked.

A person who fails to obtain an approval or who carries out an activity not in accordance with an approval is guilty of an offence under Section 626 and 627 of the *Local Government Act 1993*.

6. Criteria for approvals

Where selling of any article or service is carried out from street vending structures in built-up areas and Council wishes to charge rent for the activity, the requirements set out in this section of the manual are mandatory.

6.1 General

The health and hygiene controls placed on street vending activities are matters for Council to determine.

Traffic warning/information signs where required should conform with this manual. See Figure 1.

Street vending activities generally cater for pedestrians and for passing traffic.

6.2 Pedestrians

Street vending activities catering for pedestrians must:

- (a) not unduly obstruct the free passage of pedestrians, especially children, people with prams, the elderly and people with disabilities, including wheelchair users
- (b) be located on footpaths wide enough to accommodate the street vending activity as well as to allow the free movement of pedestrians during peak periods
- (c) be carried out from a safe structure if a structure is used
- (d) not be located where they would breach regulatory or signposted parking/standing restrictions (e.g. barrows in kerbside lanes when parking restrictions apply)
- (e) not be located in front of driveways or entrances to properties unless the permission of the property owner has been obtained.

6.3 Passing traffic

Street vending activities, see Figure 1, catering for passing traffic (generally rural and non-CBD situations in urban areas) must:

- (a) not be located where speed limit is 80 km/h or higher, unless safety and efficiency is not compromised
- (b) not be located on a hill or a bend where sight distance is limited (refer to Austroads Guide to Road Design)
- (c) not be located in front of driveways or entrances to properties unless the permission of the property owner has been obtained
- (d) not be located where motorists are forced to park in the kerbside lane, where parking/standing restrictions apply
- (e) have sufficient parking near the site
- (f) provide sufficient traffic warning signs in advance of the facility (signs should be placed only during periods of selling activity)
- (g) 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
- (h) 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, and
- (i) not be allowed to operate during hours of darkness, especially from a street vending vehicle or mobile vending vehicle unless adequate street lighting or other forms of lighting is available to warn pedestrians and other road users.

7. Approvals

The determination of an application for approval to carry out street vending activity in a public place or on a public road, either under the *Local Government Act 1993* or the *Roads Act 1993* respectively, is the responsibility of the local Council. For classified roads, consent must not be given except with the concurrence of RMS.

The Council is required under Section 77 of the *Local Government Act 1993* to bring relevant regulations or relevant local policy to the attention of an intending applicant.

The Council is required under Section 113 of the *Local Government Act 1993* to maintain a register of approvals showing:

- (a) the serial number of the approval
- (b) the date of application
- (c) the amount of the application fee and the date it was paid
- (d) the duration of the approval
- (e) the name and address of the person to whom the approval is granted
- (f) the location(s) at which the approved activity may be conducted
- (g) a description of the approved activity (including hours and days of operation), and
- (h) details of any conditions of approval and whether the approval has been revoked or modified.

In determining an application for approval the Council must have regard to Section 89 of the *Local Government Act 1993* and must not approve an application if the activity would not comply with relevant regulations.

Approvals for street vending activities may be given on a general-area or site-specific basis.

The approval in writing should normally include the following:

- (a) the permitted location for the street vending facility
- (b) the approved times and days of operation
- (c) the types of goods permitted to be sold
- (d) details of signposting requirements, if any
- (e) other conditions as may be deemed appropriate or necessary by Council.

It is recommended that the Council should apply standard conditions of approval requiring that a street vending operator must:

- (a) display evidence of a current street vending approval whenever street vending activities are being conducted
- (b) provide proof of identity whenever requested by an authorised Council employee or by the Police, and
- (c) comply with relevant food and traffic regulations.

An approval may be revoked if the operator does not comply with the written conditions.

Note: The exposure of articles (whether for sale or not) in or on or overhanging any part of a public road, requires Council approval under Item 2 Part E of Section 68 of the *Local Government Act 1993*. An application for approval under this Part may be made concurrently with a street vending application under Item 7, Part F of Section 68.

Where articles on display are not used for selling purposes, a separate application under Item 2 Part E of Section 68 may be

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appropriate.

The requirement for approval to expose articles on the street enables Councils to regulate the display of goods and produce on the footpath and other road areas.

Failure to obtain approval is an offence punishable by a penalty notice (\$300) or a fine of up to \$2,000. The guidance provided in this manual in relation to street vending is generally relevant to applications for displays.

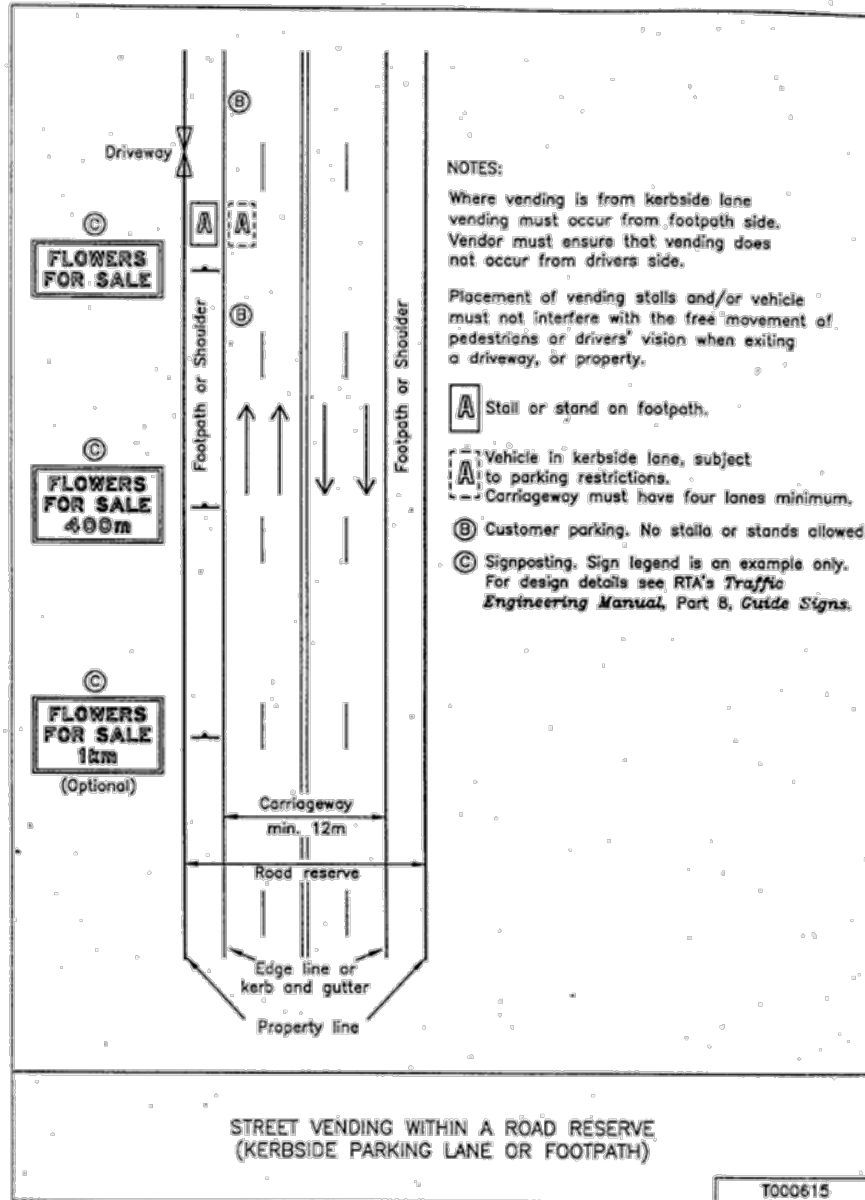


Figure 1