

1. Purpose

The purpose of this policy is to facilitate businesses, community groups and entertainers use of the footpaths for either commercial or community activities, through the issue of an approval under the *Roads Act 1993*.

This policy aims to enhance and promote a vibrant and welcoming atmosphere in the Warrumbungle Shire Council Local Government Area (WSC LGA).

The policy will ensure a pleasant and safe environment for shoppers and patrons, without compromising the safety or amenity of the public domain for pedestrians using the public footpath and adjoining public spaces and for motorists parking or alighting from their vehicles.

The policy will allow the approval of business use of footpaths within the WSC LGA adjacent to businesses where there is adequate road reserve/footpath width for safe pedestrian and traffic circulation. Businesses should not use a footpath without a permit from the Council.

2. Objectives

The objectives of this policy are to:

- Ensure safety and convenient passage of all pedestrians and customers when using public footpaths;
- Ensure the maintenance of clear view lines for both pedestrians and motorists, particularly near pedestrian crossings, street corners and key intersections;
- Ensure adjoining premises are not adversely affected by any business use of footpath areas.
- Protect Council, the community and the public interest from potential insurance and liability claims, while permitting effective use of public footpaths for business purposes;
- Effectively address risk management and insurance liability issues for Council;
- Ensure that the amenity of the general public will not be compromised by the provision of business use to footpath areas;
- Enhance the economic viability of our local businesses by offering permits to use public footpaths for business purposes;
- Ensure trading and enhance our neighbourhood centres by providing a more vibrant and colourful atmosphere for shoppers;
- Provide for an active and integrated street front; and
- Maintain visibility and exposure of shopfronts.

3. Policy Scope

This policy applies to the business use of all footpath areas in the Warrumbungle Shire Council Local Government Area. Public Health Orders are directions from NSW Health and these orders if in effect may override parts of this Policy and its guidelines. Conditions and restrictions set out in the Public Health Order must be adhered to at all times.

4. Legislation and Associated Documents

ASSOCIATED POLICIES	<ul style="list-style-type: none"> • Nil
ASSOCIATED LEGISLATION	<ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979</i> (NSW) • <i>Liquor Act 2007</i> (NSW) • <i>Local Government Act 1993</i> (NSW) • <i>Roads Act 1993</i> (NSW) • <i>Smoke-free Environment Act 2000</i> (NSW) • <i>Liquor Regulation 2018</i> (NSW) • <i>Roads Regulation 2018</i> (NSW) • <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> (NSW)
ASSOCIATED DOCUMENTS	<ul style="list-style-type: none"> • <i>Guidelines for Business Use of Footpaths</i> • Relevant Australian Standards

5. Definitions

Term	Definition
Outdoor Dining	Refers to dining on the public footpath, associated with an approved food business, also sometimes referred to as footpath dining or footpath restaurant.
Public footpath	Refers to that part of the road that is set aside or formed as a path or way for pedestrian traffic, whether or not it may also be used by bicycle traffic

6. Background

Well-managed footpaths promote both equitable access and support local businesses by creating places and streets that are amenable and attractive to all visitors. Council must manage footpaths and other public spaces to provide safe and equal access for all people within the WSC LGA. This includes pedestrians with a pram or mobility aid, or who are blind, have low vision or use a wheel chair and require a clear path of travel to be maintained at all times. Council recognises that a clear path of travel is a necessity. Stakeholders who are blind or have low vision prefer that the location of clear path of travel is along the building side of the footpath to allow for best-practice in safe and dignified wayfinding. This policy reinforces the requirement that a clear path of travel be maintained at all times, while also allowing opportunities for beneficial uses on the public footpath.

7. Policy Statement

To promote public access and well managed business use and outdoor dining on the footpath, Council will:

- value the contribution that local businesses make to the character of the local streets;
- maintain the pedestrian thoroughfare as the primary purpose of the footpath;
- promote accessibility on the footpath by maintaining a consistent and predictable clear path of travel for all users;
- encourage appropriate outdoor dining;
- consider the appropriateness of applications for approval against the guidelines supported by this Policy;

- monitor compliance with approvals, and undertake enforcement action when appropriate;
- grant approvals for up to a maximum of 7 years under the *Roads Act 1993*;
- revoke approvals where there are continuing unresolved substantiated breaches of the approval, and
- charge a fee for use of the footpath as set out in Council's Fees and Charges.

7.1 Approvals

In order for a premise to use a footpath for business or outdoor dining, NSW Government legislation sets out that the following approvals are required:

- all business use or outdoor dining on the footpath requires an approval under the *Roads Act 1993*.
- business use or outdoor dining that is not exempt development will require a development consent under the *Environmental Planning and Assessment Act 1979*;
- business use or outdoor dining that is on Crown land requires an approval under the *Crown Lands Act 1989*;
- business use or outdoor dining on community land, such as a park or reserve, requires an approval under the *Local Government Act 1993*;
- temporary occasional or short-term use of footpaths for fundraising and the like will require a permit under the *Local Government Act 1993*.
- for commercial entities seeking to use the Council footpath, or other similar area, Public Liability Insurance will be required to a minimum value of \$20 million, with Council being listed as an interested party. Higher values may be required if assessed as higher risk.
- for community entities (not for profit, local sporting or social groups) seeking to use the Council footpath, or other similar area, Public Liability Insurance to the value of \$20 million will be required.

8. Responsibilities

The Manager Planning and Regulation will be responsible for the implementation of this policy.

9. Getting Help

The staff member/s who can assist with enquiries about the policy are:

Position: Manager Planning and Regulation, Town Planner, Environmental Compliance Officer.

Department: Environment and Development Services.

10. Version Control

DEPARTMENT	ENVIRONMENT AND DEVELOPMENT		
RESPONSIBILITY	MANAGER PLANNING AND REGULATION		
VERSION CONTROL			
Policy Name	Id No and Version	Resolution	Date Adopted
Enforcement Policy	1	132	22/10/2009
Enforcement Policy	2	417/1213	20/06/2013
Enforcement Policy	3	64/1718	17/08/2017
Compliance and Enforcement Policy	4	27/2324	20/07/2023
Next Review Date	By September 2025		