



Blue Mountains City Council

**Policy on Activities
in Public Places**

Adopted by Council 9/12/97

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1. Introduction

The commencement of the Roads Act in 1993 enables Council to grant an approval for the limited use of Council's footpaths and similar areas. This policy has consequently been prepared for the variety of activities carried out on footpaths and roadways under Council's control by establishing a series of guidelines, procedures and approvals with which prospective applicants would need to familiarise themselves.

This policy does not apply to national park areas which are subject to separate legislation and are under the jurisdiction of the National Parks and Wildlife Service.

The policy has been introduced to encourage, where appropriate, outdoor eating areas in a manner which will contribute to the commercial viability of an area and at the same time enhance the ambience and streetscape of the township. The issue of a conditional approval is designed to create an harmonious atmosphere between residents, visitors and business operators in regard to the use of Council's footpath.

The policy also outlines the procedural arrangements for business operators to obtain Council approval for the limited use of the footpath adjacent to their business premises for the purpose of displaying goods for sale to the public.

The policy does not extend to the granting of an approval to use Council's footpath or roadway for the commercial sale of goods unrelated to a particular business and in fact such usages (eg. hot dog vendors, itinerant flower sellers, etc.) are prohibited.

In addition the policy outlines the requirements for a range of other activities including commercial filming, street stalls, busking, street festivals, fairs and other special events.

The spirit of the policy is to ensure that activities undertaken for commercial gain will be subject to an appropriate fee fixed by Council, whereas activities carried out by non profit organisations will not incur a fee. Intentionally the policy provides for some flexibility insofar as the need for an application is concerned, in the belief that activities such as those outlined in section 9 can function effectively without Council involvement provided that all appropriate guidelines are complied with by the operator.

In those circumstances involving an activity which Council believes requires some degree of regulating and/or coordinating, any approval issued by Council will be under the provisions of the Roads Act 1993.

2. Application of the policy

This policy applies to the Blue Mountains local government area and regulates the following activities under the relevant provisions of the Roads Act 1993 in regard to the granting of an approval for the restricted use of Council's footpath for both commercial or non profit use respectively.

- (a) use of footpaths by shopkeepers, for the storage of a variety of goods and articles which may include but not be limited to flowers, fruit and vegetables, clothing, electrical or hardware equipment on the footpath directly outside their specific premises;
- (b) footpath dining, by way of the granting of a conditional approval in regard to the limited use of the footpath directly outside an existing food business;
- (c) busking and street theatre;
- (d) public addresses, preaching and religious services;
- (e) information and promotional displays;
- (f) street collections and badge/pin days;
- (g) street stalls operated by charities and non profit organisations;
- (h) street festivals and fairs;
- (i) commercial filming.

3. Objectives

- 3.1 To ensure that residents and visitors are able to enjoy the unique natural attractions and lookouts of the City with no adverse impact from the above activities.
- 3.2 To allow for the operation of footpath dining areas in public places in such a way that they provide open social meeting places that do not adversely impact on the amenity of residents and visitors.
- 3.3 To enable Council to give consideration to the multiple use of footpaths in a manner which complements the best interest of the business community, residents and visitors.
- 3.4 To ensure that Council receives an income for the commercial use of public places under its control.
- 3.5 To ensure that activities undertaken by non profit organisations are appropriately regulated and coordinated.

4. Definitions

“Public place” is defined under the Local Government Act 1993 as a public road, bridge, jetty, wharf, road-ferry, public reserve, public bathing reserve, public baths, public swimming pool or other public place which the public are entitled to use.

“Approved” means approved by Blue Mountains City Council.

“Food business” means a restaurant, cafe, coffee lounge or takeaway food shop for which development consent has been granted by Council and any outdoor seating would be complementary to existing internal seating.

5. Use of footpaths by shopkeepers

Council's policy has been prepared on the basis that most footpaths in the Blue Mountains area are approximately 3.5 metres wide. This section has been included to outline the procedural arrangements that business proprietors will need to follow in order to obtain Council approval to use the footpath directly outside their premises for the display of goods for sale. The goods involved will vary depending on the type of business but may include but not be limited to flowers, clothing, shoes, hardware and electrical items, fruit and vegetables.

- 5.1 An approval under the Roads Act 1993 shall be obtained by a business proprietor seeking to use a portion of Council's footpath for the purpose of the display of goods for sale.
- 5.2 Any commercial use of Council's footpath must be ancillary to an existing business. Any use which is unrelated to an existing business is prohibited, eg. hot dog vendors, itinerant flowers sellers.
- 5.3 An application for an approval shall be made using the prescribed application form and by payment of the appropriate application fee.
- 5.4 Continuation of the approval for the ensuing year shall be subject to payment of the prescribed annual rental and an assessment of the activity by Council during the previous year.
- 5.5 The rental fee for the area involved shall be determined by Council as set out in Council's annual fees and charges. The rental fee shall be paid to Council annually in advance upon the rendering by Council of an account. Notwithstanding the enforcement provisions outlined in Section 9, an approval will be cancelled if the appropriate annual rental fee is not paid.
- 5.6 Unless cancelled, an approval shall remain in force for one year or the remaining part of the rental year following the initial payment. Notwithstanding the enforcement provision outlined in Section 9, an approval will be cancelled if the appropriate annual rental fee is not paid.
- 5.7 The application fee and annual rental fee are not refundable.
- 5.8 Proof of current public liability insurance and indemnity acceptable to Council will be required.
- 5.9 An approval may be transferred to a new proprietor upon notification to Council and production of the appropriate public liability insurance cover.

5.10 In order to achieve the objectives of the policy in terms of creating an atmosphere which provides for commercial activities which do not adversely impact on the amenity of residents and visitors, the following requirements will be taken into consideration in the assessment of all applications:

- (a) a 2.5 metre wide unobstructed section of footpath shall be maintained at all times;
- (b) goods displayed shall extend no further than 700mm from the shopfront and shall not extend beyond the property side boundaries;
- (c) goods displayed shall relate only to the business conducted at the premises;
- (d) the holder of the approval shall maintain the display area in a clean and tidy condition;
- (e) all goods or display stands shall be secure and finished so as not to cause injury to pedestrians and shall be removed from the footpath when the premises are closed;
- (f) public address systems, cash registers and the like are prohibited.

5.11 The Council reserves the right to cancel an approval at any time if any condition/s of an approval are being breached.

5.12 An application for an approval for the footpath adjacent to a Classified Road, such as Great Western Highway, Hawkesbury Road, Darling Causeway and Bells Line of Road, will only be considered after the applicant has obtained the written approval of the Roads and Traffic Authority.

Note: None of the aforementioned requirements restrict an applicant for a new business indicating in the development application an intention that the new business will incorporate the partial use of Council's footpath. Under such circumstances no additional application or fee is required and Council will consider this issue as part of the overall assessment of the development application.

6. Footpath dining

This section has been included to outline the procedural arrangements that food business proprietors will need to follow in order to obtain Council approval under the Roads Act 1993 to use the footpath directly outside the premises as an outdoor eating area. Council's policy has been prepared on the basis that most footpaths in the Blue Mountains area are approximately 3.5 metres wide.

- 6.1 An approval under the Roads Act 1993 shall be obtained by a food business proprietor seeking to use a portion of Council's footpath for the purpose of footpath dining.
- 6.2 An application for an approval shall be made using the prescribed application form and by payment of the appropriate application fee.
- 6.3 Continuation of the approval for the ensuing year shall be subject to payment of the prescribed annual rental, a review of the circumstances relating to the consumption of alcohol and an assessment of the activity by Council during the previous year.
- 6.4 The rental fee for the area involved shall be determined by Council as set out in Council's annual fees and charges. The rental fee shall be paid to Council annually in advance upon the rendering by Council of an account. Notwithstanding the enforcement provision outlined in Section 9, an approval will be cancelled if the appropriate annual rental fee is not paid.
- 6.5 The application fee and annual rental fee are not refundable.
- 6.6 Proof of current public liability insurance and indemnity acceptable to Council will be required.
- 6.7 An approval may be transferred to a new proprietor upon notification to Council and production of the appropriate public liability insurance cover.
- 6.8 In order to achieve the objectives of the policy in terms of creating an atmosphere which provides for commercial activities which do not adversely impact on the amenity of residents and visitors, the following requirements will be taken into consideration in the assessment of all applications:
 - (a) A two metre wide unobstructed section of footpath shall be maintained at all times. In some instances this distance may be increased or reduced subject to a merit based assessment by Council;
 - (b) Tables, chairs, umbrellas, pot plants and any other furniture may only be placed on that part of the footpath adjacent to the business premises and shall not extend beyond the property side boundaries;


- (c) The canopy of umbrellas or any other furniture shall not project beyond the designated permit area;
- (d) The canopy of any umbrella/s shall have a minimum clearance above footpath level of two metres;
- (e) All umbrella/s shall be securely anchored so that they will not be displaced by wind or inclement weather conditions;
- (f) The designated permit area, together with tables, chairs and any other associated furniture, shall be maintained in a clean condition at all times;
- (g) All tables, chairs and other furniture shall be removed from the footpath when the premises are closed;
- (h) All tables, chairs and other furniture shall be of an approved structural and aesthetic quality with such details being included in the application;
- (i) At the expiration of the approval period, the operator shall remove all outdoor furniture, tables and chairs and reinstate any damaged footpath area/s at their own expense;
- (j) Council street furniture is provided for community use and shall not be used as part of a footpath dining area;
- (k) Food and drink preparation equipment is not permitted on the footpath.
- (l) No entertainment or amplified music is permitted in the designated area. The consumption of alcohol is only permitted where it is served with a meal and satisfies a merit based assessment. This assessment will include whether it is served with a meal from the premises, whether the concurrence of the Liquor Administration Board and Local Area Commander NSW Police Service, is provided as appropriate in regard to existing liquor licensed and non liquor licensed premises respectively. Any approval will be subject to appropriate signage and limited to those persons consuming a meal.

Where there is an alcohol free zone in place it would be inappropriate to permit the consumption of alcohol at footpath dining venues in these zones. Details of current alcohol free zones can be obtained from the Council.

- (m) Statutory authorities have the right of access at all times to utilities and the like to effect repairs or to maintain their equipment.

6.9 An application for an approval for footpath dining area adjacent to a Classified Road, such as Great Western Highway, Hawkesbury Road, Darling Causeway and Bells Line of Road, will only be considered after the applicant has obtained the written approval of the Roads and Traffic Authority.

Note: None of the aforementioned requirements restrict an applicant for a new business indicating in the development application an intention that the new business will incorporate footpath dining. Under such circumstances no additional application or fee is required and Council will consider the issue of footpath dining as part of the overall assessment of the development application.



7. Street festivals and fairs

Council recognises that street festivals and other special events are an important part of community life and a well organised and successful event benefits the community in many ways.

Council's expectation in regard to large scale festivals is that organisers will take into consideration the amenity of local residents in planning the various activities associated with the particular event.

In the community interest, street festivals, fairs and other special events of a significant size organised by recognised community groups require the submission of an application to Council at least three months prior to the date/s of the event.

In the case of major events/festivals involving the erection of stages, public road closures, food stalls or fireworks displays, consultation with Council officers and any other relevant agencies prior to the submission of an application is encouraged.

The written application package shall include the following:

- completion of festival/special events application form
- details of the program and times including all events and activities to be undertaken and any proposed street closures
- sketch plan of the area clearly indicating the location of stalls, toilets, street closures, etc.
- a completed 'hold harmless agreement' *
- a signed undertaking for the provision of insurance cover

Council recognises that not all of the following activities will be part of every festival, however any approval issued by Council will be subject to the submission of the following specific details not less than 20 working days prior to the commencement of the festival/event.

The siting of all stalls and facilities or activities including:

- amusement devices
- fireworks displays
- animals
- crowd control barriers
- first aid facilities
- electrical facilities and cabling
- fire safety
- provision of rubbish receptacles and clean up arrangements of surrounding area/s after the event
- traffic control

*A 'hold harmless agreement' is a formal document by which an applicant legally accepts responsibility for injuries or losses arising from the negligence of the applicant.

- parking
- food facilities including cooking and/or heating facilities
- security
- stability of signs, structures, seating and stages
- use of private property
- toilet facilities
- environmental management

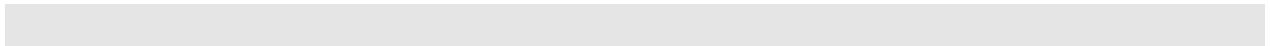
Any appropriate licences/permits/approvals from relevant government agencies must be submitted to Council prior to any approval being issued by Council.

Such permits may include some or all of the following:

- Permits from the Workcover Authority in regard to amusement devices and fireworks displays
- Approval from the Police in regard to the consumption of alcohol
- Approvals from Roads and Traffic Authority/ Police in regard to proposed road closures

It should be noted that a deposit may be required to cover the cost of Council carrying out street cleaning and/or rubbish removal.

In the interests of public safety the use of glass containers for drinking purposes is to be avoided.



8. Commercial filming

An application for commercial filming on streets, parks and reserves under Council control is required. This policy does not apply to national park areas which are subject to a separate policy by the appropriate state authority.

An application for commercial filming shall indicate the details of the location, time and date/s of filming, equipment involved, size of film crew and support team.

Adequate notice is to be given to Council, depending on the scale of the activity but as a guide a minimum of two weeks is required.

Should consent be granted by Council, some or all of the following requirements may be imposed:

- 8.1 Differential fees and notice periods will be determined for the different categories of commercial filming such as advertising, fashion shoots, television programs, documentaries and major feature films. If a street closure is required three months notice is necessary to allow for consideration by the Local Traffic Committee.
- 8.2 Proof of current public liability insurance and indemnity acceptable to Council will be required.
- 8.3 The applicant shall cover all costs associated with barricade hire, etc. and shall be responsible for any repairs or reinstatement of Council property.
- 8.4 The applicant is to exercise good risk management practices at all times so as to avoid injury or loss to others and any damage occurring on the location as a result of filming will be repaired or replaced at the expense of the applicant.
- 8.5 Appropriate approvals being obtained from all relevant authorities including police, ambulance, fire brigade, etc.
- 8.6 A bond to cover the possibility of damage to Council property or assets.
- 8.7 Blue Mountains City Council is to be acknowledged in all feature film credits.

9. Other activities

This section has been included to provide assistance to those members of the community wishing to undertake any of the following activities:

- Busking and street theatre
- Public addresses
- Information and promotional displays
- Preaching and religious services
- Street collections and badge/pin days
- Street stalls
- Street stalls for political purposes

The above activities are permissible in public places within the City except for areas designated by appropriate Council signage or where the activity has the potential to create a nuisance or a hazard to pedestrians or vehicular traffic.

Other than street stalls, no application or notification to Council is required to be submitted by members of the community wishing to undertake these activities, however operators should familiarise themselves with the contents of this section in order that their activity does not adversely impact on residents, visitors or the business community.

9.1 The following locations may not be used for any of the above activities:

- (a) any designated area such as the Echo Point precinct except with Council's written approval;
- (b) within five metres of a bus stop, pedestrian crossing, taxi stand or intersection;
- (c) any area adjacent to residential premises or to a school or place of public worship;
- (d) all parks and reserves, except with Council's written approval;
- (e) a traffic carriageway or footpath unless at least a 2.5m width remains available for public movement.

9.2 An individual or group carrying out these activities should be aware that if they cause offence or obstruction they will be subject to action by authorised Council officers or police.

9.3 An individual or group carrying out these activities should be aware that they are to exercise good risk management practices at all times so as to avoid injury or loss to others.

- 9.4 This policy does not include any approval which may be necessary from State or Federal authorities.
- 9.5 Public address systems are prohibited.
- 9.6 The immediate surrounding area is to be left in a clean and tidy condition and kept clear of hazards.

In addition to the requirements of this policy outlined in Section 9.1 - 9.6:

A busker shall not

- (a) obstruct or hinder the passage of pedestrians or vehicles
- (b) create any nuisance or objectionable noise
- (c) affix any matter or thing or mark or draw on any footway

A busker may solicit money by placing a receptacle on the ground but shall not ask members of the public for money or approach the public for the purpose of selling goods.

Street stalls

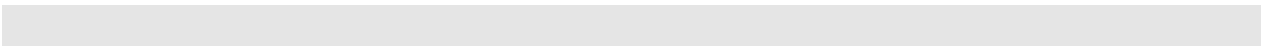
This sub-section has been included to ensure that Council's footpaths are used by charity and non profit organisations in a manner which does not adversely impact on residents and/or visitors, while at the same time providing an equitable opportunity for fundraising for all appropriate organisations.

An application in the form of a letter shall be forwarded at least 14 days before the event to Council indicating the name of the organisation, together with the date/s, location and brief description of goods to be sold at the proposed stall/s sold such as plants, clothing, food, etc. Any subsequent approval issued by Council for a street stall shall be subject to the requirements of the policy outlined in Section 9.1 - 9.6, together with the following additional requirements:

- 9.7 Street stalls may be set up and operated by non profit community groups for the sale of goods or services. In order to provide equitable access, groups should limit their stalls to no more than one per month in any township.
- 9.8 The consent of the business or organisation outside which the stall is to be situated must be obtained.
- 9.9 The organisation conducting the stall must display a sign on the stall, not on the footpath, indicating its name.

- 9.10 No other signage will be permitted and the stall must not obstruct or inconvenience pedestrian or vehicular traffic by maintaining a minimum unobstructed footpath area of two metres.
- 9.11 Street stalls selling food (e.g. sausage sizzles) shall comply with the requirements of the food regulations.

Street stalls for political purposes

- 9.12 No application or notification to Council is required.
- 9.13 There is no limit on the number of political party information stalls held in any one township on any one day.
- 9.14 Only one standard 2m x 1m table to be used.
- 9.15 No more than three people to be in attendance at any one time.
- 9.16 No fund raising activities are to be carried out.
- 9.17 The organisation conducting the stall must display a sign on the stall, not on the footpath, indicating its name.
- 9.18 No other signage will be permitted and the stall must not obstruct or inconvenience pedestrian or vehicular traffic by maintaining a minimum unobstructed footpath area of two metres.
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10. Enforcement

Appropriate action will be taken by Council (in consultation with the police when necessary) when:

- 10.1 An activity that requires approval under this policy is conducted without an approval being obtained.
- 10.2 An activity is being undertaken not in accordance with condition/s of consent.
- 10.3 The requirements for activities covered by this policy are not followed.

Dependent on circumstances, action taken by Council may include:

- cancellation of approval;
- a request or warning that the activity cease or move to a permitted area;
- the impounding of goods or other articles;
- the issue of a penalty infringement notice (on the spot fine).