

POLICY NAME: COMMERCIAL USE OF FOOTPATHS

POLICY REF: F07

MEETING ADOPTED: 24 April 2024
Resolution No. 240424/24

POLICY HISTORY: 270613/20; 260810/24



TABLE OF CONTENTS

1 OBJECTIVE 1

2 POLICY 1

2.1 Street Vending Consents and Footway Restaurant Approvals 2

2.1.1 Who may apply? 2

2.1.2 What area may be approved? 2

2.1.3 General Requirements for Footway Restaurants 2

2.1.4 General Requirements for Street Vending 3

2.1.5 Type of commercial uses 4

2.1.6 Car parking 4

2.1.7 Applications 4

2.1.8 Approvals and Renewals 4

2.1.9 Standard conditions 5

2.1.10 Footpath occupation fee 6

3 BACKGROUND 7

3.1 Environmental Planning and Assessment Act 1979 7

3.2 Roads Act 1993 7

3.3 Local Government Act 1993 7

4 DEFINITIONS 8

5 SCOPE OF POLICY 9

6 RELATED DOCUMENTATION 9

7 REVIEW 9

1 OBJECTIVE

This policy applies to street vending (display of goods) and footway restaurants (also referred to as footpath alfresco dining) undertaken on public roads within the meaning of the *Local Government Act 1993* and the *Roads Act 1993*.

The broad intent of the policy is to outline the:

- a) process commercial operators can follow in applying for an approval to use part of the adjoining footpath for street vending the display of goods or a footway restaurant;
- b) design criteria for assessing applications;
- c) standard approval conditions that will be imposed.

The aim of the policy is to:

- a) create vibrant and stimulating commercial centres where the public is encouraged to shop and dine in an outdoor environment and take advantage of the favourable local climate.
- b) enhance and promote the established central business areas of the shire, particularly those of Ballina, Lennox Head, Alstonville and Wardell as focal shopping, business and social places in the shire.
- c) provide clear guidelines for applicants, staff, Council and the community with respect to Council's expectations in relation to street vending and the establishment of footway restaurants.
- d) ensure that pedestrian and traffic safety are not compromised by the activities of street vending and/or footway restaurants.
- e) ensure equitable access for all, including people with disabilities.
- f) promote economic activity by providing opportunities for alfresco dining and for the display of goods and merchandise on footpaths.
- g) mitigate risks for both Council and approved commercial users of footpaths with respect to the operation of this policy.

2 POLICY

This policy applies to all land in Ballina Shire comprising a public road for which Council is the roads authority. This policy does not apply to private land or to roads for which Council is not the roads authority.

Note: This policy does not apply to busking on public roads or in a public place (refer to Council's Policy No B01 Busking) or to commercial activities on public land (refer to Council's Policy No C10 Commercial Activities on Public Land).

2.1 Street Vending Consents and Footway Restaurant Approvals

2.1.1 Who may apply?

- a) An application to use a footpath area for street vending or as a footway restaurant must be made by the registered proprietor of the business occupying the premises from which the footpath activity is intended to be operated or serviced.
- b) A street vending consent will only be granted where the use is consistent with the existing approved use of the premises from which the footpath activity is intended to be operated or serviced.
- c) To be eligible for a footway restaurant (alfresco dining) approval, the premises must be approved as a food and drink premises.

2.1.2 What area may be approved?

- a) The approval area must be along the building line of the property and will not extend further than the width of the street frontage of the applicant's premises.

Note: Council may consider approving a footway restaurant to extend beyond the immediate frontage of the applicant's premises. The extension onto the footpath outside of a neighbouring premises will be at the Council's absolute discretion and the views of the neighbouring premises will be taken into consideration.

- b) The maximum width of an approval area is dependent on maintaining the following unimpeded pedestrian thoroughfare:

Footpath width	Unimpeded cross-section
Less than 3.9 metres	1.5 metres
3.9 metres	2.0 metres
Greater than 3.9 metres	50% of footpath width

- c) The unimpeded cross-section includes ensuring adequate area is maintained around street furniture, garden beds etc.
- d) A minimum clearance of 600mm must be maintained on either side of an entrance to a building or shop.
- e) Display of goods (street vending) are to extend no further than one metre forward of the property boundary.

2.1.3 General Requirements for Footway Restaurants

- a) The placement of any temporary structures within an approval area must allow sufficient clearance for pedestrians to make normal use of the footpath without unreasonable impact. The placement of structures must not inhibit or obstruct clear

- sightlines for vehicles and pedestrians at intersections, vehicular kerb crossings and pedestrian crossings.
- b) The approval area for a footway restaurant may need to be defined by the use of appropriate barriers. In situations where this is required
- i) The height of the barriers is to be no more than one metre from the ground level;
 - ii) The barriers are to be stable and secure, suitably designed to not damage the footpath and able to withstand weather conditions;
 - iii) The feet of the barriers must:
 - Not be raised more than 5mm above footpath surface level
 - have bevelled edges
 - not project into the unimpeded footpath area
 - contrast visually with the footpath surface.
- c) Any landscaping, lighting, structures and/or furniture within an approval area are to be designed and configured to positively contribute to the overall streetscape.
- d) No permanent structures are permitted within an approval area, and all temporary structures and/or furniture must remain wholly within the specified boundaries of the approval area and removed, in accordance with licence terms from approval area when business is closed or not operating.
- e) Items placed in the approval area must be stable and suitably designed to prevent damage to the footpath, withstand weather conditions and maintain an attractive appearance.
- f) For pedestrian safety, umbrellas must be a minimum of 2.2 metres high from the ground at any point. Umbrellas must be secured at all times and in extreme weather conditions umbrellas must be completely removed or secured in a closed position.
- g) No advertising signs, including free-standing A-frames, are to be placed within the approval area, other than incidental advertising as specified in clauses 2.1.3(b) and 2.1.9(k).

2.1.4 General Requirements for Street Vending

- a) Any clothing racks and/or display tables with wheels, must have lockable wheels to ensure racks and display tables can be secured on the footpath.
- b) Where goods are being displayed on a stand, the stand must be safe, stable and solid and no higher than 1.5 metres.
- c) Any goods displayed without the use of a stand, must be safe, stable and solid and no higher than 1 metre.
- d) Any goods displayed within approval area must not pose a risk to members of the public using the footpath.

2.1.5 Type of commercial uses

- a) A street vending consent and footway restaurant approval under this policy are restricted to small-scale commercial use of footpaths.

2.1.6 Car parking

- a) There are no additional car parking requirements for the commercial use of footpaths where such an activity is undertaken in accordance with the requirements of this policy.
- b) Any car parking requirements associated with the existing approved use of the associated business premises must be maintained.

2.1.7 Applications

- a) An application under this policy must be submitted on a Council-approved form, together with the prescribed application fee and all required documentation.
- b) The application must include accurate scaled and dimensioned plans of the application area, together with details of the proposed placement of landscaping, lighting, temporary structures and/or furniture.
- c) An application for a footway restaurant must include details of the intended operation of the alfresco dining area, including nature of dining, hours of operation, seating capacity, type of service, etc.
- d) An application for a footway restaurant must be accompanied by detailed evidence that the existing kitchen, washing and trade waste facilities are suitable to cater for the proposed additional capacity associated with the application area.
- e) The use of a footpath area for a purpose authorised under this policy must not commence until a valid street vending or footway restaurant approval has been issued and relevant conditions have been complied with.
- f) An application for the use of a footpath area as a footway restaurant must specify whether the applicant will be applying for a licence for the service and consumption of alcohol within the approval area.

Note: If the approval area is within a designated Alcohol-Free Zone, a special exemption will need to be obtained.

2.1.8 Approvals and Renewals

- a) All street vending and footway restaurant approvals are valid for seven years and will lapse at the end of this period.
- b) At the end of the approval period the approval will lapse. An application for a new approval must be made and submitted to Council at least one month before the existing approval expires. The application must be accompanied by the relevant application form, fee and insurance documentation.

- c) This approval is vested with the registered proprietor of the business occupying the premises from which the footpath trading is to be operated or serviced. Where a business is sold or transferred, this approval is no longer valid and cannot be transferred to the new owner. A new business proprietor will need to get a new approval for footpath trading.
- d) If a proprietor sells or permanently closes the business, it is their responsibility to notify Council within a minimum of 14 days' notice.
- e) Current footpath dining approval holders will be exempt from the provisions of this Commercial Use of Footpaths Policy dated 2024, until such time as the business is sold and a new application is applied for. Current footpath dining approval holders will be subject to the provisions of the Commercial Use of Footpath Policy adopted 27 October 2022.

2.1.9 Standard conditions

- a) This approval does not become operational until the prescribed annual footpath occupation fee has been paid.
- b) The prescribed footpath occupation fee must be paid annually.
- c) The required public liability policy shall be maintained when an approval is being acted upon and a copy of the relevant certificate of currency made available to Council on request.
- d) The applicant, in acting upon this approval, indemnifies Council against all claims of public liability relating to use and activities associated with the approval area.
- e) The approval area shall be permanently marked in a manner authorised by Council, at the cost of the applicant.
- f) The endorsed use must be confined at all times to the approval area and must be operated in accordance with the terms of this approval.
- g) The footpath must be kept clean and tidy at all times. The applicant may be required to periodically steam or pressure-clean the approval area and adjacent footpath, or upon the direction of Council.
- h) The applicant must reinstate any damage caused to public footpaths at his/her own cost. All repair work must be undertaken to the satisfaction of Council.
- i) The *Companion Animals Amendment (Outdoor Dining Areas) Act 2010* allows dogs in outdoor dining areas that use temporary infrastructure to delineate the area. Proprietors are advised to familiarise themselves with the relevant Act to ensure compliance with the provisions of this Act.
- j) No advertising is to be displayed on the footpath, with the exception of branded pedestrian screens/barriers and umbrellas associated with footway restaurants.

- k) An approved footway restaurant must not serve or allow the consumption of alcohol, unless it is outside a declared Alcohol-Free Zone and/or a liquor licence has been obtained.
- l) If Council or a service authority requires the use of public land, including an approval area, to undertake works or for a planned event, the applicant is to be given at least seven (7) days written notice. In an emergency, an approval area may need to be cleared immediately. The applicant will be responsible for the movement of all items and any associated costs.
- m) Council has the right to instigate enforcement action or to modify the conditions of a street vending consent or footway restaurant approval, or to suspend or terminate such approval after giving notice to the applicant in writing if:
 - i) there is non-compliance with any part of this policy
 - ii) the consent/approval conditions have not been met or there is non-compliance with an approved plan and there is failure to comply with the directions of an Authorised Officer
 - iii) the applicant has failed to maintain public liability insurance
 - iv) the applicant has failed to pay the annual occupation fee
 - v) in the opinion of an Authorised Officer, the street vending or footway restaurant conducted by the applicant poses an unacceptable safety hazard to pedestrians, motorists or cyclists; or
 - vi) in the opinion of an Authorised Officer, the applicant has caused or is causing detriment to the amenity of the area, having regard to any complaints received and/or inspections undertaken.
- n) A street vending consent or footway restaurant approval may be cancelled by Council with 90 days' notice within the first year of its operation, and with 30 days' notice in any subsequent year. No claim for compensation will arise from such cancellation, and the applicant shall be responsible for vacating all of the approval area.

2.1.10 Footpath occupation fee

The footpath occupation fee is based on a per metre rate of the approval area in accordance with Council's annual schedule of fees and charges (note: a minimum charge applies). It is based on a reasonable return on land value, which may vary for different parts of the commercial areas. This fee is an annual fee payable to Council to undertake street vending or to operate a footway restaurant.

The annual fee be waived for the first 12 months of a new seven year application (to encourage new business).

3 BACKGROUND

A policy in relation to the commercial use of footpaths was originally adopted by Council in August 2010 following the commencement of provisions that exempted the commercial use of footpaths from consent requirements under the *Environmental Planning Assessment Act 1979*.

This policy has now been adopted to detail Council's approval requirements under the *Local Government Act 1993* and the *Roads Act 1993*, and for the use of public roads for commercial activities that include street vending, alfresco dining and merchandise displays.

3.1 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* makes provision for development that is exempt from the consent requirements under the Act. An environmental planning instrument may specify development as exempt development. The commercial use of footpaths in Ballina Shire is exempt development when it meets the requirements of clause 3.1 and Schedule 2 of the *Ballina Local Environmental Plan 2012* (BLEP 2012). Schedule 2 of the BLEP 2012 provides the following specifications for commercial use of footpaths that are exempt development:

- a) Must be located on the footpath within a road reserve for which the Council is the roads authority under the *Roads Act 1993*
- b) Must hold any relevant approval issued under the *Roads Act 1993* or the *Local Government Act 1993* (or both)
- c) Must not occupy an area greater than 30m² per operator.

Note: State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 also applies to footway dining. As the SEPP provisions will override the BLEP 2012 (in the event of an inconsistency), applicants may also need to refer to the SEPP.

3.2 Roads Act 1993

The *Roads Act 1993* provides that Ballina Shire Council is the roads authority for public roads in the shire. Section 125 of the Act allows Council to grant approval for "footway restaurants" subject to the terms and conditions of the Act. Section 138 of the Act specifies the consent requirements for structures on a public road, with relevant terms and conditions specified for "street vending" detailed in section 139A. An approval granted by Council under this policy constitutes an approval for either a "footway restaurant" or "street vending" as specified in the *Roads Act 1993*.

3.3 Local Government Act 1993

Section 68 of the *Local Government Act 1993* specifies activities requiring prior approval of Council and includes activities on a public road that "*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.*" An approval granted by Council under this policy constitutes an approval for activities on a public road in accordance with section 68 of the *Local Government Act 1993*.

4 DEFINITIONS

Alfresco dining	The use of an outdoor area for the service and consumption of food and drink.
Applicant	A person or organisation applying for approval to undertake street vending or to operate a footway restaurant.
Application	An application made under this Policy.
Application area	The area proposed for street vending or the establishment of a footway restaurant.
Approval area	The footpath area the subject of an approval for street vending or a footway restaurant approval.
Authorised Officer	An officer of Ballina Shire Council authorised in the administration and/or enforcement of this policy.
Council	Ballina Shire Council.
Food and drink premises	Taken to have the same meaning as the Standard Instrument which can include a restaurant, café, takeaway, pub and small bar for the preparation and retail sale of food or drink for the immediate consumption on or off the premises.
Footpath application	An application made under this policy to undertake street vending or to operate a footway restaurant.
Footpath occupation fee	The annual fee payable to Council to undertake street vending or to operate a footway restaurant.
Footway restaurant	An alfresco dining establishment on a public road for which approval is required under section 125 of the <i>Roads Act 1993</i> .
Footway restaurant approval	An approval granted under this policy for a footway restaurant.
Public road	As the context requires, has the same meaning as specified in the <i>Local Government Act 1993</i> and/or the <i>Roads Act 1993</i> .
Small-scale commercial use of footpaths	<p>The commercial use of footpaths that meets the exempt development requirements specified in clause 3.1 and Schedule 2 of the <i>Ballina Local Environmental Plan 2012</i> and that meets the following requirements:</p> <ol style="list-style-type: none">Involves the use of footpaths within a road reserve for which Council is the roads authority under the <i>Roads Act 1993</i>Is for the purpose of small-scale commercial/business use such as alfresco dining, display of merchandise and the likeOccupies an area not greater than 30 m² per operator

- d) Is operated in conjunction with an authorised adjoining use
- e) Does not involve the erection of permanent enclosures/ structures
- f) Does not interfere with the safety and free passage of other users of the footpath
- g) Does not result in the loss of any car parking.

Street vending

The sale and/or display of goods and merchandise on a public road for which consent is required under section 139A of the *Roads Act 1993*.

Street vending consent

Approval granted under this policy to undertake street vending.

5 SCOPE OF POLICY

This policy outlines the approval process and Council requirements for small-scale street vending and footway restaurants on public footpaths in Ballina Shire. Some of the design requirements may be applicable for other developments that are subject to other approval processes.

6 RELATED DOCUMENTATION

Related documents, policies and legislation:

- a) Local Government Act 1993
- b) State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- c) Roads Act 1993
- d) Environmental Planning and Assessment Act 1979
- e) Ballina Local Environmental Plan 2012.

7 REVIEW

The Commercial Use of Footpaths Policy will be reviewed every four years.