

**POLICY NAME:** COMMERCIAL USE OF FOOTPATHS

**POLICY REF:** F07

**MEETING ADOPTED:** 26 April 2018  
Resolution 260418/12

**POLICY HISTORY:** 270613/20; 260810/24




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## 1 OBJECTIVE

This policy applies to [street vending](#) 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 or a footway restaurant;
- b) design criteria for assessing applications; and
- 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; and
- g) mitigate risks for both Council and approved commercial users of footpaths with respect to the operation of this policy.

## 2 POLICY

### 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 or footway restaurant approval 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.

### 2.1.2 What area may be approved?

- a) The [approval area](#) will not extend further than the width of the street frontage of the applicant's premises. *Note: Council may consider approving a vending area beyond the applicant's premises with the written consent of both the owner and occupier of the adjoining premises.*
- 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 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 sight-lines for vehicles and pedestrians at intersections, vehicular kerb crossings and pedestrian crossings.
- d) The approval area for a footway restaurant must be defined by the use of appropriate barriers. The feet of the barriers must:
- i) not be raised more than 5 mm above surface level;
  - ii) have bevelled edges;
  - iii) not project into the unimpeded footpath area; and
  - iv) contrast visually with the footpath surface.
- e) Displays of goods are to extend no further than one (1) metre forward of the property boundary.
- f) Any landscaping, lighting, structures and/or furniture within an approval area are to be designed and configured to positively contribute to the overall streetscape.
- g) 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.
- h) 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.

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- i) Any clothing racks and/or display tables must have lockable wheels to ensure racks and display tables can be secured on the footpath.
  - j) 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 2.1.6(k).

### **2.1.3 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](#) as defined.
- b) Advertising on footpaths is not permitted, except for incidental advertising such as branded screens/barriers and/or umbrellas associated with footway restaurants.

### **2.1.4 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.

### **2.1.5 Applications**

- a) An application under this policy must be submitted on a [Council-approved form](#), together with the prescribed application fee (where applicable).
- 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. *Please note: If the approval area is within a designated Alcohol-Free Zone, a special exemption will need to be obtained.*

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**2.1.6 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) This approval is vested with the registered proprietor of the business occupying the premises from which the footpath activity is to be operated or serviced. Where a business is sold or transferred, this approval may be transferred to the new proprietor when Council is notified of the change in ownership. Failure to notify Council of changes may result in the approval being withdrawn.
- d) 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.
- e) 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.
- f) The approval area shall be permanently marked in a manner authorised by Council, at the cost of the applicant.
- g) 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.
- h) 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.
- i) 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.
- j) The [Companion Animals Amendment \(Outdoor Dining Areas\) Bill 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.
- k) No advertising is to be displayed on the footpath, with the exception of branded pedestrian screens/barriers and umbrellas associated with footway restaurants.
- l) 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.
- m) 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.

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- n) 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 cancel 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.
  - o) 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.

### **2.1.7 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.

## **3 APPLICATION**

### **3.1 Repeal of Previous Policy**

Upon adoption, this policy repeals Council Policy No F07 Commercial Use of Footpaths adopted by Council on 27 June 2013 (Minute No 270613/20).

### **3.2 Land to which this Policy Applies**

- a) This policy applies to all land in Ballina Shire comprising a public road for which Council is the roads authority.
- b) 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*

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*public land (refer to Council's Policy No C10 Commercial Activities on Public Land).*

## 4 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.

## 5 LEGISLATIVE CONTEXT

### 5.1 [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 30 m<sup>2</sup> 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.

### 5.2 [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*.

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### 5.3 [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*.

## 6 DEFINITIONS

|  |   |
|--|---|
| <b><i>Alfresco dining:</i></b>             | The use of an outdoor area for the service and consumption of food and drink.   |
| <b><i>Applicant:</i></b>                   | A person or organisation applying for approval to undertake street vending or to operate a footway restaurant.                        |
| <b><i>Application:</i></b>                 | An application made under this policy.  |
| <b><i>Application area:</i></b>            | The area proposed for street vending or the establishment of a footway restaurant.  |
| <b><i>Approval area:</i></b>               | The footpath area the subject of an approval for street vending or a footway restaurant approval.                                     |
| <b><i>Authorised Officer:</i></b>          | An officer of Ballina Shire Council authorised in the administration and/or enforcement of this policy.                               |
| <b><i>Council:</i></b>                     | Ballina Shire Council   |
| <b><i>Footpath application:</i></b>        | An application made under this policy to undertake street vending or to operate a footway restaurant.                                 |
| <b><i>Footpath occupation fee:</i></b>     | The annual fee payable to Council to undertake street vending or to operate a footway restaurant.                                     |
| <b><i>Footway restaurant:</i></b>          | An alfresco dining establishment on a public road for which approval is required under section 125 of the <i>Roads Act 1993</i> .     |
| <b><i>Footway restaurant approval:</i></b> | An approval granted under this policy for a footway restaurant.   |
| <b><i>Public road:</i></b>                 | 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> . |



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**Small-scale commercial use of footpaths:**

The commercial use of footpaths that meets the exempt development requirements specified in clause 3.1 and Schedule 2 of the *Ballina Local Environmental Plan 2012* and that meets the following requirements:

- a) Involves the use of footpaths within a road reserve for which Council is the roads authority under the *Roads Act 1993*
- b) Is for the purpose of small-scale commercial/business use such as alfresco dining, display of merchandise and the like
- c) Occupies an area not greater than 30 m<sup>2</sup> 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.

## 7 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.

## 8 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](#).

## 9 REVIEW

The Commercial Use of Footpaths policy will be reviewed at least every four years.