

From: Joe McGinnes [mcginnes.joe@gmail.com]
Sent: Monday, 4 February 2013 8:08:29 AM
To: Clr Maree Statham
CC: Clr. Inzitari; Clr Wayne McAndrew; Clr Peter Pilbeam; Clr. Higlett; Clr Colin Hunter; mcginnes.joe@gmail.com; Clr Ray Thompson; Clr Martin Ticehurst
Subject: Markets

Hi all
 Mayor Maree,
 I have attached list of Councils that only require \$10 million public liability insurance. This list is courtesy of [REDACTED]

Mayor and Councilors.

I note, with some interest, that Item 3 at the next Council meeting relates to Public Liability Insurance required by Council for Footpath Trading and events on Council land.

When submissions were called for some moths ago regarding the Footpath Trading Policy, I replied, making an impassioned case for keeping the PLI at \$10M. This belief has not changed. I see now that Clr. McAndrew has rightly called for some clarification on the issue following the concerns that have been raised following the (very successful) Village Markets at Queen Elizabeth Park on Australia Day.

To that end, I decided to visit EVERY Council in NSW's website to check for their PLI requirements. What I found was rather interesting. Below is a list of Councils that currently require a minimum of \$10M PLI (or less) for either events or footpath trading. As you can see, it is a very long list. (The bold ones are, as I am sure you can see) the Councils closest to us...

Armidale Dumaresq Council
 Ballina
 Bankstown (\$20m for rides, but \$10m for regular use)
 Berrigan
Blue Mountains
 Camden
 Campbelltown
 Castle Hill
 Cessnock
 Clarence Valley
 Corowa
 Cowra
 Gilgandra
 Gloucester Shire
 Gosford
 Great Lakes
 The Hills Sydney
 Holroyd
 Hurstville
 Jerilderie Shire
 Kempsey
 Kiama
 Lachlan Shire
 City of Lake Macquarie
 Leeton Shire

Leichardt
Lismore
Liverpool City
Liverpool Plains
Maitland
Manly
Mid-Western
Mosman
Murray Shire
Murrumbidgee
Nambucca
Narrabri
Narromine
Newcastle – Risk determined by Council per application.
North Sydney
Oberon
Orange
Parkes
Parramatta
Penrith
Pittwater
Port Macquarie/Hastings
Port Stephens
Queanbeyan
Randwick
Richmond Valley
Rockdale
Singleton
Strathfield
Sutherland
Sydney, City of
Tenterfield
Tumbarumba
Tumut
Tweed
Upper Hunter
Uralla
Waverley
Weddin
Willoughby
Woolondilly
Woolongong
Wyong
Yass
Young

By way of comparison, I only found 14 Councils who were requiring \$20M PLI, and about the same amount whose policies were not easy located.

SO I guess what I am trying to say is that, despite the best attempts of the GM to say that \$20M PLI is becoming the "standard", the evidence from other councils suggests otherwise.

Yours sincerely,

Statewide Mutual

Managed by: Jardine Lloyd Thompson Pty Limited

ABN 51 644 247 443



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25 June 2012

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

Lithgow City Council
Scanned

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 1998, 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



3 December 2012

Attention: Ms Carol Farnsworth

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

Public Sector

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Dear Sir,

RE: Council Footpaths

I understand that Council is currently reviewing its Footpath Trading Policy and the insurance requirements of this policy and request advice from JLT as Council's insurance broker.

We have previously provided advice to Council by email regarding this matter in May of this year.

Council's protection with Statewide Mutual contains a 'Reasonable Care' condition which requires Council to " take reasonable measures to maintain all premises, fittings and plant in safe and sound condition "

JLT recommends to all our Local Government clients that it is reasonable to request amounts not less than \$20 million for limit of indemnity from restaurateurs and shop owners who seek to place furniture, advertising frames or other displays or fittings on Council footpaths.

To do less leaves the potential for insurers to argue that Council has not taken reasonable care to protect its own interests and the interests of insurers.

Council should also bear in mind that limits of indemnity of \$20 million are quite common in the casualty (public liability) insurance market and that the premium increase from \$10 million limits of indemnity to \$20 million limits is not double the premium.

I trust that this advice is of use to Council and if anything further is required please let me know.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Hill', written over a horizontal line.

Graham Hill
Account Manager



LITHGOW CITY COUNCIL

5. COMPLIANCE

Policy 5.4

FOOTPATH TRADING

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 \$10,000,000. 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 \$10,000,000.

- (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		
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