

RICHMOND VALLEY COUNCIL POLICY REGISTER

Policy No: 2.2.4

Reference: Environmental Management - Licensing, Policy

POLICY:	FOOTWAY ACTIVITIES
FUNCTION:	Regulatory Control
OBJECTIVE:	To provide licensing policy guidelines relating to merchandise, merchandising racks, trading tables and associated equipment, street stalls and other fundraising activities.
DIRECTORATE:	ENVIRONMENTAL DEVELOPMENT SERVICES

POLICY

Aim of Policy

Apart from outdoor dining, there are other activities on the street that make a significant contribution to the quality of public places and urban life. They also provide an active street frontage that is alive and continuously changing. They also offer the opportunity to withdraw from participating in the movement of the street and become an observer. They are natural locations for both arranged and spontaneous social interactions.

While acknowledging the importance of footway activities such as street trading, street stalls and other fundraising activities, Council must be mindful that footpaths are available for everyone and it is critical that it is understood that commercial use of public space is a privilege not a right.

The essential key to an effective accessible pedestrian system throughout shopping precincts is the development and maintenance of a continuous accessible path of travel. This should extend out from the building line to provide a consistent footpath environment inclusive of the needs of all of the community, including older persons or people with a disability. In order to achieve this, any street furniture, signs, traders activities or displays should be located towards the kerb side not along the building line. This is consistent with best practice guidelines issued by the Human Rights and Equal Opportunity commission.

Objectives

The intention of the Footway Activities Licensing Policy Guidelines - merchandise, merchandising racks, trading tables and associated equipment, street stalls and other fundraising activities - Circulation, Safety and convenience Guidelines are:

- To observe the laws and legislation enshrined in the *Commonwealth Disability Discrimination Act*.
- To improve public safety on footways for all people living in Richmond Valley Council area, including the elderly and visibly or mobility impaired and those

people using wheel chairs, prams, white canes, guide dogs and electric powered scooters.

- To help business and community groups take advantage of our ideal weather conditions by providing guidelines for the provision of access to other activities appropriate to footways enhancing activities in the Richmond Valley Council area.
- To acknowledge that many businesses and community groups have been in existence in some areas for many years and have established locally accepted practices.
- To recognise that within the Council area, footways, when considered with pedestrian traffic levels, are in some instances;
 - not wide enough to safely allow for footway licensing of any activity or;
 - cannot physically be widened to allow for the ideal footpath pedestrian zone and
 - footway trading is a privilege, not a right.

The following approvals are required:

- Approvals pursuant to the *Roads Act*, and
- Licence agreement with Council under the *Local Government Act*.

Suitable Locations

Footway activities may be approved in all Richmond Valley Council public places under the control and/or management of Council, where local conditions are favourable for their operation, including areas of Council road reserve, e.g. footpaths.

Unsuitable Locations

Footway activities are not permitted in parks and open space, beach front, where the licensed area is dislocated from the business house, areas where high to very high pedestrian use exists and other public uses, e.g. bus stop, taxi ranks, directly outside a fire escape or fire hydrant and potentially hazardous places such as the corners of street intersections or unprotected elevated locations.

The location of trees, artwork, street furniture and other public infrastructure, as well as the width of the footpath, may preclude the establishment of the licensed area.

Assessment Criteria

The most important local conditions to be considered when an application to hold a licence for use of the footway area when received will be those issues pertaining to pedestrian (including pedestrians who are using wheel chairs or are visually impaired) and vehicular circulation, convenience and safety of parties and the general public and existing streetscape elements.

Existing Streetscape Elements

Whenever possible the footway activity should visually relate to and be physically aligned with existing feature, permanent elements of the streetscape, such as shop fronts, pavilions, trees, bollards, heritage restriction of building facades etc.

MATTERS RELATING TO APPROVALS

Street stalls and other forms of fundraising activities must be conducted by non-profit organisations only and must be represented by a Committee established in Richmond Valley Council area with the following exceptions:

- (a) Mallanganee Pre-School
- (b) Doubtful Creek P and C Association
- (c) Mummulgum P and C Association
- (d) Mummulgum Playgroup

One (1) street stall per year will be allocated to associations (a) to (d) above.

All other applications to conduct one (1) street stall per annum from organisations not based in Richmond Valley Council area to be determined at the discretion of the General Manager.

Council shall limit the number of street stalls and other fundraising activities conducted by community organisations to the following:

Street Stalls

Casino:

- Walker Street – Wednesday and Friday conducted from the street stall provided by Council.
- An organisation can apply to hold four (4) street stalls per annum of which two (2) are Wednesday and two (2) are Friday.

Evans Head:

- Oak Street – Friday and Saturday conducted from the area provided by Council.
- An organisation can apply to hold two (2) street stalls per annum.
- Only one (1) street stall or fundraising activity will be allocated per day.

Coraki, Woodburn, Broadwater and Rappville:

- Main street of each town – Friday and Saturday.
- An organisation can apply to hold two (2) street stalls per annum.
- Only one (1) street stall or fundraising activity will be allocated per day.

Charitable Collections or Other Fundraising Activities

Casino:

- Walker Street – Four (4) days per week excluding Sunday, public holidays and the day street stalls are conducted.
- Barker Street – Six (6) days per week excluding Sunday and public holidays.

- Only one (1) fundraising activity shall be allocated in each street per day.
- An organisation can apply to hold two (2) fundraising activities per month.

Evans Head:

- Oak Street – Friday and Saturday conducted from the area provided by Council.
- An organisation can apply to hold four (4) fundraising activities per annum.
- Only one (1) street stall or fundraising activity will be allocated per day.

Coraki, Woodburn, Broadwater and Rappville:

- Main street of each town – Friday and Saturday.
- An organisation can apply to hold four (4) fundraising activities per annum.
- Only one (1) street stall or fundraising activity will be allocated per day.

Adjacent Premises

Should a trader seek to extend their Trading Zone access to adjoining premises, written permission is required from the trader occupying the adjacent premises and remains subject to annual review and approval.

As with the normal licence process, this agreement needs to be renewed annually and must be clearly marked on submitted plans (as per the application process). This agreement would run with the owner of the adjacent business and not the land/premises. Thus the agreement would be nullified if the business were to close or change hands.

The footway is a public zone and as such is not owned by any business. This means that no business is allowed to rent a footway space to an adjoining premises seeking to occupy that area.

Location and Dimensions

Footway trading shall only be carried out within the designated trading zone and will not be permitted to be conducted within a pedestrian or kerbside zone (note: street stall and other forms of fundraising activities conducted by non-profit organisations within Richmond Valley Council area may trade in either a pedestrian or trading zone with approval).

Pedestrian, Trading, Kerbside Zone are Outlined as:

- Pedestrian Zone

The pedestrian zone extends from the cleared property line of shopfront of premises for a minimum of 2.0m. No items may extend into this zone, this zone must remain clear for pedestrian use only.

- Trading Zone

The only area of a footway where merchandise, merchandise racks and trading tables and street furniture subject to this policy, may be placed. The trading zone is located in the area between the pedestrian zone and the kerbside zone.

Kerbside Zone

Kerbside zone is the area 500mm shopside of the kerb, no merchandise, merchandise racks, trading tables are permitted to be in this area.

In all locations within the Council area a clear distance of a minimum of 2.0 metres of hard standing footway must be maintained for pedestrian circulation.

The following diagram indicates the various "zone locations".



Footpaths of width of less than 2.9 metres.

In order to facilitate a clear and consistently unobstructed footway for pedestrian access, footpaths of less than 2.9 metres cannot be used for street trading.

Due to the narrow width of footpath available, it will generally be difficult to carry out footway trading on footpaths of width of less than 2.9 metres and maintain clear and consistently unobstructed footway for pedestrian access.

MANAGEMENT AND RESPONSIBILITIES

Operators' Responsibilities

The operation of footway trading is the responsibility of the licensed holder.

The licence holder must operate in accordance with the conditions of the permit and the requirements set out in this document, must monitor the footway trading at all times, and must meet all obligations to a high standard.

Council Responsibilities

Richmond Valley Council will continue to manage the use of public land at all times and reserves the right to reclaim access to and remove all footway trading at any time for any purpose deemed by Council.

Where service authorities and others are required to carry out works within the road reserve (or works at or adjacent to the licensed holders footway) which require removal of fittings and or fixtures associated with the footpath licence approval or for loss of trade experienced due to these works. Any reinstatement of fixtures and or fittings to do with the footway trading licence is the responsibility of the permit holder.

Council regularly requires access to footpath areas for the purpose of maintenance and asset renewal programme. Due to the necessity to source labour and materials during business hours, it is impractical to program these works outside shop trading hours. Except for emergency works, Council will give reasonable notification of such works but reserves the right to occupy the trading zone for the purpose of asset maintenance or renewal. No compensation will be payable by Council for the loss of use of the trading zone. In special circumstances, such as if works take a prolonged period of time, at Council's sole discretion a partial re-imbusement of the licence fees on a pro-rata basis may be given to the licensed holder.

COMPLIANCE PROTOCOL

Council staff will monitor and evaluate all footway trading on a regular basis. Any observed infringement of this policy will be looked into and enforcement action taken.

Upon detection of a breach of the policy or specific licence condition, Council (including its staff and authorised officer) may take the following action:

1. Verbal notice to comply issued to the licence holder - a first and final verbal warning - must comply within the time limit stated;
2. Written notice to comply (or caution) issued - a first and final written notice - must comply within the time limit stated;
3. Infringement Notice issued; and
4. Revocation/cancellation of the licence.

Council may impound any items that are placed on the footpath that do not comply within this policy or conditions of licence such as portable advertising signs (A Frames) etc.

Prior to cancellation of licence, Council will provide to the licence holder an opportunity to make written representation to the General Manager on the proposed cancellation. Incidents of non compliance will be noted and may be taken into consideration for future licence applications. Second and subsequent fines will be issued without additional warning for further acts of non compliance. Failure to maintain public liability insurance is considered a serious breach and will result in the cancellation of the licence without warning. Trading without a licence will result in the issue of a fine without warning.

REVIEW OF FEE STRUCTURE AND APPLICATION PROCESS

Council will undertake a review of the fee structure and application process every twelve (12) months.

PROCESS

- All applicants must acknowledge that they understand and will comply with the policy.
- Council will advertise this policy in November each year inviting applications. Applications must be on Council's prescribed application form, received and approved by Council prior to footway activities taking place.
- All footway trading licences will expire on 30 June every year.

Obtaining a Licence

- Obtain an application form from Council, fill in all relevant sections and lodge the application with the required fee.

All applications must include:

- Site plan of existing conditions 1:100 accurately showing the width of the building frontage and the footpath from kerb to building line clearly indicating the Pedestrian Zone, Trading Zone, and Kerbside Zone. The plan should also show the existing infrastructure and other features (including Council infrastructure, such as bins, disabled parking or loading zone bays). All dimensions associated with the footpath should be shown;
- Site plan of proposed conditions 1:100 accurately showing the area and layout of the proposed footpath activity, including the proposed location of all items;
- Photographs of the site, clearly showing the proposed footpath activity zone relative to buildings and existing features of the footpath area; and
- Letter(s) of consent, in writing from the tenant and landlord if the applicant wishes to operate from in front of the adjacent property. This permission must be submitted to Council each year;

PUBLIC RISK INSURANCE

- The licensee will be required to indemnify Richmond Valley Council against all claims that may arise due to the presence and activities of the licensee and will be required to take out and maintain a product and public risk insurance policy that has Richmond Valley Council noted as an interested party for an amount of not less than \$10,000,000 on any one occurrence with an insurance company approved by Council and provision for re-appraisal of the amount of the cover as required by Council from time to time.
- The licensee will be required to provide written proof to Council that their insurer has accepted the above indemnity and that the policy has been suitably endorsed to include Richmond Valley Council's interest. Evidence of the insurance cover shall be produced to Council upon demand, as well as prior to the licence commencing and on policy renewal each year.

GENERAL CONDITIONS

- It is the responsibility of the licence holder to ensure Council's street cleaning staff have full access to the footpaths during cleaning periods.
- Traders must apply in writing to amend an existing permit.
- All merchandise, merchandising racks, trading tables and associated equipment must be removed from Council land when the business to which they pertain is closed.
- Food items displayed and sold under this Policy must comply with the *Pure Food Act* requirements.
- Fundraising organisations, except those exempt under the Charitable Fundraising Act 1991, must hold an authority from the Chief Secretary's Department to conduct fundraising activities.
- Collectors from charitable collections shall wear appropriate identification indicating the organisation they represent and must be made available for inspection at any time.
- No amplified speech or noise is to be used for footway activities.
- No canvassing of pedestrians permitted. Street stall operators must remain at the approved location.
- Council may from time to time vary any condition for the issue of a licence for footpath trading. No refund will be made for any unused period of the duration of the licence, or for licence cancellation. Licences are non-transferable between business owners or traders. An application to amend the licence must be made to Council with the authorisation from the new business owner and the leaving business owner.
- The General Manager may dispense with all or any of the conditions of their policy for special festive occasions such as Beef Week, Coraki Tea Tree Festival, local markets etc.
- This Policy does not apply to the Casino Saleyards which will require specific Council approval.

Licence Conditions

The applicant must comply with the conditions set out in the licence and this policy.

Licence Fees

In addition to the application fee, there are licence fees for the use of the public footway, charged annually. The fees applicable to the Richmond Valley Council area are set out in Council's Revenue Policy.

General Authority

- Licence issued under *Section 68 Local Government Act*.
- Any licence issued to the applicant by Council will be in accordance with the provisions of the *Local Government Act 1993*, reference is made to Section 68.

Roads Act

Any licence issued to the applicant by Richmond Valley Council will be in accordance with the provisions of the *Roads Act 1993*, part 9 division and other relevant sections.

Preparation of the Licence

The licence shall be governed by and prepared in accordance with the laws (for the time being in force) in the State of New South Wales.

Evidence of the Licence

Upon successful application, Council shall issue a licence. The licence together with this Policy, the licence application documentation, the licence conditions and its annexure, will form the "formal instrument of the agreement" between the licence holder and the Council.

The licence must be displayed at all times, facing out to the street, so that it can be seen outside the premises or stall to which it pertains.

VARIATION

Council reserves the right to amend (or revoke) this Policy from time to time.