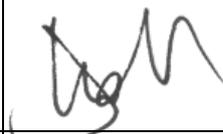




**Murrumbidgee**  
COUNCIL

## Use of Council's Footpath Policy

	Name	Position	Signature	Date
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Authorised by	John Scarce	General Manager		26 March 2024

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## **PART 1 – PRELIMINARY**

### **1) Name of the Policy and Purpose**

This policy is the ***Use of Council's Footpath Policy*** and its purpose is to set down guidelines and application requirements relating to the use of the Council's footpaths within commercial areas of Coleambally, Darlington Point and Jerilderie.

### **2) Aim of Policy**

(1) The aims of the policy are:

- a. to enable local food and drink premises including hotels, refreshment rooms, cafes, and restaurants in the commercial areas of each village with the opportunity to establish safe outdoor eating areas on the public footpath;
- b. to provide opportunities for not-for-profit organisations, charities and commercial operators to set up food vending carts and barbeques to operate from appropriate locations on Council's footpath;
- c. to provide local business the opportunity to display merchandise in appropriate locations on Council's footpath;
- d. to enable local business the opportunity to display temporary advertising structures in appropriate locations on Council's footpath; and
- e. to allow buskers to perform on land owned by or in the control of Council.
- f. to enable local not-for-profit and sporting organisations to set up stalls and sell raffle tickets.

(2) The policy also aims through the provisions of fair and reasonable controls to manage public safety on footways for all people living in and visiting the Murrumbidgee local government area, especially for the elderly and the visibility/mobility impaired, by maintaining a safe environment and prevent obstruction to pedestrian and vehicle movement in the designated areas.

### **3) Scope of policy**

(1) This policy applies to all land within the commercial precincts of Coleambally, Darlington Point and Jerilderie, shown in the Figures 1, 2 and 3.

(2) The display of temporary advertising structures and goods for sale is not permitted in the following areas:

- a. Parks, open spaces or public road median strips.
- b. Narrow footpaths that are considered to have high pedestrian use.
- c. Footpaths that are occupied by other uses, such as bus stop, taxi ranks, fire hydrants, Australia Post facilities.
- d. Footpaths in the vicinity of intersections which may interfere with visibility or distract vehicular movement.

(3) Where the use of the footpath adjacent to a classified road concurrence of Transport for NSW is required.

**Figure 1: Coleambally Commercial Precinct**



**Figure 2: Darlington Point Commercial Precinct**



**Figure 3: Jerilderie Commercial Precinct**



#### **4) Definitions**

(1) In this policy:

**Application** means either a development application for consent under Part 4 of the Act to carry out development and includes an application for a complying development certificate and an application to modify a development consent, or an application made under section 68 of the Local Government Act, 1993.

**Busker** is a person (or group) who plays a musical instrument, sings, dances, mimes or performs an act to entertain the public.

**Council** means Murrumbidgee Council.

**Development process** means application, assessment, determination, and enforcement.

**Food and drink premises** means retail premises used for the preparation and retail sale of food or drink for immediate consumption on or off the premises, and includes restaurants, cafes, take away food and drink premises, milk bars and pubs.

**Food vending cart** means a barrow, trolley or cart that does not require registration with Transport for NSW and any adjacent area reasonably used for the purpose of displaying and selling food stuffs.

**Hotel** means the premises to which an hotelier's licence granted under the Liquor Act 1982 relates.

**Local not-for-profit or sporting organisations** means a group with ties to the local government area and the villages and surrounds of Coleambally, Darlington Point and Jerilderie.

**Primary service authorisation** enables liquor to be served to patrons without another product or service under an on-premises licence. The most common example is the sale of liquor in a restaurant without a meal. All restaurants, including those with a primary service authorisation, cannot operate with the primary purpose of selling or supplying liquor. Restaurants with a primary service authorisation must have meals available at all times. A primary service authorisation does not allow a restaurant to operate as a bar.

**Public performance** means performance by a group of music, singing, dance or similar activity or public speaking on behalf of a group, agency or Church.

**Refreshment room** means a restaurant, café, tearoom, eating house or the like.

(2) Notes in this policy do not form part of the policy and are advisory.

## **PART 2 – GUIDELINES FOR OUTDOOR DINING**

### **5) Requirements for use of footpath for outdoor dining**

(1) Where it is proposed to use Council's footpath for outdoor dining incorporating the placement of tables, chairs and associated shade structures, an application for development consent is to be made to Council and determined in accordance with the provisions of Environmental Planning & Assessment Act, 1979 and Section 125 of the Roads Act, 1993. Consent, if granted will be subject to:

- a. Any approval will be subject to compliance with the provisions set down in clause 3 of the Policy and will be subject to conditions including, but not limited to, annual agreement where the payment of fees is in accordance with Council's Revenue Policy and written indemnification against action or claims against Council included in Public Liability Insurances.
- b. Applicants will be required to enter into a licence agreement with Council, make payment of fees based on the dimensions of the area approved by Council in accordance with Council's Revenue Policy and provide written indemnification against action or claims against Council included in Public Liability Insurances.

**Note 1:** Development consent determines only that the footpath may be used for the purpose of outdoor dining. The licence to occupy the footpath is an agreement between the occupier and the land owner (Council) describing the terms under which the footpath is used. This may vary from time to time in accordance with this Policy or its amendments.

**Note 2:** The existence of development consent does not imply approval of any of the terms of the licence agreement. A licence agreement will not be entered into that departs from conditions of development consent.

**6) Controls and guidelines applying to outdoor dining**

- (1) The following controls have been developed to provide guidelines for applicants seeking development consent for outdoor dining:
- a. Only applies to premises which have received development approval for or are lawfully used as food and drink premises.
  - b. There shall be no obstruction or danger created for pedestrian or vehicular traffic flow.
  - c. The area to be occupied shall normally be of a dimension that is equal to the width of the shop front. A development or licence application which proposes to extend forward of the neighbouring shop front will be referred to the neighbouring property owner and business operator unless written permission of the parties is contained in the application.
  - d. A minimum 2.6 m wide clear area is to be provided to enable pedestrian movement. A greater distance may be required based on the proposal and the circumstances of the case including existing constraints due to the volume of pedestrian traffic, proximities to other footpath obstructions, proximity to intersections and other footpath conditions including cross-fall and slope.
  - e. Outdoor dining will not be permitted on the footpath adjacent to the shop wall.
  - f. Where parking is adjacent to any proposed outdoor eating area a setback of one metre is required for passengers to alight from their vehicles. A suitable road safety barrier system may be required with a 1.0 metre setback from the kerb.
  - g. If alcohol is to be served, it shall be done in accordance with Liquor and Gaming NSW licensing requirements for primary service authorisation. In the case of hotel premises, the outdoor eating area on Council's footpath is to be used primarily for the serving and consumption of meals and is not to be used solely for serving alcohol such as a 'beer garden'.
  - h. Any approval for meal consumption will require appropriate signage stating that the furniture is only to be used by customers who are to consume a meal prepared or sold by the establishment, and stating any restriction to hours where alcohol is consumed. The wording is to be approved by the Director Planning, Community & Development (or equivalent position) or their nominated delegate.
  - i. Where it is proposed that alcohol will be consumed, specific approval is required from the Liquor and Gaming NSW and where no liquor license is in force both Murrumbidgee Council and Liquor and Gaming NSW.

**Note 3:** Where an alcohol free zone is in force, the development consent only applies to the area delineated for outdoor dining.

**Note 4:** Where this adjoins a classified road, Council will refer the matter to Transport for NSW and be subject to their concurrence.

- j. The hours of operation shall be:-
  - i. For premises where no alcohol service is provided, the hours for the use of the outdoor seating shall be between 6.00am until the close of trade of the approved use of the premises or 12.00am whichever is the earliest.

- ii. For premises where alcohol is proposed to be served including BYO premises, the hours for the use of the outdoor seating shall be between 6.00am until the close of trade of the approved use of the premises or 12.00am whichever is the earliest. Alcohol shall not be served or consumed on the footpath prior to 10.00am or after 10.30pm Sunday to Thursday, and prior to 10.00am to midnight Friday and Saturdays. A legible sign describing the requirements above is to be clearly displayed.
- k. No moveable furniture is to be left on the footpath area outside the hours stated in (j) above.
- l. Unless otherwise approved by Council, Street Furniture must meet the following objectives:
  - i. Moveable tables must be metal mesh, timber or similar construction.
  - ii. Chairs must be metal mesh, timber or similar finish.
  - iii. High quality plastic furniture shall be permitted with the approval of Council.
  - iv. A range of umbrella colours will be permitted provided there is consistency grouping of the theme of the umbrellas in colour and advertising.
  - v. Discrete advertising related to the restaurant premises will be permitted on the umbrellas.
  - vi. Street furniture must be kept in good serviceable order and repair.
- m. Where it is proposed or is considered necessary to carry out footpath construction works, paving materials shall be in accordance with the relevant policy or masterplan.
- n. Planter boxes, screens, menu boards or other paraphernalia may be approved subject to specifications required by the Director Planning, Community & Development (or equivalent position) or their nominated delegate provided details are provided in the development application.
- o. Where no onsite toilet facilities are provided, the maximum number of chairs on the footpath plus within the premises shall not exceed 20.
- p. Drop-down screens that interfere with the effectiveness of CCTV coverage will not be allowed.
- q. Where the use of a heating device is proposed, details of the type, location and design must be included in the application. Appropriate fire safety equipment must be easily accessible and its location noted in the application. Heating devices should turn off automatically if overturned to prevent injury to patrons and property. Heating devices must be removed from public land and appropriately stored when not in use. Direct access to the gas mains and use of electrical extension cords are not permitted.
- r. Installation of gas heaters should be in accordance with AS 4565 – 2004 Radiant Gas Heaters. Heaters must not be placed where they may present a fire hazard (eg in close proximity to umbrellas).
- s. In limited circumstances Council may approve the use of a portion of an Outdoor Dining Area for the purposes of a coffee cart to be used in conjunction with an approved refreshment room. The coffee cart shall comply with the, Australia New Zealand Food Standards Code and the NSW Food Act 2003 and Regulation. Patrons of the coffee cart shall be within the outdoor dining area while being served and queuing outside of this area is not permitted.
- t. Council will require the approved area to be delineated at the applicant's expense. The method of delineation will be determined by Council.

## **7) Application requirements**

- (1) The applicant shall lodge a development application with Council via the NSW Planning Portal. The information to be provided with the development application is to include:
  - a. Land owner's consent from the land owner of the food and drink premises and Murrumbidgee Council as the owner of the footpath. Should the siting of any tables and chairs extend beyond the boundary of the site, then owner's consent is also required from the neighbouring properties.
  - b. Payment of the prescribed fee for a development application, as published in Council's Revenue Policy.
  - c. Detailed plans of the footpath, showing the exact dimensions and position of the proposed area, siting of the street furniture, a cross-section from the property boundary to the top-of-kerb and details of the style, type and colour of the street furniture.
  - d. A statement of environmental effects.

**Note 5:** Where conditional approval is given additional fees are payable in accordance with Council's Revenue policy. These fees shall include, but not be limited to a bond, a licence preparation fee and an annual fee per square metre.

## **PART 3 – GUIDELINES FOR OTHER USES OF COUNCIL'S FOOTPATH**

### **8) General Requirements for use of footpath for other purposes**

- (1) An application is to be made to Council pursuant to Section 68 of the Local Government Act, 1993.
  - a. the sale of food and drinks on a take-away basis incorporating the placement of food vending carts and gas operated barbeques; or
  - b. the display of goods incorporating the placement of merchandise racks and trade tables; or
  - c. the temporary placement advertising structures incorporating the placement a-frame or sandwich board or like type structures; or
  - d. for the purpose of busking
  - e. for the sale of raffle tickets and the like by local not-for-profit and sporting groups;

### **9) Controls and guidelines applying to mobile food vending carts and barbeques**

- (1) The following controls have been developed to provide guidelines for applicants seeking approval for mobile food vending carts and barbeques
  - a. No obstruction or danger is created for pedestrian or vehicular traffic flow.
  - b. The area to be occupied shall be parallel in length to the shop front. Any extensions on to the neighbouring shopfront of the same premises must have the neighbouring property owner's written permission prior to submitting an Activity Application.

- c. A minimum 2.6 m wide clear area being provided to enable pedestrian movement. A greater distance may be required based on the proposal and the circumstances of the case including existing constraints due to the volume of pedestrian traffic, proximities to other footpath obstructions, proximity to intersections and other footpath conditions including cross-fall and slope, or the nature of the proposed activity.
- d. The hours of operation for the vending cart or barbeque selling or displaying commodities are limited from 8.00am to 7.00pm daily during Daylight Saving period and from 8.00am to 6.00pm daily during other times of the year. In exceptional circumstances, hours of operation may be varied at the discretion of the Director Planning, Community & Development (or equivalent position) or their nominated delegate.
- e. The mobile food vending cart or barbeque shall not operate within 50 metres from any existing business or other premises, displaying or selling similar types of food stuffs at the same time. In addition a mobile food vending cart shall not operate within 50 metres from any not-for-profit or charity organisation operating a fund raising activity which includes a barbeque facility.
- f. No alcohol is to be served.
- g. No food vending cart or barbeque equipment moveable furniture is to be left on the footpath area outside the hours stated in d) above.
- h. All food vending carts and barbeque equipment displaying or selling food must comply with the Food Standards, Australian and New Zealand Food Safety Standards, the Food Act 2003 and the applicable requirements of the NSW Food Authority – Mobile Food Vending Vehicles, 2009.
- i. Suitable garbage receptacles with close-fitting lids must be provided in the food vending cart. When directed, a suitable receptacle must be provided adjacent to the food vending cart for placing litter and all garbage must be removed daily or more frequently when the need arises

**10) Controls and guidelines applying to the display of goods on the footpath**

- (1) The following controls have been developed to provide guidelines for applicants seeking approval for the display of goods on the footpath. Council will consider the following matters in determining the application:
  - a. Whether products may be considered offensive in a manner from accepted social, moral, religious and cultural perspective.
  - b. Whether the proposed display and sale of goods is likely to cause a safety hazard for pedestrians or detrimentally affect the amenity of the surrounding area or cause damage to footways.
  - c. Display and sale of food items must meet all requirements of the relevant health legislation (eg. safe storage, appropriate temperature regulation, etc).
  - d. The display must not extend further than 1 metre from the existing shop front and be restricted to the length of the street boundary of the premises unless otherwise agreed by Council and stated on the licence permit.
  - e. A minimum clear width of 2.6 metres must be obtained for pedestrians at all times without obstructions from urban features including street trees, bins, street furniture and signs.
  - f. The day-to-day operation of a business in a licensed street trading area is the responsibility of the proprietor/permit holder and the use is at the permit holder's own risk. It is their responsibility to ensure good management practices occur, and the permit holder must:

- i. Operate the business in accordance with principles outlined in this policy and conditions of license agreement;
  - ii. Observe all legal requirements and laws relating to the business;
  - iii. Maintain access in and around the site with consideration that the occupied space is publicly owned space;
  - iv. Comply with all requests made by Council's Planning and Compliance Officers, both formal and informal during the course of the daily operation of the business.
- g. All goods for sale must be established well clear of driveway access points and routes for emergency vehicles;
- h. Display stand(s) must be:
  - i. Stable, and in the case of inclement weather conditions be removed from the footpath;
  - ii. Any display structures with wheels must incorporate a locking device for safety and stability.
  - iii. High presentation quality and appearance;
  - iv. Fit for purpose; and
  - v. Suitably finished so that no damage is caused to Council's pavements.
- i. Displays must be placed immediately against the front wall of the approved business;
- j. Displays must not exceed 1 metre in width or extend beyond the common boundary between adjacent shops;
- k. The permit holder shall be permitted to display goods and place display stands within the approved trading area only during the hours that the business premises is open. All display stands, racks, containers and goods must be removed from the footway and stored within the business premises after business hours;
- l. Full supervision and control must be readily available from the licence holder, proprietor or employees;
- m. The placement of food, perishables or produce of any type within the approved area must comply with health regulations, legislation and requirements;
- n. Displays and goods must not hang from awnings or be attached to the shop fronts;
- o. The permit holder will only be permitted to sell goods that are available from the subject business;
- p. The display of the following items are prohibited:
  - i. Breakable items such as glass, china ware and bottled liquids;
  - ii. Offensive materials;
  - iii. Vending machines, electronic games or pinball machines, poker machines and the like;
  - iv. Large items of household furniture and whitegoods;
  - v. Liquor products, beers, wines or the like, tobacco products or drugs of any type including scheduled medicines; and
- q. The approved area shall not be utilised by anyone other than the permit holder;

## **11) Controls and guidelines applying to advertising structures**

- (1) The following controls have been developed to provide guidelines for applicants seeking approval for the placement of advertising structures on the footpath. Council will consider the following matters in determining the application:
- a. The maximum number of a-frame or sandwich board or like type structures permitted shall be one (1) per premises. Where a premises is occupied by more than one business, such as an arcade or a first floor use, one (1) additional sign may be permitted.
  - b. The content of the sign is only to display details of the business, including details of goods and services available or special sales. The sign shall not contain third-party advertising.
  - c. A minimum clear width of 2.6 metres must be obtained for pedestrians at all times without obstructions from urban features including street trees, bins, street furniture and signs.
  - d. All moveable signage is to be stored away from the public area and off public land outside the hours of operations as approved of the current business.
  - e. All signage must be kept clear of access points to the shop including those of adjoining premises. and routes for emergency vehicles;
  - f. The a-frame sign, sandwich board or like type structure must be:
    - i. Stable, and in the case of inclement weather conditions be removed from the footpath;
    - ii. Constructed of metal or solid timber construction and of a colour harmonious to the surrounds;
    - iii. High presentation quality and appearance;
    - iv. Suitably finished so that no damage is caused to Council's pavements.
  - g. The a-frame sign, sandwich board or like structure must not exceed a height of 1200mm nor exceed 600mm in width.
  - h. Displays must be placed immediately against the front wall of the approved business.

## **12) Controls and guidelines applying to buskers**

- (1) The following controls have been developed to provide guidelines for applicants seeking to busk or provide a public performance:
- a. Buskers can perform anywhere in the areas identified in Figures 1,2 and 3
  - b. Buskers can perform at any one time between the hours of 9.00 am and 5.00 pm each day.
  - c. A busker may accept but cannot solicit donations in appreciation of their performance
  - d. Performances must not cause a nuisance by:
    - i. Obstructing pedestrian or vehicle traffic or entrances to shops or buildings.
    - ii. Excessive noise, due to the amplification of musical or other equipment.
    - iii. Selling or offering for sale of any articles, commodities or services other than a busker's own original recordings.

- iv. Using dangerous implements or materials as part of the performance.
- v. Vilifying or harassing any member of the community, including but not limited to racial, sexual, gender or disability discrimination.

**13) Controls and guidelines applying to sale of raffle tickets and local not-for-profit groups**

- (1) The following controls have been developed to provide guidelines for local not-for-profit and sporting clubs wishing to sell raffle tickets and set up stalls;
  - a. Stalls may be set up anywhere in the areas identified in Figures 1,2 and 3
  - b. Stalls may only operate from 7.30 am and 5.00 pm each day.
  - c. Applications for Street stalls will be called for each year in November for the following calendar year. Each not for profit organisation or community group shall be granted three (3) street stall bookings per annum for either raffle sales and/or the sale of products. Further stalls may be granted if the dates requested are available. In the event of two or more groups wanting the same date, the date will be awarded by ballot conducted by the General Manager.
  - d. Prior to the application for a street stall being processed, Council must be in receipt of the organisation's current certificate of currency for public liability insurance. The policy should have a minimum coverage of \$10,000,000 and stipulate the location where the risk is insured. Council accepts no responsibility for any accident or injury arising from any fundraising activity as its only involvement is granting permission for the stall to be held.
  - e. There shall be only one (1) street stall in each town per day.
  - f. Collectors for charitable collections shall wear appropriate identification indicating the organisation they represent and must make documentation available for inspection at any time.

**PART 3A – APPLICATION REQUIREMENTS FOR OTHER USES**

**14) Application requirements for mobile food vending carts and barbeques**

- (1) The applicant for a food vending cart or a barbeque shall lodge a completed Section 68 application in accordance with of NSW Local Government Act, 1993 to Council which shall be accompanied with the following:
  - a. Owner's consent from the premises where the food vending cart or barbeque is to set up in front of and Murrumbidgee Council as the owner of the footpath.
  - b. In the case of a food vending cart, payment of the prescribed fee;
  - c. A site plan showing the proposed siting of the food vending cart or barbeque;
  - d. Design and specifications of the proposed food vending cart.
  - e. Evidence of a current public liability insurance cover (minimum \$20 million) is to be provided which must indemnify Council of all public liability.

**Note 6:** Should approval be given for a food vending cart it will be limited to a maximum 36 months and be renewable after the end of this period

**Note 7:** Where conditional approval is given additional fees are payable in accordance with Council's Revenue policy. These fees shall include, but not be limited to a bond, a licence preparation fee and an annual fee per square metre.

**Note 8:** Should approval be given for a barbeque to be set up, it will be limited to a one (1) day only and be renewable after the end of this period.

**15) Application requirements for the display of goods or advertising structures on the footpath**

(1) The applicant seeking to display goods or advertising structures on the footpath is to lodge a completed Section 68 application in accordance with of NSW Local Government Act, 1993 to Council which shall be accompanied with the following:

- a. Owner's consent from the premises where merchandise racks, display tables and advertising structures is to set up in front of and Murrumbidgee Council as the owner of the footpath.
- b. Plans of the footpath, showing the siting of the merchandise rack, display table and details of the style, type and colour of the street furniture; and
- c. Plans of the footpath, showing the siting of the advertising structure, including details of signage content; and
- d. Evidence of a current public liability insurance cover (minimum \$20 million) is to be provided which must indemnify Council of all public liability.

**Note 9:** Should approval be given for the use of Council's footpath for the display of goods, it will be limited to a maximum of 52 days in a calendar year only and be renewable after the end of this period.

**Note 10:** Should approval be given for an advertising structure it will be limited to a maximum of 36 months and be renewable after the end of this period.

**Note 11:** The licence holder shall be responsible for any damage caused to Council's footway by the installation, maintenance and/or removal of the outdoor furniture or facilities, and will bear all costs to repair and make good to existing;

**Note 12:** Licence agreements are to remain with the property.

**16) Application requirements for the buskers and local street stall holders**

(1) A busker or a local not-for-profit or sporting group is to make a booking with Council which shall be accompanied with the following:

- a. The owner's consent from Murrumbidgee Council as the owner of the footpath.
- b. The owner's consent from the business operator of the premises where the busker is to perform or where the stall is to be set up.

**Note 13:** If busking as a group, each member of the group will need to apply for an individual busking license. Groups of up to 3 licensed buskers can perform at any one time, providing all members have their license on display.

**Note 14:** Busking approvals will be valid for a maximum of 12 months.

**Note 15:** Should approval be given for a local stall, it will be limited to a one (1) day only and be renewable after the end of this period.

## **PART 4 – OTHER MATTERS**

### **17) Council Consent as Land Owner**

Council's consent as land owner is required prior to the submission of any application for the use of the footpath. Where Council refuses to grant land owner's consent, it shall provide reasons for withholding such consent.

### **18) Unauthorised Use**

The unauthorised use of the footpath, including additional tables and chairs associated with outdoor dining, temporary advertising structures, merchandise racks or trade tables that are not in accordance with an approval or otherwise permitted by Council shall be removed upon the direction of an authorised Council Officer. Where a direction to remove the unauthorised items has been ignored, Council shall impound the unauthorised items.

### **19) Repair or maintenance works**

Any repair or maintenance works to be carried out on the footpath by Council will take precedent over the approval for commercial use. The approval will be suspended during any such work on the footpath and the Permit Holder will be given reasonable period of notice in advance.

### **20) Notification of Council-related development applications**

All development applications for footpath dining areas will be notified for a minimum period of 14 days in accordance with clause 3.3 Community Participation Plan (CPP).

### **21) Legislation and related matters**

The following legislation and related matters were referenced in the drafting of the policy:

- a. Environmental Planning and Assessment Act, 1979
- b. Environmental Planning and Assessment Regulation, 2021
- c. Local Government Act, 1993
- d. Local Government (General) Regulation, 2021
- e. Roads Act, 1993
- f. State Environmental Planning Policy (Exempt & Complying Development) 2008
- g. Food Act 2003

### **22) Directorate**

This policy was prepared by Planning, Community and Development Directorate

### **23) Policy Review**

This Policy:

- To be reviewed within the first year of the new Council term;
- May be reviewed and amended at any time at Council's discretion (or if legislative or State Government policy changes occur).