



LITHGOW CITY COUNCIL

5. COMPLIANCE

Policy 5.4

FOOTPATH TRADING

Draft Version 3

5. COMPLIANCE

5.4 FOOTPATH TRADING

- OBJECTIVES:**
- i) To control the display of goods for sale/display on the footpath/road reserve areas.
 - ii) To encourage the establishment of outdoor seating areas in accordance with clearly documented guidelines.

POLICY:

Council may permit the use of public footpaths for the display of goods (including signage) by an adjacent shop or outdoor eating areas in association with an adjacent restaurant or food premises.

1. General

- (i) Any person lawfully occupying a business premises adjacent to a Council footpath may apply to Council for approval to display goods, place advertising structures or place tables/chairs for dining subject to the terms of this policy.
- (ii) Council does not permit the obstruction of pedestrian accesses / crossings by goods displayed on footpaths, road reserves or other community/public areas unless Council has issued an approval in pursuant to this policy and/or any special conditions applied to any approval.
- (iii) Any approval issued under this policy is renewable annually and will expire on 30 June each year.
- (iv) Council will send a reminder notice to renew the approval at least one (1) month prior to the expiry of the approval which.
- (v) An application to renew an approval shall be submitted to Council no later than two (2) weeks prior to expiration of the expiry date referred to in 1(ii).
- (vi) Applications submitted for renewal within the timeframe referred to in 1(iv) shall ensure, subject to compliance with 1(vi), that the approval in does not expire on 30 June but will remain in place until Council has determined the renewal application and informed the applicant of the decision.
- (vii) Applicants or persons benefiting from and approval under this policy are required to hold a Public Liability Policy of at least \$20,000,000. Council is to be supplied with a certified copy of the insurance policy with application for approval; at least annually with the renewal application; within 7 days of the issuance of a new or replacement policy or upon request. Such a policy is to have Council's interest noted. The applicant/proprietor must indemnify the Council from any liability arising from the agreement to a minimum of \$20,000,000.

- (viii) An approval issued under this policy is invalid in the event that the public liability insurance referred to in 1(vi) expires and the approval remains invalid until such time as a copy of any new or replacement policy is supplied to Council, Council acknowledges receipt and confirms such insurance policy complies with the terms of this policy.
- (ix) The Council reserves the right to cancel or suspend any approval issued under this policy at any time should the terms of this policy and any approval be contravened; should any fees remain unpaid; or should access to the footpath or nearby area be required for construction or repair works.
- (x) Should the requirements of this policy be varied from time to time then persons with the benefit of an approval may be required to comply with the terms of any new or updated policy.
- (xi) Any fees payable for an application for approval, renewal or any other aspect of this policy shall be the subject of annual review by Council in consideration of its annual fees and charges.
- (xii) Should an applicant for approval or renewal under this policy wish to seek a variation from the terms of this policy, then they should clearly state the reasons why the variation is sought and provide justification as to why Council should allow a variation from the policy.
- (xiii) Variations will not be considered for the insurance requirement as outlined in 1(vii) above.
- (xiv) The General Manager has the authority to consider variations in respect of any of the requirements of this policy relating to distances, measurements, clearances and dimensions. All other variations are to be considered by the elected Council.
- (xv) This policy does not apply to the use of footpaths in association with 'special events' (eg Celebrate Lithgow) which are subject to a separate process.

2. Goods on footpaths (including signage)

- (i) There will be clear identification of the area in which goods are intended to be displayed with any application for approval or annual renewal that the applicant supplies to Council.
- (ii) All display areas, if approval is given, shall allow a minimum clearance for pedestrian traffic of at least 1.5m.
- (iii) Goods shall be placed in an area no more than 1.5 metres from the shop front.
- (iv) Notwithstanding 2(iii) goods on footpaths may be displayed on the 'kerb side' of the footpath providing the clearance for pedestrian traffic referred to in 2(ii) is provided and a minimum clearance of 600mm from the kerb is provided. (NB – The 600mm clearance from the kerb may be reduced where adjacent street furniture is already less than 600mm)

- (v) All goods displayed on the footpath shall be of good quality construction and finishes and shall (if necessary) be secured so as not to cause a hazard in times of high wind.
- (vi) The applicant/proprietor shall be responsible for the goods and any insurance issue arising from goods obstructing access.
- (vii) The applicant/proprietor shall be responsible for the removal of all goods on a daily basis at the close of trading.
- (viii) Display of goods shall be confined to the area of footpath adjacent to the premises. Before consideration would be given to areas not adjacent to the premises, the written consent of the adjoining owner and tenant must be obtained by the proprietor (to use the adjoining footpath frontage).
- (ix) Advertising signs shall have maximum dimensions of 1000mm wide and 1100mm high and shall only contain content associated with the adjacent business.

3. Restaurant Seating

- (i) There will be clear identification of the area in which seating, tables and any associated items are intended to be displayed with any application for approval or annual renewal that the applicant supplies to Council.
- (ii) All restaurant seating, if approval is given, shall allow a minimum clearance for pedestrian traffic of at least 1.5m. Where seating is associated with a table this distance is to be measured with each chair setback 300mm from the table.
- (iii) Restaurant seating shall be placed in an area no more than 1.5 metres from the shop front.
- (iv) Notwithstanding 2(iii) restaurant seating on footpaths may be situated on the 'kerb side' of the footpath providing the clearance for pedestrian traffic referred to in 2(ii) is provided and a minimum clearance of 600mm from the kerb is provided. (NB – The 600mm clearance from the kerb may be reduced where adjacent street furniture is already less than 600mm)
- (v) All seating, tables and associated items to be situated on the footpath shall be of good quality construction and finishes and shall (if necessary) be secured so as not to cause a hazard in times of high wind.
- (vi) The applicant/proprietor shall be responsible for the seating, tables and associated items and any insurance issues arising from obstructing access.
- (vii) The applicant/proprietor shall be responsible for the removal of all seating, tables and associated items on a daily basis at the close of trading.

- (viii) The applicant/proprietor shall be responsible for the disposal of litter and cleaning of the footpath occupied by the outdoor eating area.
- (ix) Placement of chairs and tables shall be confined to the area of footpath adjacent to the restaurant premises. Before consideration would be given to areas not adjacent to the restaurant, the written consent of the adjoining owner and tenant must be obtained by the proprietor (to use the adjoining footpath frontage).
- (x) No advertisements will be permitted to be placed within the agreed outdoor eating area or in the adjoining footpath area unless it complies with the terms of this policy.
- (xi) Outdoor eating furniture shall not restrict the access to public seating facilities. The Council may in certain circumstances agree to the relocation of such facilities at the expense of the proprietor. No interference or use of the facilities will be permitted without the approval of the Council.

Maintained by Department:	Development	Approved by:	Council		
Reference:	Dataworks: Policy Register	Council Policy No:	5.4	Effective Date:	11/5/09
Min No:	V1 - 06-349 V2 - 09-189 V3	Version No:	2	Review Date:	14/5/12
Attachments:					

Lithgow City Council

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29 MAY 2012

Doc. No.....

GDA Ref.....

Years.....

29 May 2012

Lithgow City Council

PO Box 19

Lithgow, NSW 2790

REF: Environment & Development ACM:SRC

Dear Mr Muir,

Thank you for your letter dated 18th May 2012 regarding the Revised Footpath Trading Policy.

It was pleasing to note that after several requests we are now getting mail relating to Council/Business issues that affect us as a business.

It is our belief that a lot of work is required by Council, the Business Chamber and Businesses in the area to stimulate growth. Part of this is the look and feel of our shopping areas. I have spent some time researching in particular Footpath Trading Policy's of those Councils around our area and find that the proposal whilst generous on one hand takes from another.

I as a business do not object to a fee being charged for the application as long as it is reasonable (I would estimate costs at around \$50.

I do see restrictions to Business in the LGA who are forced to put their public liability insurance up to 20 million to comply with this policy. I note that Oberon's insurance is reported as 5 million and Bathurst is reported split at 10 million/20 Million dependant on the signage a Business is requesting. I also note that the drive behind this change from 10 to 20 Million is coming from the insurance companies themselves, along with this point I am not aware of any claim against a council for over 7 Million in the Sydney/Central West areas. As a result I see little or no justification for the raise. Along with this, for our businesses to put a single A Frame outside on the footpath would cost us between \$350-\$500 a year, in insurance fee increases. This for Small Business is a cost that cannot be justified at this time.

If you as a Council want to encourage people into the town encourage local employment this policy will in my opinion not achieve the aim. My recommendation would be to leave the insurance requirements at 10 Million unless further justification can be given, along with a nominal one off fee for the application. This then might get the general public shopping locally and motivate Local Business to encourage more people into the area. At present the shopping precincts' do not scream "shop here".

I look forward to working with you on this and any other policy regarding Business and Community.

We also look forward to your response to this letter.

Yours Sincerely,

From:
Sent: Monday, 2 July 2012 10:49:40 AM
To: Clr Martin Ticehurst
Subject: Footpath trading

Dear Clr Ticehurst

Firstly, thanks for the flyer put under my shop door on the 18th June. As requested I did put a submission to the council. What good it will do, I'm not so sure. I can provide you with a copy of you wish.

In the Sydney Morning Herald last Friday was an article regarding Marricville Council and their footpath trading policy.

Part of it reads:

"The council has now abolished the 'footpath occupation fee', sacrificing the \$32,000 it raised each year in a bid to revive local economy'

Cafe's and resturants can now set out street furniture "with just an application fee".

It goes on to say "A streetscape vista with empty platforms is particularly uninviting as it implies closed businesses and therefore discourages visitors"

I think most of the businesses in the CBD would agree with this.

Thanks for trying to support the local businesses. All help is greatly appreciated.

Kind regards

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Lithgow City Council

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20 JUN 2012

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FOOTPATH TRADING SUBMISSION

Thank you for withdrawing the fees and charges for footpath trading.

As a small business owner I am sure I abide by your Policy 5.4 of items on the footpath as per attached sketch.

- My blackboard is made from a heavy metal and will never blow over in the wind.
- I sweep the footpath regularly to keep free of litter.

When I have buckets of flowers by the shop wall there is more than the 1.5m pedestrian clearance walkway.

FEES and CHARGES FOR FOOTPATH TRADING

If GLCC propose these fees and charges in the future, I will oppose these fees for items on the footpath as

- Small businesses bring shoppers to the Main Street.
- Blackboards and goods for sale displayed on the footpath dress the Main Street and tell the shoppers we are open for their business.
- If charges and fees were ever proposed by the Main Street would look lifeless and closed up and not open for business.
- I would not be putting my blackboard and items on the footpath as I would not be paying these fees and charges.
- Local council should try to support the businesses that are here and open now and not be charging extra outgoing costs which could close them down.
- More fees and charges is not an incentive to bring new businesses to the Main Street.

\$20 MILLION PUBLIC LIABILITY INSURANCE

I personally believe it should be left at \$10 Million as this is quite sufficient for any small business to be insured for. We do not need the additional payments going out every month.

Street

600 mm



Black Beard

2.3 m



Buckets flowers



Shop

From:

Sent: Monday, 18 June 2012 3:48:02 PM

To: Lithgow City Council

Subject: Draft Footpath Trading Policy 5.4

As a local small business trader, I am extremely concerned at the proposal set out in the above Trading Policy.

It takes a simple walk up and down Main Street to see the inordinate number of empty shops already. We had another close two weeks ago. The new men's wear shop (of which Lithgow is in dire need of) closed after barely six months of trading. It wont take very much extra financial pressure to have my business following the same track.

I cannot see how increasing our Public Liability insurance to \$ 20 million will help turn Lithgow Main Street into the thriving CBD it should be. The alternative is to shop at the embarrassingly run-down Valley Plaza shopping mall - also full of empty shops!

I have had no success in finding other Councils demanding more than \$10 million, and have certainly found no successful litigation's requiring such an unreasonable amount.

Deciding to exempt us for a 12 month period of the 'application fee' and the annual fees for displaying our trading props is no comfort at all. A temporary reprieve is just that. Temporary. These items make a street look interesting and inviting. They also help attract potential customers and help keep business alive.

It would appear Lithgow Council is more interested in a sterile CBD with pretty planter pots and trees than it is encouraging local business to stay solvent.

I implore this Council to re-think this policy, and perhaps take some time out to actually come and speak to us and find out what is happening outside the insular walls of council.

Regards

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From: .
Sent: Thursday, 7 June 2012 11:33:18 AM
To: Lithgow City Council
Subject: ATTN: General Manager - Draft Footpath Policy Submission

To the General Manager,

Attached is my submission to Council regarding the Draft Footpath Policy.

Thank you.

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To the General Manager and Councillors,

I am writing to you in response to the Draft Footpath Trading: Policy 5.4.

As I am sure Council is aware, the biggest point of debate of this new policy is the \$20M public liability that Council is asking businesses to cover in regards to footpath trading. The General Manager has said that Council's own insurers are asking for this amount.

Noting that the General Manager is a board member of Statewide, Council's insurer, it stood to reason that the other councils involved with Statewide would be asking for the same increase from their businesses as well. However, five councils – Willoughby City Council, Upper Hunter Shire Council, Gilgandra Shire Council, North Sydney Council and Bellingen Shire Council are all still requesting \$10M liability (footpath trading policies of the other Councils were not located.)

Council's own website states that *"It should be noted that the Council has decided not to charge any fees for footpath trading activities in order to offset the potential increase in insurance premiums due to the requirement for \$20 million public liability insurance."* – However, whilst the waving of fees may save up to \$100 a year, the increase in insurance payments may be up to five (5) times that amount for a regular small business over the course of a year. My business, for example, would be up for another \$28 per month (\$336 per year). With small business in particular having a tough time at the moment, this draft policy could have negative effects for business community in the area as a whole.

When you take into consideration that there has been no increase in liability demands from Councils within our region, it should be considered unnecessary for our Council to consider this change.

My submission to Council is as follows:

- 1) The \$10M liability kept in place for businesses. This will save businesses an average of \$350 a year (This figure comes from business people I have spoken to.)
- 2) The re-introduction of an application fee/trading fee for goods on the footpath.
 - a) \$125 application fee for applications requiring goods displays, dining tables and chairs or multiple sandwich boards (which includes the first year fees.)
 - b) \$100 per subsequent year for goods displays, dining tables and chairs or multiple sandwich boards.
 - c) \$75 application fee for one (1) sandwich board (which includes the first year fees.)
 - d) \$50 per subsequent year for one (1) sandwich board.
- 3) That this policy be kept in place and be re-assessed at next year's budget discussions.

Yours Sincerely

\$10 Million	Insured by Statewide Mutual	\$20 Million	Insured by Statewide Mutual
Armidale-Dumaresq Council	✓	Ashfield	
Auburn	✓	Broken Hill Council	✓
Aulbury City		Cabonne Council	
Ballina Shire Council		City of Sydney	
Bathurst Regional Council		Cooma - Monaro Shire Council	✓
Berrigan Shire		Corowa Shire	✓
Blacktown City Council	✓	Dubbo City Council	
Canterbury		Eurobodalla Council	✓
Great Lakes	✓	Hawkesbury Council	
Lismore	✓	Hornsby Shire Council	✓
Maitland City Council		Ku-ring gai Council	
Manly Council	✓	Lachlan	✓
Nambucca Council		Mosman Council	
Narromine Council		Penrith City Council	
Newcastle		Port Stephens	
Orange City Council		Queanbeyan Council	✓
Parramatta City Council		Randwick	
Pittwater Council	✓	Ryde City Council	✓
Randwick		Shellharbour Council	✓
Wakool Shire Council		Tamworth Council	
Wollondilly	✓	Wagga Council	
Wyong		Warringah	
		Woollahra Municipal Council	
		Yass Valley Council	

46 Responses

22 10 mill of which 8 were Statewide

24 20 mill of which 9 were Statewide



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25 June 2012

The General Manager
Lithgow City Council
PO Box 19
LITHGOW NSW 2790

Lithgow City Council
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27 JUN 2012

Doc. No.
GDA Ref.
Years.

Dear Sir,

Council Footpaths

I confirm that Statewide Mutual is a not-for-profit Mutual covering Public Liability & Professional Indemnity (since 1993), Property (since 1998) and Fidelity Guarantee Insurances (since 1995), for NSW Local Government.

The Mutual's Board of Management consists of 11 representatives from the participating Councils and 3 representatives from the Scheme Manager – none of whom are paid for their participation on the Board.

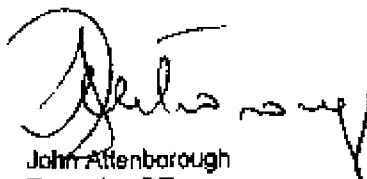
Since 1995, the Liability Scheme has been fully reinsured so that Statewide carries no self insured risk. Being a not for profit Mutual, if there are any surplus funds generated (principally through investment income), such funds belong to, and are reimbursed to, Member Councils that qualify for a rebate. On the Liability Scheme, some of the surplus is retained to meet claims in the event that one of Statewide's Reinsurers goes into liquidation, such as the HIH Group did in 2001.

The formula for determining the amount being reimbursed to each individual Council includes a claims component, to ensure that those Councils which contributed to the surplus are rewarded, while those Councils which incurred higher loss ratios (claims:premium ratio) receive less.

Additionally, under the Statewide Mutual Liability Scheme, a risk management component is included in the formula so that Councils which are more pro-active in endeavouring to prevent claims (and therefore prevent injury or damage to ratepayers and residents) receive a higher percentage of the surplus.

The suggestion that Councils benefit financially in some way (reduced premiums or higher rebates) for ensuring that local businesses carry \$20m Public Liability Insurance is a nonsense. Many Government Departments require their lessees to hold a minimum indemnity of \$20m. General Insurance Motor Vehicle Comprehensive Policies provide \$20m cover for third party property damage. Domestic Householders Insurance Policies provide \$20m Public Liability and Personal Liability cover. Statewide Mutual provides Member Councils with \$400m Public Liability cover and \$300m Professional Indemnity cover. It would therefore seem only reasonable that Council should require businesses which seek to occupy Council's property (ie the footpath) should hold a minimum of \$20m cover. To suggest otherwise would be irresponsible.

Yours sincerely


John Attenborough
Executive Officer