

## Guidelines for Commercial Use of Local Government Controlled Areas and Roads Approvals

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Author:	Coordinator Health & Local Laws	Commencement:	13/08/2024

### 1. PURPOSE

To provide for control and regulation on the use of local government controlled areas and roads within the Mareeba Shire Council jurisdiction in accordance with relevant Local Laws<sup>1</sup> to ensure pedestrian movement is not impeded, visual amenity is not compromised and to provide for effective management of risk.

### 2. SCOPE

The guideline applies across Council and to the public.

### 3. PROCEDURE STATEMENT

#### ALL APPLICATIONS

The following conditions will apply to all applications for use of local government controlled areas and roads:

- All applications shall be made in writing on the approved form.
- An application for approval must be accompanied by full details of how the proposed activity will be undertaken, including any relevant work methods, signage, maps, specifications, plans and vehicles to be used.
- Where an application is received without sufficient documentary evidence of public liability insurance, the application may not be approved.
- Any goods/furniture/materials are to be positioned only outside the front of the premises that is the subject of the application and are not to be displayed outside any other premises without approval. An application to use the footpath in front of an unrelated premises will only be considered where the applicant has sought approval or consent from that premises.
- Council's delegated officer is authorised to approve applications and issue an approval or refuse the application. The applicant will be notified in writing of the outcome of the application and where the application is not approved, reasoning will be provided.

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<sup>1</sup> Local Law No. 1 (Administration) 2018 and Subordinate Local Law No. 1 (Administration) 2018.

## **Approvals**

The following is applicable to all approvals:

- The term (length of time) of the approval shall be the term stated in the approval.
- The approval will expire on 30 June each year. Applications for renewal of the approval should be made well prior to the expiry of the approval.
- As a condition of the approval and in compliance with the relevant Local Law, it is the responsibility of the applicant to maintain adequate public liability insurance.
- Approvals may be issued with conditions, including the need to comply with specific requirements. Approval holders must comply with the conditions attached to the approval.

## **Assessment criteria**

For all applications, the additional criteria to be considered will include:

- the physical suitability of the area or road for the proposed activity
- the likelihood of the proposed activity causing nuisance, inconvenience or annoyance to the occupiers of the adjoining land, vehicular traffic or pedestrians
- the likely effect of the proposed activity on the amenity of the surrounding area
- the likely effect on the local environment and any risk of pollution or other environmental damage
- the appropriateness, quality and condition of equipment to be used in the proposed activity
- the likely impact on the ability of the general public to use the site concurrently with the proposed activity
- whether the applicant's proposed waste management strategy makes provision for the satisfactory collection, storage and removal of all waste generated by the proposed activity
- whether the application provides documented evidence that the applicant holds a public liability insurance policy that complies with Council's published *Standard Requirements for Public Liability Insurance for Approval Holders* policy.

## **Public liability insurance**

All applications must be accompanied by documentary evidence that the applicant has obtained public liability insurance for an amount not less than the stated amount in Council's *Standard Requirements for Public Liability Insurance for Approval Holders* Policy.

Council's preference is to be included as a Named Insured on any policy (option a) above) and applicants for public liability insurance should advise their insurance company of this when negotiating the policy.

Council may, at its sole discretion, accept naming as an Interested Party with Interests Noted or with nil named reference, and such will be dependent upon the type of activity being conducted and the assessed level of potential activity risk involved.

Where an approval holder for a policy is advised by their proposed insurer that the company will not allow Council to be added to the contract or policy (possibly more relevant to global insurance companies), the approval holder should make efforts to shop around and negotiate with companies who have cover with insurers who will meet Council's requirements for insurance as aligned with Council's assessed level of risk for the proposed activity. Where an applicant or approval holder is unable to secure insurance to the satisfaction of Council having regard to the assessed level of potential activity risk, the approval application or renewal may be refused.

The renewal date for the public liability insurance must be kept in force for the whole of the period covered by the approval. The cover must be current to 30 June. This information will be recorded and proof of renewal of the insurance policy must be provided to Council each year. Failure to provide Council with proof of renewal of the insurance policy may result in cancellation of the approval.

### **Enforcement procedures**

Approval holders must comply with the conditions attached to an approval for the duration of the term of the approval.

The following procedure will be followed in dealing with breaches of the Local Law relating to the Commercial Use of Local Government Controlled Areas and Roads:

- A compliance notice will be issued outlining the action required by the approval holder and the action that Council will take upon further non-compliance with the approval conditions or breaches of the Local Law. Where the breach is that no approval is currently in place, advice will also be provided on how to make an application for approval.
- Council may also cancel or suspend an approval on reasonable grounds.<sup>2</sup>
- **Where a person fails to comply with a compliance notice, a penalty infringement notice may be issued and any materials or items relevant to the activity may be removed from the relevant location by an authorised person.**

### **Fees**

Refer to Council's current *Schedule of Fees and Charges - Environmental Health & Local Laws*.

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<sup>2</sup> See Local Law No. 1 (Administration) 2018 ss 17-18.

## FURTHER INFORMATION

### BUSKING

Where approval is for busking, further guidelines and conditions are applicable.

#### Assessment guidelines

In assessing an application for busking on the footpath, the following will apply:

- The application for a busking approval will not be considered without an insurance Certificate of Currency indicating that the applicant has adequate public liability insurance. The policy must be for the relevant amount listed in Council's *Standard Requirements for Public Liability Insurance for Approval Holders* Policy and Council is to be named as the insured party or listed as an interested party in the insurance policy. Where performers do not hold current public liability insurance, the cover may be purchased from Council for a fee. Public liability insurance cover will be required for each busker, regardless of age.
- The applicant must nominate an area in which they wish to perform. If located in Kuranda, the applicant must nominate one of the following designated areas:
  - In front of 38 Coondoo Street (property owned by Telstra) (Lot 715 NR7409)
  - In front of the Heritage Market, Rob Veivers Drive, Kuranda (Lot 2 RP736332)
  - 7 Coondoo Street—outside St Saviours Church (Lot 406 NR7409)
  - 9 Coondoo Street—outside Djurri Dadagal (Lot 405 NR7409)
  - Therwine Street—outside the information Centre (Lot 13 K4019)
- The application proposal must indicate nominated performance times.
- The application proposal must not indicate any use of performance audio amplification equipment.
- The application proposal must not indicate any use of flammable liquids or lit torches in performance.
- The application proposal must not indicate any use of knives, whips, or sharp objects during performance.
- Either a three-month or an annual busking approval should be nominated.

#### Approval conditions

- The applicant must adhere to all the conditions attached to the approval, in particular:
  - The use of abusive, profane, offensive, or harassing behavior will result in the cancellation of the approval; and
  - Buskers must only perform in the location detailed on their approval. The areas designated for busking will be determined by Council.
  - Approval holders must seek approval or consent from any business operators adjacent to the approved performance site.
- Approvals may be revoked at any time where non-compliance is observed.

## **Fees**

Refer to Council's current *Schedule of Fees and Charges - Environmental Health & Local Laws*.

## **POLITICAL STALLS**

Where the application is for a political stall, the following will apply:

### **Applications**

- No formal Application is required—that is, no application form needs to be completed.
- The applicant must provide a description of the proposed stall and its location.
- The applicant must provide a copy of their public liability with Council being a named insured party or listed as an interested party in the insurance policy.
- No application fee is required, and no bond is required.

### **Siting requirements**

- Where the stall is to be located on a Council footpath, a minimum 2 metre thoroughfare must be maintained between the stall and the road gutter.
- The applicant must seek approval or consent from the adjacent business operator.
- The stall must not be located so as to prevent or obstruct pedestrian traffic adjacent to dedicated crossings.

### **Conditions**

- The stall holder must ensure that all waste and litter is disposed of appropriately.
- The stall holder must ensure that unwanted advertising material does not become litter.
- The stall must be temporary and in no way fixed to the site and must be removed at the end of the day.
- Where it is proposed for a stall to operate in excess of three consecutive days, a formal application for Commercial Use of Local Government Controlled Area or Road must be made to Council.
- Any associated advertising signs or sandwich boards must be attached to the stall.

## **GOODS FOR SALE ON FOOTPATH**

Where approval is for Goods for Sale on Footpath, further requirements apply.

### **Assessment guidelines**

In assessing an application for Goods for Sale on Footpath, the following shall be considered:

- The application for Goods for Sale on Footpath approval will not be considered without an insurance Certificate of Currency indicating that the applicant has adequate public liability insurance. The policy must be no less than the amount listed in Council's *Standard Requirements*

*for Public Liability Insurance for Approval Holders Policy and Council is to be a named insured party or listed as an interested party in the insurance policy.*

- The proposal must allow for a 2-meter thoroughfare clearance for pedestrians.
- The application proposal must not indicate any obstruction from the footpath to kerbside.
- For application proposals for the Kuranda township, the proposal must locate the goods on the kerbside side of the footpath.
- For application proposals for Mareeba township, the proposal must position the goods against the shop wall.
- The application must clearly indicate that goods are to be located for display only outside the front of the business concerned.
- Where the application proposal is for Kuranda township, goods may only be placed on the kerbside side of the footpath. Council may consider approval where extreme circumstances prevent such placement.
- Where the application proposal is for the Mareeba township, goods may only be placed against the shop wall. Council may consider approval where extreme circumstances prevent such placement.
- Where approvals already exist at an adjacent business, the proposal should locate goods in a manner which complements the existing approvals (in the reasonable opinion of an authorised person).
- The application must not propose the hanging of goods from ceilings and awnings and business fronts

### **Approval conditions**

- The applicant must adhere to all the conditions attached to the approval, in particular:
  - All bins, racks or other items used for the display of goods must be free of protrusions, sharp edges or any parts which an authorised person reasonably believes may present a risk of injury; and
  - All goods must be removed from the designated area at end of each day.
- Approvals may be revoked at any time where non-compliance is observed.

### **Fees**

Refer to Council's current *Schedule of Fees and Charges - Environmental Health & Local Laws*.

## OUTDOOR DINING

Where approval is for Outdoor Dining, further guidelines and conditions are applicable.

### Assessment guidelines

In assessing an application for Outdoor Dining on the footpath, the following will be considered:

- The application for an Outdoor Dining approval will not be considered without submission of an insurance Certificate of Currency indicating that the applicant has adequate public liability insurance. The policy must be no less than the amount listed in Council's *Standard Requirements for Public Liability Insurance for Approval Holders Policy* and Council is to be a named insured party or listed as an interested party in the insurance policy.
- The application proposal must allow for a 2-meter clearance for pedestrian traffic.
- The application proposal must allow for unobstructed access from the footpath to kerbside.
- The application proposal must include a site plan indicating the positioning or placement of tables and chairs in relation to the premises.
- Where approvals already exist at an adjacent business, the application proposal must locate tables and chairs in a manner which complements the existing approvals (in the reasonable opinion of an authorised person). For example, all furniture associated with the approvals must be placed on the same side of the footpath.

### Approval conditions

- The applicant must adhere to the conditions attached to the approval, in particular:
  - Tables, chairs and their surrounds shall be kept in a clean and tidy condition at all times; and
  - All tables and chairs must be removed from the designated area at end of each day.
- Approvals may be revoked at any time where non-compliance is observed.

### Fees

Refer to Council's current *Schedule of Fees and Charges - Environmental Health & Local Laws*.

## APPROVED FURNITURE ON BYRNES STREET MAREEBA

Where approval is for approved furniture to be placed on the Byrnes Street footpath in Mareeba, further guidelines and conditions are applicable.

### Assessment guidelines

In assessing an application for approved furniture on any part of the footpath at Byrnes Street Mareeba, the following will apply:

- The application for approved furniture to be placed on Byrnes Street footpath Mareeba will not be considered without an insurance Certificate of Currency indicating that the applicant has adequate public liability insurance. The policy must be no less than the amount listed in Council's

*Standard Requirements for Public Liability Insurance for Approval Holders* Policy and Council is to be a named insured party or listed as an interested party in the insurance policy.

- Furniture measurements should adhere to:
  - a. 1 x table (preferably round) which does not exceed 50cm x 50cm in width or length or diameter with only 2 chairs permitted for that table; OR
  - b. 1 x 1.2m bench with a seat width of no greater than 60cm wide.
- The application proposal must allow for a 2-meter clearance for pedestrian traffic.
- The application proposal must allow for unobstructed access from the footpath to kerbside.
- The application proposal must include a site plan indicating the positioning or placement of tables and chairs in relation to the premises.
- Where approvals already exist at an adjacent business, the application proposal must locate tables and chairs in a manner which complements the existing approvals (in the reasonable opinion of an authorised person). For example, all furniture associated with the approvals must be placed on the same side of the footpath.

### **Approval and conditions**

The following additional conditions apply:

- The applicant must adhere to the conditions attached to the approval.
- Approvals may be revoked at any time where non-compliance is observed.
- Approved furniture and their surrounds shall always be kept in a clean and tidy condition.
- Approved furniture is to be removed from the footpath at the close of business each day.

### **Fees**

Refer to Council's current *Schedule of Fees and Charges - Environmental Health & Local Laws*



## DEPOSITING GOODS OR MATERIALS INCLUDING HOARDING, SCAFFOLDING OR GANTRY

Where approval is for Depositing Goods/Materials—Hoarding, Scaffolding or Gantry further guidelines and conditions are applicable.

### Assessment guidelines

In assessing an application for Depositing Goods/Materials—Hoarding, Scaffolding or Gantry, Council will have regard to:

- The application for approved Depositing Goods/Materials—Hoarding, Scaffolding or Gantry approval will not be considered without a valid insurance Certificate of Currency indicating that the applicant has adequate public liability insurance. The policy must be no less than the amount listed in Council's *Standard Requirements for Public Liability Insurance for Approval Holders* Policy and Council is to be a named insured party or listed as an interested party in the insurance policy.
- The application proposal should include a site plan clearly indicating placement and location of materials—fencing or scaffolding structures.
- The application proposal must allow for a 2-meter clearance for continued pedestrian traffic.
- The application proposal must include a safety plan for the safe movement of pedestrians and vehicles including but not limited to the safe temporary diversion of traffic, erection of warning lights and barricades to the satisfaction of an authorised person.
- The application proposal must specify a deadline for completion of the works or ceasing of the activity

### Approval and conditions

The following conditions will be imposed on an approval. The approval holder, its contactors or agents are required to:

- adhere to the conditions attached to the approval which may include additional project-specific Workplace Health and Safety conditions.
- observe standards specified by Council in the carrying out of the works or activity; and
- reinstate the footpath or road to the satisfaction of an authorised person following completion of the works or ceasing of the activity.

### Fees

Refer to Council's current *Schedule of Fees and Charges - Environmental Health & Local Laws*.

## 4. REPORTING

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No additional reporting is required

## 5. DEFINITIONS

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**Council** – means the Mareeba Shire Council including all elected representatives, employees, contractors, volunteers, a Standing or Joint Standing Committee, committee members and any entity under direct Council ownership, management, sponsorship or financial control.

## **6. RELATED DOCUMENTS AND REFERENCES**

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*Local Government Act 2009 (Qld)*

*Local Law No. 1 (Administration) 2018 (MSC)*

*Subordinate Local Law No. 1 (Administration) 2018 (MSC)*

*Standard Requirements for Public Liability Insurance for Approval Holders (MSC)*

## **7. REVIEW**

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It is the responsibility of the Manager Development & Governance to monitor the adequacy of this procedure and implement and approve appropriate changes. This procedure will be formally reviewed every four (4) years or as required from time to time.