

# FOOTPATH TRADING POLICY

Policy | Development and Environmental Services

To facilitate the use of footpaths and public areas for the purpose of outdoor trading, and to provide requirements and guidelines to inform the regulation of these outdoor areas.

<b>Policy No:</b>	POL/10049.3	<b>Version:</b>	1
<b>Service Unit:</b>	Planning and Development Services		
<b>Responsible Officer:</b>	Manager Development and Environmental Services		
<b>Responsible Director:</b>	Director Planning and Infrastructure		
<b>Authorisation Date:</b>	18 June 2018	<b>Review Date:</b>	18 June 2020
<b>Minute No:</b>	103/18		

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# 1 Background

## 1.1 Title of the Policy and Commencement Date

The Footpath Trading Policy takes effect from 18 June 2018.

## 1.2 Purpose of the Policy

To provide a method of assessing applications for the appropriate use of Singleton Council's footpaths as footpath trading areas, based on the requirements and guidelines stated within this policy.

# 2 Objective

## 2.1 Objectives and Coverage of the Policy

- Facilitate the creation of a cosmopolitan trade atmosphere in appropriate areas of the city;
- Ensure an equitable and safe thoroughway is maintained on footpaths for pedestrians including the users of wheelchairs and motorised scooters;
- Facilitate the appropriate use of footpaths for the purposes of footpath trading activities including outdoor dining activities and the use of free standing signage, flags and like items to promote business activity;
- Facilitate improvement to the street vitality, amenity and economic viability;
- Provide opportunities for shop owners, residents and visitors to benefit from pedestrian circulation; and
- Provide requirements and guidelines to inform the regulation of footpath trading activities to avoid nuisance, endangerment or inconvenience to the public and residential neighbourhoods.

# 3 Application

## 3.1 Application of this Policy

The policy applies to all applications for footpath trading on roads or in public places (land other than a road) within the local government area.

# 4 Definitions

For the purposes of this policy:

Term	Meaning
<b>Footpath trading area</b>	a footpath utilised on a temporary basis for commercial activities which may include the display of articles, signs, goods, food or beverages for consumption, display or sale in association with an adjacent approved business



<b>A-frame sign</b>	upright, rigid supporting frame with two flat connected panels at the top in the form of a triangle or an inverted V. An example is pictured in clause 5.20.
<b>Flag Structure</b>	pole, staff or similar article with a piece of cloth or bunting displaying a design, symbolic colours or patterns
<b>Outdoor Dining Operator</b>	the entity that exercises management and control over a footpath trading area used for the purpose of outdoor dining.

## 5 Principles/Body

### 5.1 Making an Application for Footpath Trading Areas

Applicants seeking approval for a footpath trading area must complete an *Application for Footpath Trading Form*. Application forms are available from Singleton Council Customer Service Centre located at the Civic Centre, Queen Street, Singleton or Council's website [www.singleton.nsw.gov.au](http://www.singleton.nsw.gov.au).

Footpath Trading applications may be lodged at the Customer Service Centre or at [ssc@singleton.nsw.gov.au](mailto:ssc@singleton.nsw.gov.au).

Prior to lodging an application for a footpath trading area, it is recommended that applicants contact Council's Customer Service Centre to ensure they have the required information for submission to Council and to clarify application **fees**.

### 5.2 Fees for Application

Fees and charges will be applied to applications for footpath trading areas.

Council's Fees and Charges are reviewed annually. Current adopted and draft fees and charges schedules are accessible at Council's website [www.singleton.nsw.gov.au](http://www.singleton.nsw.gov.au).

### 5.3 Exemption from Approval

Approval is not required for placement of a single A-Frame sign where it is placed:

- in accordance with the Locational Guidelines (clause 5.17);
- in accordance with the Placement Guidelines (clause 5.18);
- is a single sign that specifically conforms to the Articles Placed Within Area Guidelines – A-Fame Signs (clause 5.20); and
- that single sign is placed separately from any other articles or is placed in an approved footpath trading area.



Approval is not required for placement of flags where they are placed:

- in accordance with the Locational Guidelines (clause 5.17);
- in accordance with the Placement Guidelines (clause 5.18);
- are no more than three flags that specifically conform to the Articles Placed Within Area Guidelines – Flags including Tear Drop flags (clause 5.21); and
- those flags are placed separately from any other articles or are placed in an approved footpath trading area.

#### **5.4 Factors Considered when Assessing Applications for Approval**

Council will consider the following factors when assessing all applications for approval of a footpath trading area:

- the *Local Government Act, 1993* and/or *Roads Act, 1993*;
- Council's guidelines contained in Clauses 5.17, 5.18, 5.19, 5.20 and 5.21, as appropriate;
- the provision of a continuous minimum 1.8m wide path of travel for pedestrians within the footpath to ensure equitable access and dignity;
- the proximity of other footpath trading areas;
- the frequency of use of the footpath;
- the features of the footpath including the width and construction;
- traffic considerations including pedestrian and customer safety issues;
- traffic considerations including areas adjacent to the road kerb or within existing sign posted zones relating to bus stops, taxi stands, parking for disabled and the like; and
- the ability of the premises to comply with this Policy.

Despite clause 5.4, Council will assess applications for alternative arrangements where the applicant can demonstrate that, on the merits of the individual case, the alternative arrangement will better achieve the purposes of this Policy.

#### **5.5 RMS Concurrence**

Application for a footpath trading area on a Classified State Road or adjacent to traffic control signals is prohibited without concurrence from the NSW Roads and Maritime Service (RMS). Council will seek this concurrence after an application is made.

#### **5.6 Conditions of Approval**

- It is the responsibility of the footpath trading operator to meet all of the conditions of approval which may include operating hours. An approval may be revoked by Council at any time for failure to comply with any condition of the approval;



- An approval will be granted for a period determined by Council and will conclude at the end of that period;
- Expiration of the approval will require lodgement of a new application;
- Council may revoke or suspend an approval if access is required to the footway;
- An approval lapses if the footpath trading operator's business ceases to trade, however, approvals are transferable, provided Council is notified and proof of a current Public Liability Risk Insurance Certificate for the new proprietor is submitted to Council; and
- Despite any provisions of this Policy, Council may amend any approval to meet legislative requirements or altered circumstances at specific sites at any time.

### **5.7 Insurance – Notification of Claims and Public Liability**

- The applicant/operator for footpath trading approval is to indemnify Council in writing against any action taken against it by persons suffering any loss of injury as a result of the existence or operation of the footpath trading area;
- Public Liability insurance must be taken out by the applicant/operator of the food business. This policy must have a limit of not less than \$20m indemnity cover;
- Singleton Council is to be noted on the policy as an interested party for the respective rights and interest; and
- The applicant/operator is required to lodge a copy of their current Public Liability Certificate of currency to Council, prior to the placement of furniture within the approved footpath trading area. A Certificate of Currency is required to be furnished with each renewal application.

### **5.8 Non-Compliance – No Approval or Breach of Approval**

- The use of a footpath trading area without approval or not in accordance with an approval is an offence and may result in the issue of an infringement notice or other regulatory action;
- The use of a footpath trading area will be reviewed if the use is not in accordance with the approval requirements;
- Council will send out a notification of the review process to the footpath trading operator requesting representations within seven days of receiving the notification; and
- Following review of any representations and evidence gathered, Council may terminate the approval or otherwise cause the approval to lapse with one month's notice in writing.



## 5.9 Cleanliness and Maintenance

- The footpath trading area must be maintained in a clean and tidy condition at all times;
- Environmentally sound methods of cleaning and maintaining the footpath trading area must be used;
- The footpath trading operator is responsible for cleaning the approved footpath trading area;
- Rubbish must not be disposed of in Council's street bins; and
- An 'assistance animal' is permitted in a footpath trading area in accordance with the *Disability Discrimination Act, 1992*. Animals are otherwise only permitted in accordance with the *Companion Animals Act, 1998*.

Note: Section 14A of the *Companion Animals Act, 1998* provides that dogs are not prohibited in outdoor dining areas provided that:

- (a) the dog is under the effective control of some competent person and is restrained by means of an adequate chain, cord or leash that is attached to the dog;
  - (b) the person does not feed the dog or permit the dog to be fed; and
  - (c) the dog is kept on the ground.
- A footpath trading area must be paved or sealed for its full width. The approval holder is to bear the cost of all pavement repairs carried out by Singleton Council which have been caused by footpath trading activities.

## 5.10 Smoking in Footpath Trading Areas Used for Outdoor Dining Purposes

Smoking in or adjacent to a footpath trading area is prohibited when a footpath trading area is used for the purpose of providing outdoor dining.

## 5.11 Crime Prevention

Operators of the business with an approved footpath trading area are encouraged to provide a notice advising patrons to secure their bags or valuables while using a footpath trading area particularly when a footpath trading area is used for the purpose of providing outdoor dining.

## 5.12 Alcohol Free Zones

Council has approved Alcohol-Free Zones in respect to roads, footpaths and public car parks in the following areas until 30 June 2022:



- All roads in the area bounded by Queen Street, Boundary Street, York Street, Church Street, Wynyard Street, Munro Street, John (South) Streets, Ryan Avenue and John Street;
- Maitland Road from Boundary Street to Kelso Street;
- The full length of Howe Street;
- The full length of Dunolly Road;
- The full length of Dorsman Drive; and
- Blaxland Avenue from Dorsman Drive to Wakehurst Crescent.

Approved footpath dining areas with an appropriate Liquor Licence are exempt from the requirements of Alcohol-Free Zone restrictions.

### **5.13 Toilet Facilities**

- Toilet facilities must be available for patrons at the premises to which it relates when a footpath trading area is used for the purpose of providing outdoor dining and the combined seating capacity of both internal and footpath trading areas is greater than 60 places; and
- Inclusion of outdoor seating increases the number of seats to a café etc, and such an increase may require the provision of toilet facilities.

### **5.14 Heating Devices**

- Free standing heaters located within footpath trading areas must comply with Australian Standard AS 1596 (Storage and Handling) and must be certified by the Australian Gas Association;
- Heating devices must be contained wholly within the footpath trading area; and
- Heating devices must be positioned and secured to ensure that they will not cause any injury to patrons or pedestrians. Footpath trading operators are responsible for any damage caused.

### **5.15 Lighting**

Any footpath trading area approved to operate outside daylight hours must provide adequate lighting, to Council's satisfaction, to ensure the safety and amenity of patrons and the general public.

### **5.16 Furniture**

- The type of furniture will be determined by Council as part of the lease arrangement;



- Outdoor furniture should make a positive contribution to the street environment. A furniture style that is practical and elegant and integrates well with the surrounding cityscape is encouraged. All furniture items will be subject to Council's approval, details of which must form part of the application;
- Any furniture provided on a footpath must provide for and allow a minimum 1.8m pedestrian path of travel as per Clause 5.4;
- The furniture should be strong, durable, waterproof and weather resistant, designed for commercial outdoor use. The design must not contain parts that are likely to cause damage to the pavement. Public safety and comfort must be considered; and
- Surfaces such as table tops must be non-reflective. White furniture is discouraged due to the tendency for rapid deterioration and discolouring in the urban environment.

### **5.17 Locational Guidelines**

A footpath trading area will only be considered by Council where:

- it is in association with an adjacent approved business premises; and
- the applicant is the owner/proprietor of that business premises.

A footpath trading area is only appropriate where:

- the public space is wide enough to accommodate the footpath trading area while still maintaining a clear pathway of travel for all pedestrians including those who use mobility aids;
- the ground surface of the footpath trading area is suitably constructed and sufficiently level to accommodate proposed articles and enable the area to be used safely and without inconvenience to pedestrians or vehicles; and
- there is no unreasonable hazard to pedestrians, users of trading areas or vehicular traffic.

The location and operation of footpath trading areas must take into consideration the amenity of neighbours and other users of public areas;

Applications submitted within a residential zone will be publicly notified in accordance with the provisions of the Singleton Development Control Plan 2014.

### **5.18 Placement Guidelines**

Placement and defining footpath trading area:

- A footpath trading area is to be clearly marked and operated within the approved area (as determined by Council) only;
- The boundary markers of the footpath trading area shall be installed and maintained by Council after approval is granted;



- Footpath trading areas will only be approved immediately adjacent to the business to which it relates; and
- Footpath trading areas must be located so that the proprietor is able to supervise activities in the area from within the premises.

A footpath trading area must:

- provide an unobstructed minimum 1.8m wide pedestrian path of travel along the footway;
- be located adjacent to the road kerb, generally in accordance with Figure 1, to optimise pedestrian access;
- maintain a minimum clear width of 1.8m exclusive of any obstruction or street fixtures (eg. seats, bench, tree, rubbish bin, pole) from the property boundary towards the roadway to provide access for pedestrians using a mobility aid.
- In special circumstances (eg. high volume pedestrian or traffic areas, such as near busy intersections) greater widths may be required;
- where vehicles are permitted to park against the kerb, be at least 0.6m from the kerb edge to provide a safety buffer from vehicles and to enable passengers to alight from and access parked vehicles;
- provide a suitable barrier (temporary, framed fabric style or planter box style or a suitable contrast to the surrounds to be visible at all times) aligned at each end of the footpath trading area;
- not inhibit access to public utilities such as fire hydrants, access holes, inspection chambers, telephone and electricity underground cables, water service pipes and the like;
- where situated at a street intersection corner, be designed to reflect how the appropriate principles in AustRoads Guide to Traffic Engineering Practice - Part 5 and the RMS's Road Design Guide have been applied to the intersection typology and traffic calming infrastructure in order to maximise public safety;
- At some locations reduced setbacks may be permitted having regard to the sight lines present at the location;
- provide adequate clear zone provision to the trading area in accordance with the RMS's Road Design Guide where relevant;
- not be located adjacent to the road kerb or within existing sign posted zones relating to bus stops, taxi stands, parking for disabled and the like;
- not be located on both sides of the pedestrian access path unless the location has been purpose built to accommodate placement of furniture;
- must include a minimum pedestrian path of 1.8m;
- must include a set back of 0.6m from kerb; and



- All tables, chairs and other outdoor furniture are to be kept in the designated footpath trading area at all times.

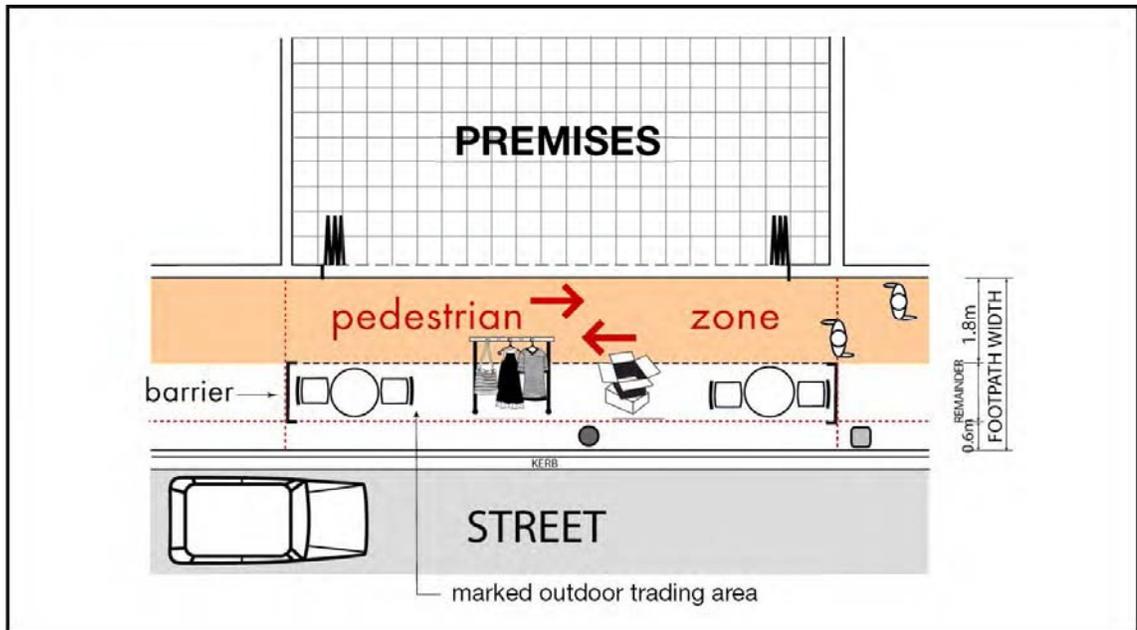


Figure 1: Adjacent to kerb

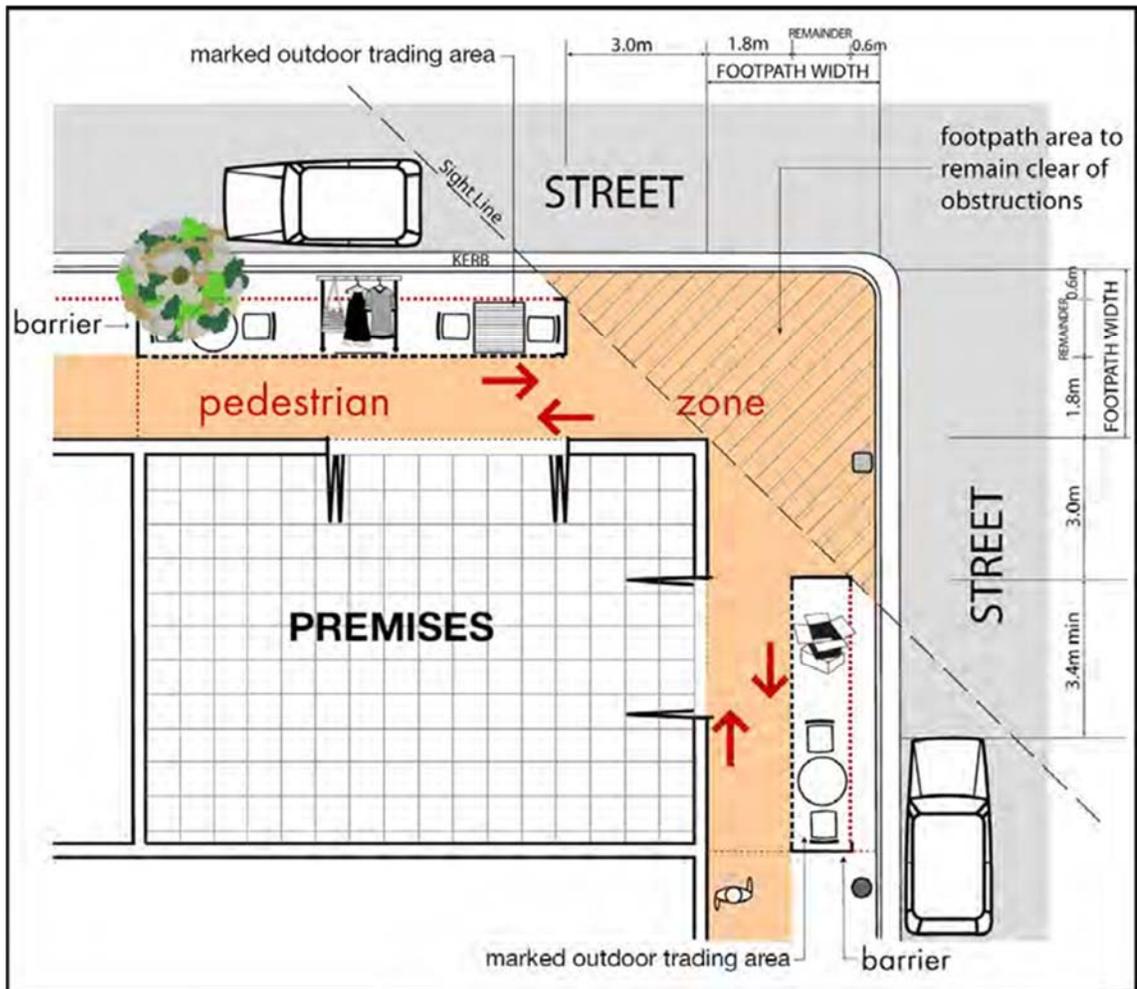


Figure 2: Adjacent to kerb at corner location



- Where a marked footpath trading area is adjacent to the kerb at street corner:
  - o Vehicle sight line maintained with nominal 3m setback pending locational circumstances;
  - o Minimum unobstructed pedestrian path of 1.8m on both street frontages;
  - o Set back 0.6m from kerb; and
  - o All articles, signs, goods, food or beverages for consumption, display or sale are to be kept in the designated footpath trading area at all times.

Note: All figures should be read as a guide only. Relevant traffic requirements must be complied with on a site by site basis.

### 5.19 Articles Placed Within Area – General Guidelines

- Articles placed within footpath trading areas including articles for sale, furniture, tables, chairs, planter boxes, barriers and menu boards must, at all times, be properly placed and confined within the footpath trading area and shall not impact upon the safety of other users;
- Articles placed within the footpath trading area shall not protrude from the area except for flags;
- Items placed in the footpath trading area must not cause damage to the existing footway or other public infrastructure. The footpath trading operator is responsible for any damage caused to third parties;
- It is the responsibility of the business to ensure that patrons do not move furniture or goods from within the boundaries of the footpath trading area onto the pedestrian path of travel;
- No article including furniture is to be permanently fastened to the footway without the separate prior approval of Council;
- Articles or structures not permanently fastened to the footway must be removed from the footpath trading area upon completion of trading each day;
- Footpath trading areas on footways to which vehicular traffic has access must be protected by approved barriers;
- Umbrellas and shade structures should make a positive contribution to the street environment. All umbrellas and shade structures will be subject to Council's approval, details of which must form part of the application;
- Umbrellas and shade structures should be strong, durable, waterproof and weather resistant, designed for commercial outdoor use. The design must not contain parts that are likely to cause damage to the pavement. Public safety must be considered;
- White umbrellas and shade structures are discouraged due to the tendency for rapid deterioration and discolouring in the urban environment; and



- The applicant for the footpath trading application must demonstrate how umbrellas and shade structures will be secured during use, without being permanently fastened or damaging Council assets / footpath.

## 5.20 Articles Placed within Area – A-Frame Signs

- A-frame signs must not exceed 1100mm high when open x 600mm wide x 600mm deep. (When open, signs are required not have a base footprint exceeding 600mm x 600mm);
- A-frame signs must be sturdy and unable to fall or be blown over and must be constructed of suitable durable materials;
- A-frame signs must not have protruding or moving parts when displayed;
- A-frame signs must not have flashing lights or any elements that can reflect light or dazzle;
- A-frame signs must not display offensive content;
- A-frame sign content must relate to the associated business; and
- Where the A-Frame sign is located in a Heritage Conservation Area as defined in the Singleton Local Environmental Plan 2013 (LEP), the sign must only display business identification information in accordance with the provisions of State Environmental Planning Policy No 64.



Figure 3: A-frame sign maximum dimensions



## 5.21 Articles Placed within Area – Flags including Tear Drop Flags

- Flag structures must not exceed 2.5m high or the height of adjacent awnings or similar structures within a 10m radius, whichever is lower, and must not have a width exceeding 600mm at any point or in any direction;
- Flag structures must be free standing or in a base or holder that does not exceed 1100mm high x 600mm wide x 600mm deep and must not penetrate or have any associated part that penetrates the ground;
- Flag structures must be sturdy and unable to fall or be blown over and must be constructed of suitable durable materials;
- Flag structures and flags must not have any elements that can reflect light or dazzle. Flags must not display offensive content;
- Flag content must relate to the associated business; and
- Where the flag is located in a Heritage Conservation Area as defined in the Singleton Local Environmental Plan 2013 (LEP), the sign must only display business identification information in accordance with the provisions of State Environmental Planning Policy No 64.

## 6 Relevant Legislation

- *Local Government Act 1993*
- *Roads Act 1993*
- *Disability Discrimination Act 1992*
- *Companion Animals Act 1998*
- *State Environmental Planning Policy No. 64 – Advertising & Signage*
- *Singleton Local Environmental Plan 2013*
- *Singleton Development Control Plan 2014.*

## 7 Document Information

Related documents and reference information in this section provides a single reference point to develop and maintain site compliance information.

### 7.1 Related Documents

Related documents, listed in **Table 7-1** below, are internal documents directly related to or referenced from this document.

Number	Title
DCS39/18	Alcohol-Free Zones

Table 7-1 – Related documents



## 8 Responsible Officer / Policy Owner

Ownership of this policy rests with the Manager Development and Environmental Services.

## 9 Responsibilities

Parties or Persons	Responsibilities
Manager Development and Environmental Services	<ul style="list-style-type: none"> <li>Ensuring the document is maintained and reviewed according to the documents requirements. Ensuring the resources are allocated to effectively undertake all aspects of this document</li> </ul>
Planning & Development Team	<ul style="list-style-type: none"> <li>Assess and determine applications for footpath trading in accordance with the requirements of this document</li> </ul>

## 10 Approval

As per cover sheet.

## 11 Monitoring

This policy will be monitored by the Manager Development and Environmental Services to ensure compliance.

## 12 Review Date

This policy, once adopted, is to remain in force until it is reviewed by Council. This policy is to be reviewed approximately every two (2) years to ensure that it meets legislative requirements.

## 13 Last Review Date

This Policy was last reviewed on 20 April 2015.

## 14 Record Keeping, Confidentiality and Privacy

This policy is to be made available for public viewing as required under the *Government Information (Public Access) 2009, NSW*.

## 15 Breaches and Sanctions

Any breaches of this Policy will be referred to the General Manager for appropriate action.

