



# **WEDDIN SHIRE COUNCIL**

**POLICY NUMBER: 5.4.4**

## **POLICY FOR FOOTPATH RESTAURANTS & STREET TRADING**

**Adopted: 20 April 2017**

## **POLICY FOR FOOTPATH RESTAURANTS AND STREET TRADING (NO. 5.4.4)**

---

1. **Title:** Policy for Footpath Restaurants and Street Trading

2. **Number:** Policy Number 5.4.4

3. **Purpose:**

1. To promote the regulated use of public assets with the aim of promoting and consolidating the viability of existing commercial areas within the Shire.
2. To inject vitality, amenity and ambience into the street environment through the expansion of permitted activities on public land.
3. To protect existing levels of public amenity and safety from the adverse impact of street trading activities by adequately addressing potential risk management issues.
4. To maintain equity in the regulation of restricted public land usage by promoting both fairness and certainty to street traders and existing business house owners within the Shire.
5. Protect the financial interest of ratepayers by charging a reasonable fee to administer the commercial use of public assets.

4. **Application:**

The scope of this Policy extends to all forms of street trading both short and long term in nature.

For the purposes of this Policy, short term street trading is defined as any activity that extends or any time from a part day up to a month. Longer term street trading covers activities which occupy a part of the footpath on a daily or weekly basis and involves a lease arrangement.

This Policy incorporates the following activities -

- Extended Street Trading
- Footpath Dining
- Merchandise and Display
- Street Vending Vehicles
- Casual Street Vending
- Street Stalls/Ticket Selling/Public Collection and
- Busking

5. **Associated Legislation and Other References**

Local Government Act 1993.

Roads Act 1993

6. **Policy:**

### **Introduction**

The term “Street Trading” used in the context of this Policy refers to long term or periodic occupation of the footpath and/or road carriageway in the Shire of Weddin, for the purposes of either selling or displaying goods (including food or drink) or providing a service to customers, or as an extension for existing business houses within any public street.

This Policy is seen as integral to Council’s role of creating an environment within Weddin Shire Council’s core business areas which contributes to their commercial viability while at the same time enhancing the streetscape and creating a more visually pleasant and upbeat shopping environment.

## **POLICY FOR FOOTPATH RESTAURANTS AND STREET TRADING (NO. 5.4.4)**

---

This Policy has been created to encourage street trading and footpath restaurants whilst also acknowledging that in a competitive economic environment these activities must be regulated for equity and fairness to existing business owners. The Policy also aims to protect the rights of pedestrians, disabled persons and traffic by promoting a reasonably safe and clear passageway on footpaths and roadways.

### **Management Responsibility**

The responsibility for management of this Policy lies with the Director Environmental Services.

Management responsibility encompasses the protection of Council's interests in road and footpath usage through exercising its duty of care in the manner in which these assets are presented and maintained for public use.

### **Risk Management Issues**

Council has responsibility for the care, control and management of public roads and has specific powers and responsibilities under the Local Government Act 1993, Roads Act 1993 and Disability and Discrimination Act. Council's power to grant conditional consent to a street trader does not extend to delegating its common law "duty of care".

The management of public risk in allowing street trading is the primary objective of this Policy. The setting up of footway restaurants and the display of merchandise on the footpaths can impact on the free movement of pedestrians particularly the elderly, people with disabilities and children. It is therefore imperative that street trading does not place pedestrians or passing road traffic at an increased risk of an accident and that this type of activity only be permitted in locations where it can be safely accommodated. The principles of acceptable locations would include:

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

For Council to promote and illustrate the implementation of appropriate risk management responsibilities, Council shall take into consideration and incorporate into a formal street vending approval process the following;

- The conditions under which the street trading activity is granted approval.
- The standards relating to the erection and maintenance of any structure.
- The responsibility for inspecting, cleaning and maintaining the roadway or footway.
- The standards of public health and hygiene including cleanliness of the area which is subject of the approval.

## **POLICY FOR FOOTPATH RESTAURANTS AND STREET TRADING (NO. 5.4.4)**

---

- The circumstances under which the approval may be withdrawn.
- The manner and form of corporate indemnity against legal liability which may arise from the street vendor's occupation of the footway which is the subject of the approval.
- The insurance requirements including the terms, conditions, cover and minimum level of indemnity required.

### **Street Trading Approval**

A Street Trading Approval shall be required where the street trading activity involves occupation of the footway on one-off, short-term or daily basis during business hours, or for an extended period. There are two categories of street trading which require approval by way of a Street Trading Agreement.

### **Footpath Dining**

#### ***Approval Procedure***

Applications may be submitted by all food business proprietors who seek to extend their serving area onto the adjacent footway of a public road.

Applications are lodged using the prescribed application form and payment of the appropriate application fee to the Department of Environmental Services and Planning.

The application shall include:

- a) The proposed location of the activity including a sketch drawn to scale showing the proposed table and chair layout relative to the footway, other existing objects located thereon, and the property boundaries.
- b) The proposed period of operation, including times and days of the week.
- c) The nature of any signs including advertising signs, shade structures, portable barriers, and waste containers.
- d) Any further information required by Council.

Approval to conduct footpath dining is subject to the applicant obtaining a valid approval, pursuant to Section 68 of the Local Government Act 1993.

#### ***Fees***

The applicant will be required to pay the following fees.

- Application fee

All fees are payable in advance and shall be paid once annually unless otherwise required.

All fees are determined by Council each year as set out in the *Council Fees and Charges Policy of the annual Operational Plan*.

Applicants are required to lodge a copy of current public liability insurance with a minimum cover of \$10 million for any one event and with Weddin Shire Council noted as an interested party on the insurance certificate.

## **POLICY FOR FOOTPATH RESTAURANTS AND STREET TRADING (NO. 5.4.4)**

---

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

Council may at any time cancel approval for footpath dining for failure to comply with conditions of consent or general terms of approval. Cancellation of approval shall be provided in writing and the applicant may appeal the decision in writing to Council.

### ***Approval Criteria***

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

- a) The minimum footpath width available for pedestrian use in any street within the Shire is two metres (2m).
- b) Tables, chairs, barriers, shade structures (including canopy) shall be positioned wholly so as not to overhang or encroach beyond the side boundaries, and shall be wholly contained within the frontage of the food business premises.
- c) Shading structures shall provide a minimum vertical clearance of two (2) metres above footway level.
- d) Shade structures, tables and barriers shall be securely supported and suitably anchored to withstand unexpected wind gusts, and shall be monitored for sturdiness at all times.
- e) The Restaurant trading tables and displayed items shall not reduce the minimum required footpath two metre (2m) width for pedestrian traffic.
- f) All footpath dining furniture shall be to an approved structural standard and design, and prior to its use, is subject to approval by the relevant Council Officer.
- g) All portable footpath dining furniture shall be removed from the footway whilst ever the food business is closed.
- h) The footpath dining shall not restrict access to, or incorporate usage of, existing street furniture provided for public use.
- i) Compliance with conditions and regulations relating to the preparation, storage and serving of food in a public place as determined by the Director Environmental Services or his/her delegate.
- j) The designated footpath dining area shall be maintained in a clean and tidy condition at all times.
- k) Approval shall be sought from the Liquor Administration Board and the Local Area Commander, NSW Police with regard to the consumption of alcohol in the footpath dining area, whether or not it is located within a designated alcohol free one of the Shire.
- l) A right of access exists, with all utility services authorities with infrastructure in the footway, for the purpose of repairs and maintenance. There will be no compensation payable for interruption to footpath dining due to infrastructure repair or maintenance other than as a time credit given in the term of the approval.
- m) All applications will be subject to a six month trial period to assess the impact of individual applications, there after a review of applications shall be conducted on an annual renewal basis.

### **Street Vending Vehicles**

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

#### **a) Standing Vehicle –**

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

## **POLICY FOR FOOTPATH RESTAURANTS AND STREET TRADING (NO. 5.4.4)**

---

### **b) Mobile Vehicle**

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

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

Approval to operate a mobile street vending vehicle also requires compliance with the Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999 and Road Transport (Vehicle Registration) Regulation 1998 and the Roads and Traffic Authority’s “*Street Vending Manual*”.

### ***Approval Procedure***

Applications are lodged using the prescribed application forms (Section 68 Form) and payment of the appropriate application fee to the Department of Environmental Services and Planning. The application shall include:

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

### ***Fees***

The applicant will be required to pay the following fees:

- Application fee

All fees are to be paid prior to any application for approval being assessed. All fees and charges are determined by Council each year as set out in the *Council Fees and Charges Policy of the annual Operational Plan*.

### ***Insurance***

Applicants are required to lodge a copy of a certificate of current public liability insurance with a minimum cover of \$10 million for any one event, with Weddin Shire Council noted as an interested party on the insurance certificate.

### ***Approval Transfer***

Street Vending approvals are transferable to a new operator, subject to notification to Council and, proof of public liability insurance cover being lodged.

### ***Approval Criteria***

- a) This Policy relates to operation of a street vending vehicle on a public road (not being a classified road under the control of the RTA). A vehicle shall not enter any Public Reserve unless special permission to do so is first obtained, nor shall such vehicles operate within 150m of the entrance to a Reserve so as to cause obstruction to pedestrian or vehicular traffic.
- b) The operation of the vending vehicle shall not restrict access along a footway or obstruct vision to other vehicular traffic on the road.

## **POLICY FOR FOOTPATH RESTAURANTS AND STREET TRADING (NO. 5.4.4)**

---

- c) The vending vehicle shall display a sign requesting patrons not to loiter around the vehicle.
- d) Litter containers shall be provided for the convenience of customers.
- e) Waste water shall be contained within the vehicle for later disposal to the sewerage system.
- f) The vending vehicle shall not be operated within 50m of a retail food premise open for trading, and 50m of any licensed premises and only in the designated standing sites as specified.
- g) The standing vending vehicle shall only stand in a floodlit area.
- h) Compliance with conditions and regulations relating to the preparation, storage and serving of food in a public place, as determined by the Director Environmental Services or his/her delegate.
- i) The vehicle must be removed from its location within 15 minutes of closure and the area around the vending vehicle must be left in a clean and litter free state.
- j) Chimes or like devices used to attract attention shall not be used between the hours of 8.00 pm and 8.00am or used within 90 metres from any hospital, schools (during school hour)s or churches in service.
- k) Vehicles shall comply with vehicle registration regulations including the display of signs on the vehicle warning motorists of the presence of children in the vicinity.
- l) Compliance with Section 6 of the publication “Street Vending” (RTA & Department of Local Government 1996) relating to Criteria for Approvals.

### **Merchandise and Signage Display**

This Policy provides for the granting of approval to business proprietors to display goods and merchandise and portable signs within a designated zone on the footway directly fronting the business premises.

Approval may be granted provided the goods are a sample of what is displayed for sale within the premises and the sign refers only to the business which is the subject of the Street Trading Agreement to occupy the area of footway.

The placement of objects on the footpath against the front of a business of a “non saleable” nature, such as pot plants, require an approval.

### ***Approval Procedure***

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

Applications are lodged using the prescribed application form and payment of the appropriate application fee to the relevant section of Council. The application shall include:

- a) The proposed location of the business, including a sketch drawn to scale showing the proposed layout of display relative to the footway and other existing objects, as well as property boundaries.
- b) The proposed period of display, including times and days of the week.
- c) The position, size and wording of any signs, including advertising signs, tables, display structures.
- c) Any further information required by Council.

## **POLICY FOR FOOTPATH RESTAURANTS AND STREET TRADING (NO. 5.4.4)**

---

### ***Fees***

The applicant will be required to pay the following fees and securities:

- a) Application fee

All fees are payable in advance, all fees and charges are determined by Council each year as set out in the *Council Fees and Charges Policy of the annual Operational Plan*.

Applicants are required to lodge a copy of a certificate of current public liability insurance with a minimum cover of \$10 million for any one event, with Weddin Shire Council noted as an interested party on the insurance certificate.

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

### ***Approval Criteria***

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

- a) A two (2) metre wide unobstructed passage of footway is maintained at all times.
- b) This merchandise display is contained within a strip that extends 750mm out from the property's front boundary and does not extend beyond the property's side boundaries. A clear space equivalent to the width of the premise's doorway shall be maintained in the designated display area.
- c) Portable signage shall be limited in number to one per business, and the size restricted to a maximum of one (1) metre in height and 500 millimetres in width. Collapsible signs shall be capable of being locked into a rigid structure when erected.
- d) The legs/supports of all display furniture and signs shall be secure and shall not extend or protrude beyond the designated display area or beyond the displayed goods.
- e) The designated display area shall be maintained in a clean and tidy condition at all times.
- f) The merchandise display furniture and signage shall be removed from the footpath whenever the premises are closed for business.
- g) No sale or transactions in connection with the business's merchandise shall be conducted from the footpath.
- h) Public address systems or spruiking are not permitted from the footpath.

### **Street Vending Approvals**

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

There are two (2) categories of Street Vending Approvals provided for in this Policy.

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

Street stalls/ticket selling and public collections –

- (a) Shall nominate the location(s) of the proposed activity;
- (b) Shall be restricted to charitable and non profit organizations based within the Weddin Shire;



## **POLICY FOR FOOTPATH RESTAURANTS AND STREET TRADING (NO. 5.4.4)**

---

- (c) Shall ensure compliance with the requirements of the Food Act, the Horticultural, Stock and Nurseries Act, the Lotteries and Charities Act and any other relevant legislation;
- (d) Shall ensure that no obstruction is caused to the flow of pedestrians or traffic and ensure that a two metre wide footway is provided at all times for pedestrian traffic;
- (e) Any other requirements that are considered appropriate when consideration for approval is given.
- (f) Mobile ticket selling is to be restricted to the main streets within villages of the Shire;
- (g) Ticket selling stands shall be limited to a size not exceeding 2.0m x 1.0m
- (h) Street stalls to be conducted in accordance with Council's Street Stalls Policy.

### **No approval fee is required for charitable or not – for profit organizations.**

Applicants are required to lodge a copy of current public liability with a minimum cover of \$10 million for any one event and with Weddin Shire Council noted as an interested part on the insurance certificate.

### **Busking**

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

- Persons seeking to busk in a public place must make application to the Department of Environmental Services and Planning nominating the duration, hours, location and the form of busking to be performed.
- Shall ensure that the performance does not cause a hindrance to the flow of pedestrian traffic.
- The applicant shall obtain the permission of shop keepers outside whose premises they seek to perform, for the full duration of the performance.
- The performance shall not cause any public disturbance by nature of the level of noise, the language or equipment used or the acts performed.
- The performance shall not include drawing or marking the footway or affixing any matter or structure to the footpath paving.
- A busker may place a receptacle for the receipt of gratuities but shall not directly solicit money from pedestrians in respect of either the performance or the selling of other goods.
- Council reserves the right to refuse any application or revoke an approval at any time.
- One organisation only being granted permission for any one day at any one location.

### **Fee Structure**

#### ***Application Fees***

The application fee for Street Vending may be found in the Weddin Shire Fees and Charges in the annual Operational Plan and covers the cost of receiving the application, processing by way of referral for comment to other Council officers and the establishment of an approval. This fee is reviewed annually/unless stated otherwise.

### **Enforcement of Street Vending Approval Conditions**

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

- The registration number of the application for the approval
- The date on which the application for the approval was made
- The amount of fee or rent payable
- The dates on which such fee or rent or parts thereof was paid

## **POLICY FOR FOOTPATH RESTAURANTS AND STREET TRADING (NO. 5.4.4)**

---

- The name and address of the business premises
- A brief description of the nature of the street vending activity
- The duration of the approval
- Whether the approval has been revoked or modified.

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

Should an instance of non-compliance be detected or reported, the applicant shall be notified and requested to rectify the situation. Failure to respond to this notification will result in the matter being placed in the hands of Council's Relevant Officer.

Failure to obtain approval for street vending, or to comply with approved conditions, is an offence punishable by a penalty notice or a fine as prescribed under the Local Government Act and Roads Act Regulations as applicable.

### **Legislative Provisions**

a) **Local Government Act 1993**, Under Section 68 of the LGA persons are required to obtain Council approval to:

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

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

b) **Roads Act 1993**, Under Section 125 *“a Council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road to use part of the footway for the purposes of the restaurant”.*

If structures are erected in the footway for ancillary purposes for a footway restaurant, then it is reasonably foreseeable that a person, whether or not a customer of the restaurant, may suffer injury or damage as a consequence of the restaurant activities. It is therefore imperative that Council establish a Policy which provides for the approval of footpath dining and other similar activities of street trading.

Under Section 139A a roads authority may approve the erection of a structure in, on or over a public road in a built-up area connected with the purpose of selling any article or service. This approval may be subject to conditions including the charging of rent and specifying the period of consent. Under Section 142, the person who has right to the control, use or benefit of a structure erected on a road must maintain the structure in a satisfactory state of repair.

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

## **POLICY FOR FOOTPATH RESTAURANTS AND STREET TRADING (NO. 5.4.4)**

---

### **7. Review**

- This policy shall be reviewed by September 2021 and thereafter at four (4) yearly intervals, to ensure it meets all statutory requirements and the needs of Council.

### **8. Adoption**

- This policy commences as from the date of adoption by Council, being 20 April 2017 and replaces any previous policy.

### **9. History**

<b>Version</b>	<b>Details</b>
5.4.1	Adopted June 2006
5.4.2	Adopted 17 September 2009
5.4.3	Adopted 18 April 2013
5.4.4	Adopted 20 April 2017